

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No.1558 of 2016

In the matter of:

Petition under Regulation 45, Power to Remove Difficulties, of GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 and for refunding the charges unduly recovered by the State Load Dispatch Centre (SLDC) on account of Short-trades and Non-trades period for use of State Transmission Network in respect of Short Term Open Access user for Collective transactions.

Petitioner: UltraTech Cement Limited
Unit: Gujarat Cement Works
Kovaya, Rajula, Amreli

Represented by: Shri P. R. Mehta

V/s

Respondent: State Load Dispatch Centre
132 kV Gotri Sub-Station Compound
Gotri Road, Vadodara- 390 021

Represented by: Advocate Shri Anand Ganeshan along with Shri N. N. Shaikh

CORAM:

**Shri Anand Kumar, Chairman
Shri K. M. Shringarpure, Member
Shri P.J.Thakkar, Member**

Date: 8/9/2017

ORDER

1. The present petition has been filed by the Petitioner, M/s UltraTech Cement Limited, seeking following prayers:

- (a) Direct and hold that based on the definition under Regulation 3 (r), “Reserved Capacity”, in case of Collective Transactions, no transmission capacity stands reserved till the

energy is scheduled and approved a day ahead for the Short-Term Open Access (STOA) users

- (b) Hold and declare that the action of the Respondent SLDC in considering the MW capacity limit indicated under Prior Standing Clearance/NOC for STOA as in case of Collective Transactions for power not Scheduled and Scheduled energy not approved as capacity reserved is unwarranted, arbitrary and not tenable in terms of regulatory provisions in this regard and hence be set aside,
- (c) Hold and declare that the action of the Respondent SLDC in raising the Transmission Charges claims from STOA users for collective transactions is ultra vires, unwarranted, arbitrary and not tenable in terms of regulatory provisions in this regard and hence be set aside and reaffirm that such charges are to be recovered by the exchanges only as directed under the respective regulations,
- (d) Direct the concerned SLDC to abide by the provisions under CERC/GERC Regulations/procedures and refrain itself from raising claims and recovering amounts through arbitrary decisions/instructions towards Transmission Charges to deter them from going for Open Access power purchase through collective transactions by insisting on payment of such arbitrary claims,
- (e) Direct the SLDC to approach the Commission as per the Regulatory provisions for Removal of Difficulties if any, instead of directing the consumers at least in the Open Access matters based on its arbitrary/convenient interpretations,
- (f) Direct the SLDC to stop forcing any such recovery viz. State Transmission Charges for collective transactions which is not duly approved by the Commission through legitimate process for the same and also warn SLDC that such arbitrary actions henceforth shall be treated as breach/disobedience of the Orders of the Commission attracting punishment as per Section 142 of the Electricity Act, 2003,

- (g) Direct the SLDC to refund the claim amount recovered so far from the petitioner with interest at the rate the Utilities recover the Delay Payment Charges,
- (h) Direct the Respondent viz. SLDC, refund the amount recovered for claims which were not raised within the period of 2 years from the date/dates on which it was considered due for payment by the Petitioner, if at all such additional charges are finally considered as leviable.

2. The facts of the case as stated in the Petition are as follow:

- 2.1. The Petitioner, a company registered under the Companies Act, 1956, is having its production facility at Kovaya and is engaged in production of cement.
- 2.2. Petitioner is an Extra High Voltage (EHV) consumer of distribution licensee Paschim Gujarat Vij Company Limited (PGVCL) bearing consumer No. 43107 at 220 KV voltage level and having a contract Demand of 17500 KVA. The Petitioner is connected to transmission network of the State Transmission Utility (STU) viz. Gujarat Energy Transmission Corporation Limited. The Petitioner also has a Captive Power Plant (CPP) of 92 (4×23) MW capacity for supplementing its requirement of power and using open access facility as per Regulations for sale of its surplus power if and when such surplus power is available.
- 2.3. Respondent, State Load Dispatch Centre, is a System Operator for the power system network including the network of GETCO for monitoring and controlling generation and use of power within the State of Gujarat by the consumers.
- 2.4. The Respondent has recovered the State Transmission Charges for Short-trades and Non-trades periods in respect of Collective Transactions using Short-Term Open Access (STOA) by arbitrary and misleading interpretation of permission granted for Open Access by way of

issuing “Prior Standing Clearance/NOC” by SLDC for sale/purchase of power through collective transactions as capacity reserved.

- 2.5. The Respondent has retrospectively recovered the charges on the basis of assumption that the No Objection Certificate given for the capacity as indicated under the NOC as the capacity reserved for the Petitioner, whereas in fact according to the Open Access Regulations, 2011, capacity is reserved for LTOA and MTOA, while for the STOA for collective transactions in particular, it is considered as permission only for operation if and when the capacity is available after allowing (i) the use of capacity in priority by LTOA first, (ii) MTOA and (iii) by STOA under bilateral contracts. The question of reserved capacity for STOA in case of collective transactions in particular is far from the fact.
- 2.6. Respondent SLDC did not furnish any specific reply against the specific issues and references pointed out by the Petitioner in its correspondence referring to regulatory reference documents for Reservation of Capacity and the collective transactions but merely preferred to reiterate irrelevant references based claims only.
- 2.7. It was already clarified by the Commission to the Respondent vide minutes of the meeting dated 24.11.2011 that the transactions of power made by STOA consumers through power exchanges are collective transactions and to be treated as per Inter State Open Access Regulations of CERC and not as per the Intra-State transactions as per Regulations of this Commission.
- 2.8. On the representations made by the Petitioner citing various regulatory references against the arbitrary interpretation and actions of recovery by the Respondent, Respondent in its replies, has not denied or disputed provisions cited but simply reiterated generalized references applicable to bilateral transactions. The Respondent has deliberately avoided referring to the

collective transactions, CERC provisions in this regard and authorization by Regulators to exchanges for collection of Transmission Charges.

- 2.9. The Petitioner has never disputed provisions for payment of State Transmission Charges in accordance with the GERC Regulations and had been paying the same since beginning as such. The matter of dispute is very much limited to only and only arbitrary interpretation of “Reserved Capacity” in case of collective transactions where the point of injection as also the point of drawal of Open Access power are not identified.
- 2.10. Such arbitrary interpretation and coercive actions for recovery is made after a very long time from the date of issue of the respective Regulations and avoiding a legitimate course of action within the framework of regulatory provisions such as approaching the Commission for removal of difficulties if at all any.
- 2.11. The Respondent has been justifying its transmission charges claims/recoveries referring to Regulation 21 of the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011. However, the same is applicable to bilateral transactions only and not applicable to Collective Transactions in particular. This issue was raised during the meeting held by the Commission on 24.11.2011 and it was clarified that the collective transactions would be governed by the CERC Regulations/Orders.
- 2.12. Section 56 (2) of the Electricity Act, 2003 provides that no sum due from any consumer under this Section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. Thus, as per Section 56 (2) also, such invoices are time barred.
3. The Respondent State Load Desptach Centre, vide its reply submitted as follows:

- 3.1. The Petition has been filed seeking a declaration that the Transmission Charges for collective transactions should be on scheduled energy and not on maximum reserved capacity even for the period prior to 14.8.2014, namely for FY 2012-13 and 2013-14.
- 3.2. Respondent State Load Despatch Centre, has acted in accordance with the prevailing Regulations framed by the Commission namely, GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 and GERC (Terms and Conditions of Intra-State Open Access) (First Amendment) Regulations, 2014 which provide for transmission charges to be payable on the basis of maximum capacity reserved for the customers. The above actions of the SLDC of recovering the transmission charges on the basis of maximum capacity reserved has already been upheld by the Commission in Gujarat Granito Manufacturers Association Vs State Load Despatch Centre and Anr. in Petition No. 1440 of 2014 vide Order dated 24.3.2015.
- 3.3. The Petitioner had sought the facility of Short-Term Open Access on the State Transmission System to procure the electricity through Indian Energy Exchange as collective transaction. The consent or No Objection Certificate of the Respondent State Load Despatch Centre (SLDC) is required for such open access on the State Transmission System and the same has been recognized in the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 also.
- 3.4. SLDC after considering the surplus capacity available after allotment to the Long and Medium Term Open Access, had granted the consent/NOC for 25.15 MW to the Petitioner. Once granted, such capacity is accounted for and kept reserved for the Petitioner and deducted from the available surplus capacity considered while granting open access to subsequent applicants. It is thus wrong on the part of the Petitioner to claim that no capacity has been reserved in case of short-term open access. The consent/ NOC granted by SLDC is for a certain capacity, which is the reserved capacity.

- 3.5. The maximum reserved capacity is not determined on a day to day basis but is the capacity reserved by the Short-Term Open Access Customer for the period of Open Access, namely, the capacity for which NOC has been granted by SLDC. The capacity placed on bid by the Petitioner and accepted by Power Exchanges is not the reserved capacity under Open Access but the capacity sought to be purchased under Open Access. SLDC has granted the NOC for the capacity of 25.21 (avg.) MW for the Petitioner for the period of April, 2012 to March, 2014 and this is the capacity that has been reserved by SLDC for the Petitioner.
- 3.6. The transmission charges applicable for the above open access on the State network is determined as per the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 and amendments thereto. The CERC (Open Access in Inter-State Transmission) Regulations, 2008 which govern the Short-Term Open Access in Inter-State transmission system also provide that the transmission charges payable for use of the State network is as fixed by the respective State Commission. Only in the absence of the determination of the transmission charges by the State Commission that the above Regulations provide for charges for the energy approved. The proviso to Regulation 16 (2) of the CERC Regulations would not apply once the respective State Commission has determined the transmission charges. In the present case, the Commission has determined the transmission charges and the same would be applicable.
- 3.7. The GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 provided for transmission charges for Short-Term Open Access customers at Regulation 21 and which was amended vide GERC (Terms and Conditions of Intra-State Open Access) (First Amendment) Regulations, 2014. The proviso in the Original Regulations as well as the first amendment provided that the transmission charges for Short-Term Open Access shall be payable on the basis of maximum capacity reserved for the customer.

- 3.8. The Regulations were further amended by the GERC (Terms and Conditions of Intra-State Open Access) Regulations (Second Amendment) Regulations, 2014 notified on 14.8.2014 wherein Regulation 21 (2) (ii) was amended whereby transmission charges for Short-Term open access are now payable on the basis of energy actually scheduled for Short-Term transactions and specifically made effective from date of its publication in gazette i.e. 14.8.2014.
- 3.9. On coming into effect of the above amendment, the transmission charges are to be based on actual scheduled energy and accordingly, SLDC has been recovering transmission charges from the Petitioner and other customers as per the Scheduled energy. However, prior to coming into the effect of the above Amendment, the transmission charges were to be based on the maximum reserved capacity as provided in the prevailing Regulations. It is undisputed that the period in question namely 2012-13 and 2013-14 are prior to the notification of the Second Amendment and therefore the provisions of the Second Amendment cannot be applied to such period. The above position has been upheld by the Commission in its Order dated 24.3.2015 in Petition No. 1440/2014. The above Order of the Commission has been challenged before the Hon'ble APTEL by way of Appeals No. 238 of 2015, 269 of 2015 and 12 of 2016, but no stay has been granted.
- 3.10. Letters dated 28.1.2015 and 15.4.2015 issued by SLDC are consistent with the GERC Open Access Regulations and the Amendments thereto. The Petitioner has not disputed the calculation of the transmission charges but only the principle of determination on the maximum reserved capacity as opposed to scheduled energy. In accordance with the GERC Open Access Regulations, the transmission charges are payable on maximum reserved capacity. Therefore, it is not relevant to consider whether the Petitioner has actually traded the electricity or not. The principle of determination on maximum reserved capacity has been applied only to the

period prior to 14.8.2014 i.e. prior to coming into force of the Second Amendment to the GERC Open Access Regulations.

- 3.11. The clarification in the minutes of the Meeting dated 24.11.2011 was only with respect to the procedure laid down by the CERC Open Access Regulations. The transmission charges for the State network cannot be as per the CERC Open Access Regulations. In any event, the CERC Open Access Regulations, dealing with collective transactions, has provided that the transmission charges for the State network are as fixed by the respective State Commission. The GERC Open Access Regulations specifically provide that the transmission charges are payable on maximum reserved capacity and the same cannot be disregarded on the basis of the clarification in the Minutes of the Meeting.
- 3.12. The referred CERC Open Access Regulations specifically recognize in Regulation 16 (3) that the transmission charges for use of State network shall be as fixed by the respective State Commission. Transmission charges fixed under Regulation 16 (1) and 16 (2) are for inter-State transmission network and not for State network. Therefore, above Regulations cannot be used for determination of transmission charges for the use of State network.
- 3.13. CERC Open Access Regulations cannot be applied for principles of determination of transmission charges when there are specific GERC Open Access Regulations. The Central Commission itself has recognized that the transmission charges for the State network is as determined by the State Commission. It is therefore not relevant that the Central Commission has approved the transmission charges for inter-State network on the basis of actual scheduling and not on reserved capacity.
- 3.14. In absence of the settlement by the Power Exchanges, the payment is to be made by the Short Term Open Access Customers and accordingly the invoices were raised on the Petitioner.

SLDC is entitled to recover the transmission charges as determined by this Commission and the same cannot be denied.

- 3.15. CERC Open Access Regulations only provide that the transmission charges cannot be revised retrospectively. However, this does not prevent the recovery of the applicable transmission charges. In the present case, there has been no revision of transmission charges by the Commission. There had been an under-recovery of the transmission charges for the relevant period and the SLDC had sought to recover the said amount. This does not amount to revising the transmission charges retrospectively.
- 3.16. The clarification in the Meeting dated 24.11.2011 does not affect the methodology of determination of transmission charges. The transmission charges for the State network is to be determined by the State Commission which is also provided in the CERC Open Access Regulations. Therefore, there was no need for raising any interpretation issue in the meeting.
- 3.17. SLDC is only seeking to recover the transmission charges as determined by the Commission and there is no requirement for SLDC to approach the Commission for Orders for recovery of transmission charges once such charges have been determined by the Commission. SLDC has not sought to recover any additional amount. The Petitioner cannot claim undue benefit of short fall of recovery by SLDC.
- 3.18. GERC Open Access Regulations do not distinguish between the bilateral and collective transactions. The contention of the Petitioner that the transmission charges as per the GERC Open Access Regulations are only applicable to bilateral transactions and not to collective transactions is misconceived and erroneous. The Petitioner cannot be permitted to seek open Access on the State network without payment of transmission charges.

3.19. The Petitioner has admitted that the transmission charges are payable in accordance with GERC Open Access Regulations. Therefore, the contention of the Petitioner that the GERC Open Access Regulations is only with reference to bilateral transactions and not collective transactions is contradicted by the above admission of the Petitioner. GERC Open Access Regulations initially provided for transmission charges on reserved capacity and it was vide Second Amendment on 14.8.2014 that the transmission charges was made applicable on energy approved. The reserved capacity is the capacity which has been allowed to the open access user i.e. capacity for which NOC is granted.

4. The matter was kept for hearing on 16.2.2016, 5.4.2016, 7.5.2016 and finally on 26.7.2016.

5. Arguments and submissions of Shri P. R. Mehta, on behalf of the Petitioner, during the hearing and vide written submissions, are stated below:

5.1. The Respondent has made irrelevant references to the Commission's Order in Petition No. 1440/2014 which is misleading as the Order referred to is for totally different issue wherein levy of State Transmission Charges from STOA users was disputed. In the present case, the Petitioner has very categorically stated that the levy of state transmission charges in case of collective transactions are not disputed and in fact the same have been regularly paid without demur. In this case the issue is arbitrary action of the Respondent SLDC of considering NOC capacity limitation as reserved capacity instead of energy scheduled.

5.2. It is an arbitrary interpretation based on afterthoughts after more than three years of implementing Open Access Regulations, 2011 and not even raising such issue in the meeting dated 24.11.2011 for clarifications on implementation issues. There is no reply as to the fact that why the Respondent did not approach the GERC and/or CERC for disputing State Transmission Charges collected by the Power Exchanges and the modality adopted by the

Power Exchanges and preferred to act arbitrarily without any specific cause of action in this regard. Moreover, when the NOC capacity approved is with a condition to limit the total drawal within the Contract Demand only, the question of reservation of additional capacity in case of collective transaction is unwarranted.

- 5.3. The Second Amendment is basically for change of Transmission Charges modalities for usage by STOA consumers for part of the day and does not refer to the collective transactions, “Reserved Capacity” definition and CERC provision for collection by the Power Exchanges as made out to be by the Respondent. The proviso of payment of transmission charges for short-term open access on actual scheduled energy for short-term transactions is for bilateral transactions under STOA and not for the collective transactions which are governed by the CERC Regulations as already clarified under the GERC Minutes of Meeting dated 24.11.2011. As such the said amendment cannot form a cause of recovery action as taken by the Respondents SLDC for the prior period.
- 5.4. The question of under recovery by SLDC does not arise at all as the same were to be and are recovered by the Power Exchanges in accordance with the Regulations and the Respondent SLDC, under the guise of Amendment dated 14.8.2014, taking advantage of its monopoly position, suddenly ventured into arbitrary as also coercive action of illegitimate recoveries going beyond its authority. Moreover, there is no reply/reason as to why such recovery actions, if at all justified, based on Regulations notified in June, 2011 are taken after a period of three years.
- 5.5. The transmission charges also form a part of the tariff and as per the Electricity Act, 2003, it can be determined by the Commission only and can be recovered in accordance with the term-conditions as decided by the Commission only. Hence, the submission by the Respondent viz. there is no bar on recovery of transmission charges by SLDC and has not sought to recover any

additional amount is not only wrong but also goes to show that the Commission's lawful authority is taken for granted.

- 5.6. Judgment of APTEL passed in Appeal No. 69 of 2014 on 17.2.2016 involves issues of similar nature wherein Power Grid had raised the impugned bills by retrospectively applying amendment dated 24.11.2011 to the Transmission Sharing Regulations, 2010 for the period prior to 1.7.2011. All the issues were decided in favour of the appellant and against the Respondents. Incidentally, all Gujarat Government power utilities were also the Respondents in the above matter.
- 5.7. There is a profound logic in going by Scheduled Energy based State Transmission Charges in case of collective transactions. All surplus capacities are getting allotted to LTOAs, MTOAs and STOAs (bilateral contracts) and hence the capacities get reserved on priority with commitments from both the sides i.e. Open Access users and Service providers CTU/STU. Whereas in case of collective transactions, it is not so because the injector/generator does not know from where and through which route it has come to him. It is only known that the network of CTU/STU is used and hence the network usage charges only are recovered as against Reserved Capacity Charges.
- 5.8. Another dimension of the collective transactions is of bidding, acceptance of bids and firming up energy schedules. The Power Exchanges (PXs) are receiving bids for selling/injecting power by the generators for say 10,000 MW but in a close ended bidding process of exchanges and looking to the rates bided, may be only 3000 MW power schedules get approved. The issue is whether it is justified and judicious to recover transmission charges for 10,000 MW power which is not going to be transacted as against only 3000 MW power actually get transacted.

5.9. The following issues in Short/Non Trades Transmission Charges claim of SLDC remain unanswered:

5.9.1. For collective transactions, the State Transmission Charges are recovered in full by the respective Power Exchanges in accordance with law and how there can be another charges to be recovered by SLDC for the same services.

5.9.2. If Power Exchanges recovery and its modalities were inappropriate, was it represented before it within a reasonable time?

5.9.3. SLDC has submitted audited accounts to GERC for true-up exercise for the past years. Whether such under recovery was shown as lien with exchanges and/or the STOA users of collective transactions?

5.9.4. For all Open Access users under bilateral contracts, there are specific agreements with GETCO for Reservation of Capacity for Transmission of Power from injector/generator to drawer/consumer. For collective transactions, are there any similar power transmission agreements indicating capacity reservation?

5.9.5. For collective transactions, the SLDC gives only “Standing Clearance/ No Objection Certificates” indicating only a limit of power to be transacted. Is there any provision/mention of “Reservation of Capacity” and mode of recovery.?

5.9.6. In cases where NOC is given with a condition for limiting total drawal within contract demand, how additional capacity reservation issue can come up?

5.10. Also, since final schedule and power flow quantum gets decided through close end bidding process of the power exchanges, no capacity reservation is possible till the bids are known. Moreover, since the bided quantum of power is generally far more than accepted bid quantum

of power, recovery of transmission charges of the same available transmission capacity from the multiple bidders is neither justified not correct.

5.11. The capacity under NOC is only a limit indicated based on the infrastructure available and real time operation data but by no means it is a reserved capacity as defied under the GERC/CERC Regulations.

5.12. There is no reference to the collective transactions under any of the GERC Regulations and /or Amendments thereof and on the contrary under the clarification given by the GERC during the 24.11.2011 meeting, it is made clear that the collective transactions shall be governed by the CERC Regulations. In absence of settlement by power exchanges, fresh orders/amendments in procedure as may be required are to be sought from the authority viz. CERC and/or GERC but arbitrary and ultra vires actions for coercive recovery by abusing monopoly position is absolutely unfair and illegal.

5.13. The Petitioner has nowhere agreed or accepted the recovery of additional State Transmission Charges except recovered through exchanges in accordance with the CERC Regulations. The time bar issue is only applicable if at all the Commission do not accept the Petitioner's contention based on Regulations in this regard.

5.14. The recovery period starts from 1st April, 2012 and hence, it had to be claimed by/before 1st April, 2014 which is not done. For FY 2012-13, 1st intimation for recovery is of Respondent's invoice No. SLDC/12-13/STOA/211 dated 16.4.2015 for Rs.56,70,282 and it was after a period of 3 years. Section 56 (2) of the Electricity Act, 2003 clearly shows that the claims after the period of 2 years are null and void ab initio.

- 5.15. The interpretation of MoM issue recorded is convenient but incorrect as it clearly says that the collective transactions shall be governed by the CERC Regulations but nowhere it says that it is in regard to procedure only.
- 5.16. Further, the difference between the present petition and petition No. 1440 of 2014 of Gujarat Granito Manufacturer decided vide Order dated 24.3.2015 can be pointed out as follows:
- 5.16.1. The Petitioner has prayed to hold and declare as per the definition of “Reserved Capacity” under Regulation 3 (r), for collective transaction, no transmission capacity stands reserved till the energy is scheduled and approved on day ahead basis, whereas no such prayer was there in Gujarat Granito’s case.
- 5.16.2. Contrary to Gujarat Granito’s case, the Petitioner has never disputed provisions for payment of State Transmission Charges in accordance with the GERC Regulations. The matter of dispute is limited to only arbitrary interpretation of “Reserved Capacity” in case of collective transactions where the point of injection and point of drawal of open access power are not identified.
- 5.16.3. Gujarat Granito had contended that there is no reserved capacity for STOA consumers in Inter-State or Intra-State transmission network as the STOA is allowed only for the spare capacity available in the transmission network, whereas the Petitioner, herein, states that there is no capacity reservation as far as the collective transactions are concerned.
- 5.16.4. The Petitioner has referred to the clarification given by the Commission at point No.4 in the minutes of the Meeting dated 24.11.2011, wherein it was clarified that open access transactions through power exchanges are to be treated as collective transactions and to be dealt according to the inter-state OA Regulations of the CERC. However, there was no such reference in Petition No. 1440/2014.

5.16.5. The Petitioner has also raised the issue of such invoices being time-barred under Section 56 (2) of the Electricity Act, 2003, transmission charges are not leviable and collectable, however, no such aspect was raised in Petition No. 1440/2014.

6. Advocate Shri Anand Ganeshan's arguments and submissions, on behalf of the Respondent, are summarized below:

6.1. The present Petition is entirely covered by the decision of the Commission's Order dated 24.3.2015 in Petition No. 1440/2014 in the case of Gujarat Granito Manufacturers Association Vs. State Load Despatch Centre and the Petitioner's attempt to distinguish the Order is misconceived. The above case was also on the issue of payment of transmission charges on maximum reserved capacity by the open access consumers procuring power through power exchange as opposed to scheduled capacity. The prayer of the Petitioner in the present petition is also the same.

6.2. The contention of the Petitioner that the order is silent on collective transactions is incorrect as in the above Petition No. 1440/2014, the members of the Petitioner therein were procuring the power through energy exchange which is a collective transaction. Merely because the decision in Petition No. 1440/2014 does not refer to collective transactions does not mean that the decision of the Commission was not related to collective transactions. The Commission was considering the transmission charges in the context of collective transactions and therefore the decision would apply to the facts of the present case also.

6.3. GERC Open Access Regulations, 2011 and the amendment thereto do not distinguish between bilateral and collective transactions and the transmission charges would be applicable for all short-term open access and not merely bilateral transactions. Since in both the transactions, state transmission system is utilised, the open access customer, whether in bilateral or collective is

required to pay the transmission charges. Further, there can be no distinction between the transmission charges for collective and bilateral transaction.

6.4. The issue of reservation of capacity was raised by the Petitioner in Petition No. 1440/2014, however, the Commission upheld the recovery of transmission charges by the Respondent based on maximum capacity reserved; such capacity being the capacity for which NOC is granted. Once the NOC is granted to any open access customer, including for collective transactions, such capacity is kept reserved for that particular customer and is not considered for available surplus capacity while granting open access to subsequent open access customers. It is incorrect to say that there is no specific drawal point for the open access customer in a collective transaction. The drawal point of the open access customer is fixed. The fact that the injection point is not specific would not mean that there is no capacity reserved by the SLDC. If there is no capacity reserved by SLDC for open access customer in collective transaction, then such capacity would be considered surplus capacity available for any other applicant which is not the case. It is wrong on the part of the Petitioner to claim that there is no concept of reserved capacity. The consent/NOC granted by SLDC is for a certain capacity, which is the reserved capacity and SLDC is entitled to recover transmission charges as per the above quantum.

6.5. Appeals have been filed against the above Order in Petition No. 1440/2014 being Appeals No. 238/2015, 269/2015 and 12/2016 before Hon'ble APTEL, wherein similar issues regarding collective transactions, reservation of capacity and settlement through power exchanges have been raised. No stay has been granted by the Tribunal.

6.6. As regards, contention of the time barred, the invoices raised by the Respondents are not barred by limitation or that the recovery is sought after a period of three years. SLDC had sought recovery only for period 2012-13 and 2013-14 in January and April 2015. The recovery was within the period of three years and therefore there is no bar for such recovery. The Respondents

are entitled to transmission charges for the open access granted and the invoices are not invalid merely because they were raised after 1.4.2014. The claim for transmission charges had not been time barred.

6.7. Section 56 of the Electricity Act, 2003 is not applicable to the present case. In any event, Section 56 (2) does not prevent recovery of charges after 2 years. It only provides that there can be no disconnection after two years. Section 56 (2) only prevents recovery under the said Section. It is clear from the fact that the Section 56 does not create any dues but only provides a means of recovery being through notice of disconnection. The recovery through disconnection is barred under sub-section (2) of Section 56 after 2 years. However, this would not prevent recovery of an amount due under any other law.

6.8. This issue has been settled by the Hon'ble APTEL by decision dated 9.5.2008 in Appeal No. 74/2007 in Ajmer Vidyut Viteran Nigam Limited Vs. Rajasthan Electricity Regulatory Commission and Ors. There was a dissent in the above appeal and though the Hon'ble Technical Member differed on other aspects, on the issue of Section 56, the Hon'ble Technical Member had concurred. The above decision settles the issue that general law of limitation is applicable and Section 56 (2) only provides for period for disconnection of supply of electricity. This does not prevent the Respondent from recovering the amount through other means after two years. Section 56 (2) does not prevent the SLDC from raising invoices for the period 2012-13 in 2015.

6.9. As to the validity of the claim of the Respondent, the transmission charges applicable for the open access on the State network is to be determined as per GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 and amendments thereto. CERC Open Access Regulations which govern the short-term open access in inter-state transmission system also provide that the transmission charges payable for use of State network is as fixed by the respective State Commission. Only in the absence of the determination of the transmission

charges by the State Commission the CERC Regulations provide for charges for the energy approved. In the present case, the Commission has determined the transmission charges and the same would be applicable. The contention of the Petitioner that the transmission charges as per the State Commission Regulations is not applicable for collective transactions is incorrect and contrary to the above specific provisions of the CERC Open Access Regulations itself.

6.10. GERC Open Access Regulations as notified on 1.6.2011 provided for transmission charges for Short-Term Open Access customers. These do not distinguish between bilateral and collective transactions and the transmission charges would be applicable for all Short-Term Open Access and not merely bilateral transactions. The Petitioner cannot be permitted to use the intra-state transmission network without paying transmission charges for the same. Further, the determination of such charges would be as per the respective State Commission which is also provided by the CERC Regulations.

6.11. Above 2011 Regulations, was amended by the Commission vide First Amendment, 2014 notified on 4.3.2014. The proviso in the Regulations as well as the First Amendment provided that the transmission charges for STOA shall be payable on the basis of maximum capacity reserved for the customer. The Regulations were further amended by GERC Second Amendment notified on 14.8.2014, which specifically provided for application of the said amendment from the date of its publication in the Gazette i.e. from 14.8.2014. As per the Second Amendment, transmission charges for STOA would be payable on scheduled energy. But this does not mean that the transmission charges for the period prior to 14.8.2014 would be paid on the basis of scheduled energy merely because the recovery is after Second Amendment. The principle for determination of the transmission charges for open access for a certain period would be as per the Regulations applicable for such period and not the Regulations prevailing at the time recovery is sought. Therefore, even if invoices are raised in 2015, since the period of open access

is prior to 14.8.2014, the GERC Open Access Regulations prior to Second Amendment would apply. It is undisputed that the period in question namely 2012-13 and 2013-14 are prior to the notification of the Second Amendment and therefore the provision of the Second Amendment cannot be applied to such period.

6.12. SLDC after considering the surplus capacity available after allotment to the Long and Medium Term Open Access, had granted the consent/NOC for 25.15 MW (approx..) to the Petitioner. Once granted, such capacity is accounted for and kept reserved for the Petitioner and deducted from the available surplus capacity considered while granting open access to subsequent applicants. It is thus wrong on the part of the Petitioner to claim that there is no concept of reserved capacity for STOA for collective transactions. The consent/NOC granted by SLDC for collective transactions is for a certain capacity, which is the reserved capacity.

6.13. The Petitioner's claim that there is no fixed drawal point in collective transactions is incorrect. The drawal point of the open access customer is fixed. This has also been held by the Hon'ble APTEL in Appeal No. 70/2015. Merely because the injection point is not fixed does not mean that there has been no reservation of capacity. The capacity for which NOC is granted for open access for collective transactions is deducted from the available capacity for subsequent applicants. If there was no reservation of capacity, this capacity would continue to be shown as surplus and available and any subsequent applicant would have a right to open access on the same capacity. Thus, the claim of the Petitioner is contrary to the practice and procedure of grant of open access.

6.14. The term 'maximum reserved capacity' in Regulation 21 has to be given a meaning. The maximum reserved capacity cannot be determined on a day to day basis as claimed by the Petitioner but it is the capacity reserved by the STOA customer for the period of Open Access. This capacity is the capacity for which NOC has been granted by the SLDC. The capacity placed

on bid by the Petitioner and accepted by Power Exchanges is not the reserved capacity under open access but the capacity sought to be purchased under open access. Thus, the payment of transmission charges for the period prior to Second Amendment is on the basis of maximum reserved capacity i.e. the capacity for which NOC is granted. The Open Access customers such as the Petitioner are required to make payment as per NOC capacity. However, SLDC inadvertently had raised the invoices initially on scheduled capacity and not reserved capacity. Once the error was realised, SLDC issued Supplementary invoices for the differential amount. It is the obligation of the Petitioner to pay the transmission charges as per the GERC Open Access Regulations. The Petitioner cannot deny its liability merely because the invoice was raised subsequently, particularly when the claim is not time barred.

6.15. SLDC is not seeking to retrospectively revise the transmission charges. There is no revision in the applicable transmission charges. There had been an under-recovery of the transmission charges for the relevant period and the SLDC had sought to recover the said amount. SLDC cannot be prevented from recovery of legitimate dues. This principle of recovery through revised invoices has already been upheld by this Commission in Petition No. 1440/2014.

6.16. The original invoices were raised by SLDC under the Open Access Regulations 2011 on the basis of scheduled capacity (in MW) inadvertently. However, once the error was realized in April, 2014 SLDC raised supplementary invoices for differential transmission charges on reserved capacity basis in MW for the period 2012-13 and 2013-14 from April, 2014 onwards. For the period 2014-15 upto the Second Amendment, the original invoices were raised on the basis of reserved capacity. For the period after Second Amendment, the invoices are raised on the basis of Scheduled capacity (in MW).

6.17. As to the settlement of transmission charges through power exchange, in the absence of such settlement, the payment is to be made by the Short-Term Open Access customer such as the

Petitioner. The Petitioner cannot escape its liability to pay the transmission charges as per the Regulations on the basis that the settlement was to be through Power Exchanges.

6.18. In collective transactions, the CERC Regulations provide for settlement of transmission charges by the Power Exchange under Section 18 i.e. transmission charges are paid by the Power Exchange directly to the SLDC. The Power Exchange would in turn recover the said charges from the respective open access customer. The fact that the settlement is through power exchange does not change the liability of transmission charges on the open access customer. The Regulation 16 (3) of the CERC Open Access Regulations also provides for payment of transmission charges by the Intra-State entities/open access customers such as the Petitioner. The original invoices were raised by the Respondent SLDC on the Power Exchange wherein inadvertently the transmission charges were claimed on the basis of scheduled capacity and not reserved capacity.

6.19. Once the error was realised, the Petitioner wrote to the Power Exchange for the recovery of the differential amount. However, the Power Exchange expressed its inability to recover the differential amount pertaining to the past period. Concern was also raised for recovery of the amount from the people who were no longer members of the Power Exchange. In this regard, a meeting was held between the officials of SLDC and the Power Exchange on 1.5.2014. The Power Exchange agreed for recovery by SLDC directly from the open access customer as they would not be able to recover for the past period. Thus, the SLDC raised the invoices directly on the STOA customer. Though the Power Exchange had expressed reservations on the recovery on reserved capacity basis, the same cannot be disputed as this is a clear provisions in the GERC Open Access Regulations, 2011.

6.20. Hon'ble APTEL has upheld the Order dated 20.12.2014 passed by this Commission in Petition No. 1421/2014 and also upheld the jurisdiction of the Commission and applicability of the

GERC Open Access Regulations, even in the cases of open access for collective transactions. In the said Appeal, specific grounds were raised on behalf of Appellants that the Central Commission Regulations have to be considered for grant of STOA to facilitate transaction through power exchange. However, this submission has not been accepted by the Tribunal. In view of this judgment, the open access granted to an embedded customer, even for collective transactions is subject to the Regulations and Orders passed by the Commission. The minutes of Meeting dated 24.11.2011 have to be considered in view of the above decision of the Tribunal.

6.21. Though the invoices on the Petitioner were raised after the Second Amendment, the same relate to the period prior to the Second Amendment namely, 2012-13, 2013-14 and 2014-15- upto 14.8.2014. The Second Amendment applies only prospectively i.e. from the date of publication in Gazette.

6.22. Respondent issued supplementary invoices from April 2014 to rectify the mistake in original invoices and claim the differential amounts for the period prior to April, 2014. The original invoices for the period from April, 2014 to August 2014 were raised correctly on the basis of reserved capacity, including for the Petitioner.

6.23. There were around 383 open access customers prior to 14.8.2014 and around 480 open access consumers for whom supplementary invoices were to be raised and therefore the entire process took time. The Respondent raised supplementary invoices progressively and the process was completed on 22.6.2015. The Respondent raised nearly 1835 supplementary invoices in total for the period prior to Second Amendment. Out of the above, nearly 944 of supplementary invoices were raised after the second amendment, however, they were related to the period prior to the Second Amendment.

7. Based on the submissions made by the parties, following issues emerged for the decision of the Commission:

- I. Whether the collective transactions, and the transmission charges for the same, are governed by the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 or the CERC (Open Access in Inter-State Transmission) Regulations, 2008 in view of Point no. 4 of the Minutes of Meeting dated 24.11.2011 as recorded by the Commission?
- II. Is there any Reserved Capacity as per the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 for collective transactions? Whether the reserved capacity for bilateral transactions and collective transactions are different and distinct?
- III. Is the Petitioner, for collective transactions, liable to pay the transmission charges for Scheduled energy instead of Reserved Capacity based on NOC prior to Second Amendment to the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011?
- IV. Whether the action of recovery of transmission charges by the Respondent SLDC for collective transactions on the Capacity basis, unwarranted, illegal and ultra-vires ?
- V. Whether the claim of the Respondent is barred by the period of Limitation as specified under Section 56 of the Electricity Act, 2003?
- VI. Is the Respondent eligible to recover the dues for the period FY 2012-13 and FY 2013-14 as claimed in the impugned invoices dated 28.1.2015 and 16.4.2015 retrospectively?
- VII. Whether the Respondent has violated the provisions of the Act and Open Access Regulations/Orders notified by the Commission.?

7.1. We have carefully considered the submissions made by the parties. The issues emerged in present petition pertain to transmission charges payable by Open Access customers prior to

Second Amendment dated 14.8.2014 to GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 specifically for collective transactions.

7.2. It is undisputed between the parties that the Commission has notified GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 vide Notification No. 3 of 2011 dated 1.6.2011. The Commission made First Amendment in the said Regulations by Notification No. 1 of 2014 dated 4.3.2014, effective from 1.4.2014. The Commission, thereafter, notified Second Amendment to the Principal Regulations, which became effective from 14.8.2014.

7.3. M/s. UltraTech Cement Limited is EHV consumer of PGVCL having consumer No.43107 with Contract Demand of 17500 kVA. The Petitioner is also having a Captive Power Plant of 92 MW capacity for supplementing his requirement of power and using open access facility for sale of his surplus power as and when such surplus is available. The Petitioner has obtained the consent from time to time from PGVCL for sale of power under Short-Term Open Access through collective transactions for which the Respondent SLDC have also issued the NOCs/Standing Clearance. In case of sale of power through collective transactions through energy exchange wherein the Petitioner, being situated in license area of PGVCL, is injecting power at injection point utilizing either the Inter-State or Intra-State or Inter as well as Intra-State transmission network. When the Intra-State network is involved, i.e. injection point of Open Access customer it is a part of either State Transmission or State Transmission as well as Distribution network, which may be further connected with Inter/Intra-state connection point and if such network is utilized by the Open Access customer, he shall be liable to pay the transmission charges for utilization of Intra-State Transmission Network as well as distribution network which needs to be decided with consideration of relevant provisions of CERC as well GERC Open Access Regulations.

7.4. Now, we deal with the first issue i.e. whether the collective transactions and transmission charges for the same are governed by the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 or the CERC (Open Access in Inter-State Transmission) Regulations, 2008.

7.5. In support its contention that for collective transactions the applicable Regulations are the CERC Regulations, the Petitioner has heavily relied upon the various CERC Regulations and point No.4 of Minutes of Meeting dated 24.11.2011 recorded by the Commission. Thus, it is necessary to refer the relevant provisions of the CERC (Open Access in Inter-State Transmission) Regulations, 2008. Regulation 16 of the aforesaid Regulations, reads as under:

Transmission Charges

16. (1) In case of bilateral transactions, for use of the inter-State transmission system, the transmission charges at the rate specified hereunder shall be payable by the applicant for the energy approved for transmission at the point(s) of injection:

<i>Type of Transaction</i>	<i>Transmission charges(Total) (Rs./MWh)</i>
<i>(a) Bilateral, intra-regional</i>	<i>30</i>
<i>(b) Bilateral, between adjacent regions</i>	<i>60</i>
<i>(c) Bilateral, wheeling through one or more intervening regions</i>	<i>90</i>

(2) In case of the collective transaction, for use of the inter-State transmission system, transmission charges at the rate of Rs.30/MWh for energy approved for transmission for each point of injection and for each point of drawal shall be payable.

(3) The intra-State entities shall additionally pay transmission charges for use of the State network as determined by the respective State Commission:

Provided that in case the State Commission has not determined the transmission charges, the same shall not be a ground for denial of open access and charges for use of respective State network shall be payable for the energy approved at the rate of Rs.30/MWh:

Provided further that transmission charges for use of the State network shall be intimated to the Regional Load Despatch Centre concerned for display on its web site:

Provided also that transmission charges shall not be revised with retrospective effect.

The aforesaid Regulation provides that in case of collective transactions, for use of Inter-State transmission systems, charges are payable @ Rs. 30/MWh for energy approved for transmission.

Regulation 16 (3) of the said Regulations provides that Intra-State entities shall additionally pay transmission charges for use of State network as determined by the respective State Commission. The first proviso of the said Regulations provides that in case SERC has not determined the transmission charges, the same shall not be a ground for denial of Open Access and charges for use of respective State Network shall be payable for the energy approved at the rate of Rs. 30/MWh. Thus, the aforesaid Regulation recognizes that when the Intra-State Transmission system is utilized, the Open Access customers are required to additionally pay the transmission charges either @ Rs. 30/MWh or it shall be payable as per the transmission charges determined by the respective State Commission.

7.6. The CERC made first amendment to the aforesaid Regulations by notification dated 20.5.2009.

The amendment in Regulation 16 of the principal Regulations reads as under:

16. (1) In case of bilateral transactions, the transmission charges at the rate specified hereunder shall be payable by the short-term customer for the energy approved for transmission at the point or points of injection:

<i>Type of Transaction</i>	<i>Transmission Charges(Total)(Rs./MWh)</i>
<i>(a) Bilateral, intra-regional</i>	<i>80</i>
<i>(b) Bilateral, between adjacent regions</i>	<i>160</i>
<i>(c) Bilateral, wheeling through one or more intervening regions</i>	<i>240</i>

(2) In case of the collective transactions, transmission charges at the rate of Rs. 100/MWh for energy approved for transmission separately for each point of injection and for each point of drawal, shall be payable.

(3) The intra-State entities shall pay the transmission charges for use of the State network as fixed by the respective State Commission in addition to the charges specified under clauses (1) and (2):

Provided that in case the State Commission has not determined the transmission charges, the charges for use of respective State network shall be payable at the rate of Rs.80/MWh for the electricity transmitted:

Provided further that non-fixation of the transmission charges by the State Commission for use of the State network shall not be a ground for refusal of open access:

Provided also that the transmission charges payable for use of the State network shall be conveyed to the Regional Load Despatch Centre concerned who shall display these rates on its web site:

Provided also that the transmission charges payable for use of the State network shall not be revised retrospectively.”

As per the aforesaid amended Regulation 16 (3), the transmission charges payable for use of State Network shall be as per the rate fixed by the respective State Commission in addition to the Inter-State Transmission Charges decided by the CERC. The first proviso of Regulation 16 (3) provides that if the transmission charges are not decided by the respective SERCs, in that case, the same shall be payable @ Rs. 80/MWh as decided by CERC.

From the aforesaid Regulation, it is clear that the CERC has recognized that whenever any State Transmission Network is utilized in Collective Transactions in addition to Inter-State Transmission Network, the Open Access customer shall be liable to pay the transmission charges which shall be as decided by the SERC or in case the same is not decided by the SERC, the transmission charges as decided in the Regulations of CERC shall be applicable.

Therefore, the contention of the Petitioner that in case of collective transactions the provisions of CERC Inter State Open Access Regulations only is applicable is contrary to the CERC Regulations, hence the same is not valid.

The above Regulation also recognizes that SERC may prescribe transmission charges for use of the Intra-State network by the open access customers.

7.7. It is undisputed that the Petitioner is situated in the State of Gujarat and injecting power at injection point for collective transactions, utilizing the Intra-State network from the injection point to inter-connection point of Intra-State and Inter-State transmission network. It is also undisputed by the Petitioner that he is liable to pay the transmission charges for utilization of Intra-State network. The dispute pertains to only the applicable rate for utilization of Intra-State Transmission Network in such collective transactions. It is also recognized by the CERC that the transmission charges, if decided by the SERC for utilization of Intra-State Transmission network, in that case the rates as decided by the SERC shall be applicable. Hence, the

contention of the Petitioner that only the CERC Regulations and rates as per the CERC Regulations would be applicable is far from the truth and the same is rejected.

7.8. We further note that in the collective transactions when the open access is sought by the seller, the injection point is known and it is also known that the power flows from injection point to STU/CTU network, if any. Moreover, for open access sought by the buyer, the drawal point is known at the buyer end and the intra-state transmission network involved, if any. Hence, when a procurer/buyer procures the energy from Energy Exchange, the drawal of power from the interconnection point of the CTU/STU network to STU network, which is to be utilized for transmission of energy in such case, is also known. Therefore, when the intra-state network is involved for open access in collective transactions and the dispute pertaining to the grant of open access on such network and charges payable for use of it arises, it will fall within the jurisdiction of the respective State Commission within whose jurisdiction the intra-state network falls.

7.9. It is also pertinent to refer the Judgment of Hon'ble APTEL dated 7.4.2016 in Appeal No. 70/2015, in the matter of State Load Dispatch Centre and Paschim Gujarat Vij Company Limited Vs. Gujarat Electricity Regulatory Commission and Steel Cast Limited, wherein Hon'ble APTEL has recorded that in case of users of Intra-State networks for collective transaction, it would fall within the jurisdiction of the State Commission within whose jurisdiction the intra-state network falls. The relevant portion of the aforesaid judgment is as follows:

7. In view of the above, the main issue in present Appeal which is required to be decided by us is "Whether the State Commission has jurisdiction to deal with the issues emerging out on denial of Short Term Open Access by the Appellants to the Respondent No. 2 considering the subject transaction as a power conveyance through power exchange?"

...

(ii) The Respondent No. 2 is an embedded consumer of the Appellant No.2. Any transaction whether bilateral or collective or Intra-State would not change the position of the Respondent No. 2 as an embedded consumer of the Appellant No. 2. Even if we consider that one to one relation of the buyer and seller of power in respect of the power exchange transaction of Respondent No.2 is not known but the drawl point is known on the day one. Even uncertainty of the delivery point does not make it an Inter-State transmission case in light of the fact that drawal point is well known and the fact that the open access as sought by the Respondent No. 2 is for the use of transmission and distribution system of the State located in the command area of the Appellant No. 2. If the dispute arises for users of Intra-State network in collective transaction, it would fall within the jurisdiction of the respective State Commission within whose jurisdiction the Intra-State network falls

(iii) Having regard to the provisions of Section 32 and 33 of the Electricity Act, 2003 pertaining to the functions of the State Load Despatch Centre and compliance of its directions, this case falls within the ambit of Appellant No. 1 and 2. We have further noted that as per the prevailing Regulations of the State Commission, any dispute arising due to non-issuance of NOC by the Appellants has to be brought before the State Commission which in this case is GERC and for the same reason, the GERC's jurisdiction is attracted.

(iv) We are of the considered view that the State Commission was right in dealing with the present case. The State Commission has the jurisdiction in the present case.

(v) After going through the detailed submissions made by the Appellants before the State Commission regarding the transmission constraints, the State Commission observed that the present issue should have been dealt by the Appellant No. 1 since it is the nodal agency and is equipped with the latest technology to monitor and control the power system round the clock basis and the designated agency is continuously aware of the system loading dynamics and any bottlenecks in the network as such there was no need on the part of the Appellants No. 1 to refer the matter to the Appellant No.2 for consent. On examination of letter dated 30.04.2014 of the Appellant No. 1 which clearly states that the Appellant No. 2 has not accorded consent, it is observed that relevant facts on the system dynamics have not been analyzed or recorded by the Appellant No. 1 which was mandatory for denying

the Short Term Open Access permission to the Respondent No. 2 and by just mentioning in the letter that the Appellant No. 2 has not accorded consent, this cannot be considered as justifiable reason for such denial.

(vi) We observed from issues raised by the Appellants regarding their utmost concern for the Grid security which just cannot be overlooked and for this reason, the Appellants have to go into the transmission network contingencies and other related aspects while granting open access and the Appellants are rightly mandated to carrying out these vital functions but in the present case, the reasons stated for denying the Short Term Open Access are not in accordance with the State Commission's Regulations.

(vii) We have also observed that the denial of Short Term Open Access was for May, 2014 only as the Respondent No. 2 has received the NOC for Short Term Open Access for June and July, 2014.

(viii) We agree that the open access should be provided subject to operational constraints but the specific reason for such denial ought to be given as per the State Commission's Regulations, 2011.

(ix) We fail to understand that the Appellants having a large Intra-State transmission system within the State of Gujarat denied open access to its embedded consumer which is not at all in letter and spirit of the prevailing Regulations and the Electricity Act, 2003.

Based on the aforesaid observations, we decide that in the present case where one of the issues is the utilization of the Intra-State network and payment for utilization of such network, the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 and amendments thereto are applicable and the Petitioner is liable to pay transmission charges for the use of Intra-State transmission network.

7.10. The Petitioner has further relied upon clarification issued in the Minutes of Meeting dated 24.11.2011 issued by the Commission which reads as under:

Sr. No.	Clarification Sought by the Discom	Decision taken in the meeting
4.	Scope of the open access regulations notified by the Commission The distribution licensee seek clarifications that as to whether regulations are applicable to the consumer who are availing power supply through power exchanges, particularly in regard to the Short Term Open Access.	It was clarified that OA transactions through power exchanges are to be treated as collective transactions and to be dealt according to the inter-state OA regulations of CERC.

We clarify that the aforesaid clarification was issued by the Commission on the issues sought to be clarified by the distribution licensee and the same is not on the disputes amongst the parties on the aforesaid subject matter issued by the Commission after hearing the parties. Moreover, the said clarification talks about the transactions carried out by Short Term Open Access customers through power exchanges are to be treated as collective transactions. It also states that the same are to be dealt as per the Inter-State Open Access Regulations of CERC. The said clarification does not say that the GERC Open Access Regulations is not applicable in such cases. We clarify that the GERC Open Access Regulations, 2011 also consist of provisions for the inter-state transactions as well as intra-state transactions. In case of utilization of only Inter-State network, the CERC Regulations apply exclusively. However, when the Intra-State network is also involved or utilized, in such case the GERC Open Access Regulations apply.

Therefore, the reliance of the Petitioner on the clarification dated 24.11.2011 and CERC Open Access Regulations has no relevance and does not support to the contention of the Petitioner and the same is rejected.

7.11. Now, coming to the second issue i.e. is there any Reserved Capacity as per the GERC Open Access Regulations, 2011 for collective transactions and whether the Reserved Capacity for bilateral transactions and collective transactions are to be interpreted differently and distinctly? It is necessary to refer the definition of Reserved Capacity contained in the GERC Open Access Regulations, 2011 which reads as under:

(r) "Reserved Capacity" means the power transfer in MW between the specified point(s) of injection and point(s) of drawal allowed to a short-term customer on the transmission/distribution system depending on availability of transmission/distribution capacity and the expression "reservation of capacity" shall be construed accordingly;

As per the aforesaid definition, the power transfer in MW capacity between the point of injection and the point of drawal allowed to Short-Term Open Access customer on the availability of transmission/distribution capacity is termed as Reserved Capacity. The aforesaid definition covers the transfer of energy between drawal and injection point in MW which is not in energy term but the same is in capacity term for Open Access. The Petitioner contended that the reserved capacity needs to be considered as per the CERC Regulations and he relied on the CERC Open Access Regulations, 2004 and CERC Open Access Regulations, 2008 in this regard. It is, therefore, necessary to refer the definition of "Reserved Capacity" stated in the CERC Open Access Regulations, 2004, which reads as under:

(j) "Reserved Transmission Capacity", means the power transfer in MW between the specified point(s) of injection and point(s) of drawal allowed to a short-term customer on the transmission system depending on availability of transmission capacity and the expression "reservation of transmission capacity" shall be construed accordingly.

According to above Regulation also the Reserved Capacity is a capacity on transmission network made available to the open access customer between injection point and drawal point for transfer of power in MW.

7.12. We note that the Petitioner has relied upon Regulation 16, of the CERC Open Access Regulations, dated 25.01.2008, as referred above, in support of his argument that the transmission charges are payable for energy scheduled for transmission i.e. on scheduling which is approved and not on Prior Standing Clearance/ NOC capacity basis.

7.13. We note that the aforesaid definition does not provide that “Reserved Capacity” means “Scheduled Capacity” or “Scheduled Energy”. It states the capacity between the point of injection and drawal allowed to the Short-Term Open Access Customer considering the availability in the transmission and distribution network. If the contention of the Petitioner is considered that it is on scheduled capacity, in such case the variance in the scheduled capacity on different dates will lead to different reserved capacity for STOA and it is not the case in NOCs as sought by the STOA customers as it does not provide different capacity on different dates and approved by the SLDC accordingly. As the STOA is granted for duration of a month by the SLDC, such capacity is kept reserved for such STOA customer, irrespective of whatever capacity is scheduled by the customer throughout the month. If the argument of the Petitioner is accepted, then the STOA period may vary considering the scheduled capacity on which the STOA is sought by the customer, which is against the provisions of the Regulations. Hence, the plea of the Petitioner that the “Reserved Capacity” means the Scheduled Capacity or Schedule Approved is not legal and valid. Hence, the same is rejected.

7.14. Now we deal with the issue as to whether the Petitioner is liable to pay transmission charges for Reserved Capacity for collective transactions prior to Second Amendment and whether the action of recovery of transmission charges by the Respondent valid or not.

7.15. The Commission has notified the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011, vide Notification No. 1 of 2011, dated 1.6.2011 in which the relevant clause

for transmission charges applicable for Open Access Customers is specified in Regulation 21 which reads as under :

“...

21. Transmission Charges

Open Access customer using transmission system shall pay the charges as stated hereunder:

- (1) *For use of inter-State transmission system :
As specified by the Central Commission from time to time.*
- (2) *For use of intra-State transmission system :
(i)By Long-Term and Medium-Term Open Access Customers:*

The Total Transmission Cost (TTC) as determined by the Commission in the Annual Transmission Tariff Order of the STU shall be shared by all long-term and medium-term open access customers on monthly basis (including existing Distribution Licensees) in the ratio of their allotted capacities, in accordance with the following formula:

Monthly Transmission Tariff (MTT) = $TTC/(ACs \times 12)$ (in Rs./MW/month);

Where;

TTC = Total Transmission Cost determined by the Commission for the transmission system for the concerned year (in Rs), and

ACs = sum of capacities allocated to all long-term and medium-term open access customers in MW.

Provided that Monthly Transmission Tariff shall also be shared by a Generating Company if power from such Generating Company is sold to a consumer outside the State of Gujarat, to the extent of capacity contracted outside the State:

Provided further that the transmission tariff payable by any long-term or medium-term open access customer utilizing the transmission system for part of a month shall be determined as under:

Transmission Tariff = $TTC/(ACs \times 8760)$ (in Rs./MWh);

Where;

TTC = Total Transmission Cost determined by the Commission for the transmission system for the relevant year (in Rs), and

ACs = sum of capacities allocated to all long-term and medium-term open access customers in MW.

Provided that where a dedicated transmission system used for open access has been constructed for exclusive use of an open access customer, the transmission charges for such dedicated system shall be worked out by transmission licensees for their respective systems and got approved by the Commission and shall be borne entirely by such open access customer till such time the surplus capacity is allotted and used by other persons or purposes.

(ii) By Short-Term Open Access Customers:

Transmission Charges payable by a Short-Term Open Access customer shall be at a rate one-fourth of the transmission charges applicable to the Long-Term / Medium-Term customer, as described above.

Transmission charge payable by Short-term open access customers

$$= \frac{1}{4} \times \text{Rate of transmission charge payable by long-term / medium-term open access customers}$$

Provided that the Transmission charges payable by Short-term open access customers for use of the system for part of a day shall be as follows:

(a)	<i>Upto 6 hours in a day in one block</i>	=	$\left(\frac{1}{4} \times \text{short-term open access rate}\right)$
(b)	<i>More than 6 hours and upto 12 hours in a day in one block</i>	=	$\left(\frac{1}{2} \times \text{short-term open access rate}\right)$
(c)	<i>More than 12 hours upto 24 hours in one block</i>	=	<i>short-term open access rate</i>

Provided that transmission charges for short-term open access shall be payable on the basis of maximum capacity reserved for such customer.

As per the aforesaid Regulation, the transmission charges are recoverable by the STU/Transmission licensee from the Open Access customers who are availing the Long-Term, Medium-Term and Short-Term Open Access. The said Regulation provides that the Transmission Charges payable by Long-Term and Medium-Term Open Access Customers be determined as per the formula given in the said Regulation. It also provides that the transmission charges payable by the Short-Term Open Access customers shall be 1/4th of the Transmission charges payable by the Long-Term and Medium-Term Open Access Customers. The transmission charges are payable by LTOA or MTOA customer on the capacity in MW allocated to such customer. Therefore, the STOA customer is also required to pay the Open Access charges on capacity allocated i.e. MW basis.

7.16. The Commission made first amendment by Notification No. 1 of 2014 dated 4.3.2014 to the Principal Regulations of GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011. In the said Amendment Regulations, the Commission amended the charges payable by STOA customers. The Amended Regulation reads as under:

“

Regulation 21 (2) (ii) of the Principal Regulations shall be substituted as under:

(ii) By Short-Term Open Access Customers:

Transmission Charges payable by a Short-Term Open Access customer shall be determined as under:

Transmission charges payable by Short-term open access customers

= $24 \times TTC / (ACs \times 8760)$ (In Rs./MW/day)

Where;

TTC = Total Transmission Cost determined by the Commission for the transmission system for the relevant year (in Rs.) and

ACs = Sum of capacities allocated to all long-term and medium-term open access customers in MW.

Provided that transmission charges for short-term open access shall be payable on the basis of maximum capacity reserved for such customers.”

As per the above amendment the transmission charges payable by the Short Term Open Access customers are equated to the transmission system for the relevant year, which is equivalent to the transmission charges payable by the Long Term and Medium Term open access customers in Rs/MW/day. The proviso in the said amendment provides that the transmission charges for STOA shall be payable on the basis on maximum capacity reserved for such customer. It is recognized in the said Regulations that the transmission charges payable by the STOA customers shall be based on the maximum capacity reserved by such customer. Thus, the first amendment made in the GERC (Terms and conditions of Intra-State Open Access) Regulations, 2011 also recognized that the open access charges is payable by the Short-Term Open Access customers based on the maximum capacity reserved in MW basis only.

7.17. The Commission amended the aforesaid Regulations on 14.8.2014 by issuing second amendment, i.e. GERC (Terms and Conditions of Intra-State Open Access) (Second Amendment) Regulations, 2014. The amendment in Regulation 21 (2) (ii) reads as under:

“(ii) By Short-Term Open Access Customers:

Transmission Charges payable by a Short-Term Open Access customer shall be determined as under:

Transmission charges payable by Short-term open access customers

$$= \text{TTC} / (\text{ACs} \times 8760) \text{ (In Rs./ MWh)}$$

Where;

TTC = Total Transmission Cost determined by the Commission for the transmission system for the relevant year (in Rs.) and

ACs = Sum of capacities allocated to all long-term and medium-term open access customers in MW.

Provided that transmission charges for short-term open access shall be payable on the basis of the energy actually scheduled for Short-Term transactions.”

According to aforesaid amendment, which came into force with effect from 14.08.2014, the transmission charges for Short-Term Open Access are payable on the basis of energy actually scheduled. Thus, the recovery of the transmission charges from Short Term Open Access based on the actual “scheduled energy” has become effective from 14.08.2014. Hence, according to above amendment the Commission has specifically decided that the STOA charges is payable on the scheduled energy and not on reserved capacity as stated in the Principal Regulations dated 1.06.2011 and first amendment dated 4.03.2014. The Respondent has clarified that w.e.f. 14.8.2014, they are recovering transmission charges from the STOA customers accordingly. From the above, it is clear that the STOA charges is payable on reserved capacity in MW till 13.08.2014, i.e. prior to second amendment. Only on notification of second amendment to the Open Access Regulations, 2011 on 14.8.2014, the STOA charges is payable on scheduled energy instead of reserved capacity.

7.18. Moreover, as referred above, proviso to the Regulation 21 (2) (ii) of the GERC’s principal Regulations, 2011 and First Amendment to the said Regulations state that Transmission Charges are payable by the Short-Term Open Access Customers and that the transmission

charges are payable on the basis of maximum capacity reserved for Open Access customers. Therefore, the combined reading of the aforesaid Regulations with the definition of the Reserved Capacity as per the Regulations proves that the capacity stated in the Regulations is on MW basis applied for NOC in STOA application and accordingly the STOA granted by the SLDC and it is neither on scheduled capacity basis nor MWh basis. Therefore, the contention of the Petitioner that the Reserved Capacity is required to be considered based on Scheduled Capacity or the flow of energy is not acceptable and the same is rejected.

7.19. We also note that the Second Amendment was made to Regulation 21 (2) (ii) vide GERC (Terms and Conditions of Intra-State Open Access) (Second Amendment) Regulations, 2014 w.e.f. 14.8.2014, which provides that the transmission charges for Short Term Open Access are payable on energy actually scheduled. Thus, by way of the said Amendment the Commission amended the transmission charges payable based on the actual energy scheduled by the Short Term Open Access customers. If the contention of the Petitioner is accepted, then the reserved capacity specified in the Principal Regulations and First Amendment becomes at par with Second Amendment. If the word Maximum Reserved Capacity is equated with the Scheduled Capacity or energy actually scheduled, in that case, the Second Amendment, was not necessary as it has no meaning. In fact, the Principal Regulations and First amendment have different meaning distinct from the Second Amendment to the Principal Regulations. Therefore, the contention of the Petitioner is not valid and legal and the same is not acceptable and dismissed accordingly.

7.20. As regards the claim of the Petitioner, that the transmission charges levied by the SLDC for reserved capacity instead of scheduled capacity claimed by SLDC is illegal, we note that the transmission capacity is booked under Short-Term Open Access for the Petitioner by SLDC and thereafter the Petitioner has neither surrendered the unused capacity nor informed to SLDC

regarding revision in the capacity allowed in the NOC by SLDC. SLDC in such case was unable to provide Short Term Open Access to other customers and optimize the utilization of the transmission system. The Petitioner contended that on short-traded days the transmission charges are payable limited to traded quantity only is also not acceptable and legal on the ground that the quantum of short-traded quantity of STOA is a commercial transaction carried out at the Exchange level between seller and purchaser for power purchase/sale and once the STOA is granted on the transmission system, the same needs to be utilized by the open access customers to whom such open access is granted. Shortfall in procurement of power through Energy Exchange due to mismatch of price between seller and procurer of power is not a ground for non-applicability of transmission charges for Short Term Open Access once the open access is granted to open-access customers. The Principal Regulations as well as First Amendment specifically provide that once the capacity is booked for STOA, such consumers are liable to pay transmission charges as per the relevant Regulations prevailing when such STOA transactions took place.

7.21. In view of above, we decide that Petitioner is liable to pay transmission charges as per the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 and the first amendment made therein. The claim of the Petitioner that the CERC Open Access Regulations is applicable to the Collective Transactions for Transmission Charges is not legal, valid and acceptable and the same is rejected. The claim of the Petitioner that he is not liable to pay transmission charges for NOC capacity/Reserved capacity or for non-traded/short-traded days and SLDC is required to refund the same is also not legal and valid and the same is rejected. The recovery of transmission charges for NOC capacity/Reserved capacity by SLDC is legal and valid.

7.22. Now, we deal with the issue as to whether the claim of the Respondent for recovery of Transmission Charges claimed by invoice dated 28.1.2015 and 16.4.2015 amounting Rs. 63,74,625 and 56,70,282 for FY 2013-14 and FY 2012-13 is permissible or not as per Section 56 of the Electricity Act, 2003 and whether the same is barred by the period of limitation.

7.23. The Petitioner has contended that as per Section 56 of the Electricity Act, 2003 the Respondent is not entitled to recover any dues after the period of 2 years from the date when such dues became first due as it had never been shown as recoverable. In this regard, it is necessary to refer the said Section, which reads as follows:

Disconnection of supply in default of payment.

56. (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits , under protest, -(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity:

The title of the aforesaid Section by its caption makes it very clear that it is about disconnection of power supply in case of default in payment. It does not talk about the period of limitation and states only the procedure for disconnection of power supply when the consumer defaults in payments. Section 56 consists of 2 sub-sections which need to be interpreted in this case. Section 56 (1) states regarding recovery of dues towards electricity supply by generating company/licensee by disconnection of supply line. The said Section does not restrict the right of licensee/generating company from recovering the dues by filing a suit. The consumer is able to avoid disconnection by following the process as specified in sub-clause (a) and (b) of first proviso of Section 56 by payment to the licensee. The aforesaid section does not restrain the licensee from recovery of dues payable by the consumers. The aforesaid Section empowers the licensee to disconnect the power supply by issuance of notice, 15 days in advance, without filing a suit. The sub-section 2 of Section 56 states that the coercive method of disconnection of power supply which is specified in Section 56 (1) is not available to the licensee if the sum has become due and has not been shown for two years continuously in bill as recoverable arrears. In such a case, licensee/generating company cannot disconnect the supply. The said Section does not restrain the licensee or generating company from recovering the dues from the consumers after two years. The limitation for recovery of dues, if any, in case of Electricity

Act, 2003 is governed by the provisions of the Limitation Act, 1963. Accordingly, the period is for 3 years from the date when the dues first accrued for recovery from the consumers. In the present case, the invoice issued by the Respondent SLDC on 28.1.2015 and 16.4.2015 for FY 2012-13 and FY 2013-14. i.e. within 3 years period from the date of Open Access granted to the Petitioner. We also note that the dues were claimed by the Respondents for the first time with invoice dated 28.1.2015. There is no evidence on record which shows that the dues have been earlier claimed by the Respondents and it has not been paid by the Petitioner. It is not the case where the said dues have been shown continuously as arrears by the Respondent in invoices raised on the Petitioner. In the absence of the aforesaid, it is incorrect to say that Section 56 of the Electricity Act, applies in the present case and claim of the Respondent is barred by the period of Limitation. In this regard, it is necessary to refer para 32 to 39 of the Judgment dated 9.5.2008 in Appeal No. 74/2007 in the case of Ajmer Vidhyut Vitarant Nigam Limited Vs. RERC, in which Hon'ble Tribunal decided about applicability of the Section 56 in case of outstanding dues from the consumers, which is reproduced below:

“ ...

32) Section 56 has the caption “Disconnection of supply in default of payment”. Section 56 is not prescribing the period of limitation. It is prescribing a procedure of disconnection of supply in default of payment. It is a tool of recovery of dues. 56(1) says that the dues towards electricity supply can be recovered by a licensee or a generating company by disconnecting electric supply line. This procedure is without prejudice to the right of licensee or the generating company to recover such charge by the legal process of filing a suit. The consumer can save himself such consequences of default by making the payment as prescribed in (a) and (b) to the proviso to 56(1). if the electricity company intends to file a suit it will have to file a suit within the time prescribed by the Limitation Act. However, even without resorting to a suit, the

company is allowed to use the coercive method of disconnection of electricity to force the consumer or purchaser of electricity to make the payment.

33) The sub section (2) then proceeds to say that this coercive method shall not be available if after the sum has become due the same has not been shown for two years continuously in the bills. For this purpose it will be proper to dissect section (2) as under:

(i) notwithstanding anything contained in any other law for the time being in force,

(ii) no sum due from any consumer,

(iii) under this section shall be recoverable after a period of two years from the date when such sum became first due,

(iv) unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and

(v) licensee shall not cut off the supply of electricity

34) The second sub section has to be necessarily read with the first sub section. This is the general rule of interpretation. However, in this case it is all the more important because the second sub section has the words “under this section”. 56(1) is not creating any dues. It is creating a method of recovery. This method of recovery is disconnection of supply albeit after 15 days notice. 56(2) says that this process of recovery is subject to certain restrictions. So we can find the first important part of section 56(2) namely no sum due from any consumer, under this section shall be recoverable after the period of two years. It is important to notice the comma after the word consumer and absence of the comma after the word section. So “under this section” has to relate to the subsequent words “shall be recoverable” and not to “no sum due”. Therefore, it follows that sub section (2) says that no sum shall be recoverable under this section after two years under this section.

35) *The two years period starts when such sum became 'first due' which is another important term to notice here. Now the protection given to a consumer (not to others purchasing electricity) is that the electricity shall not be disconnected for recovery of dues which are more than two years old or after the lapse of two years from the time the sum became first due. Now this has to be read with the interest of the consumer in view. Vis-à-vis a consumer a sum becomes due towards his electricity consumption when a bill is raised by the distributing company. In that sense, the words "first due" may be read to mean when the sum was first billed.*

36) *However, there is another exception which is for the protection of the distribution company which comes from the following words "unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied". In another words, if the sum has been shown continuously as arrears of charges for electricity supplied then the method of recovery given in 56(1) can be used even after the lapse of two years.*

37) *The last words "and the licensee shall not cut off the supply of electricity" has to be read with the first clause of the sentence i.e. "no such shall be recoverable". The sub section, thus, says that the licensee shall not cut off electricity after a lapse of two years from the date the sum became due unless the dues have been continuously shown for two years.*

38) *When the two sub sections are read together we find that for recovery of dues from a consumer 15 days clear notice will have to be given but at the same time a bill should have been raised specifying the amount due.*

39) *The section 56 read as a whole does not at all give any period of limitation for recovery of dues in the usual legal process which is through a civil suit. Limitation of two years is only for the method of recovery given in section 56(1). This does not mean that the distributing company can raise a bill even after the dues have become barred by limitation. Nor does it say that*

limitation vis-à-vis the distributing company or the creditor, will start running only after the bill is raised. The appellant however, says that only after November 2005 when it raised the bill, the limitation shall start running.

...”

7.24. The Petitioner has relied on the Judgment dated 7.2.2016 in Appeal No. 69/2014 and submitted that as per the ratio laid down by the Hon'ble APTEL in the case of Lanco Kondapalli Power Limited Vs. CERC and Ors., the claim of the Respondents to recover the dues retrospectively is not permissible. We note that the Commission has notified the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 and first amendment therein on 4.3.2014. As recorded in the earlier paras, both the above Regulations provide for recovery of Transmission Charges by the Respondent based on Reserved Capacity, while the Respondent has recovered the transmission charges not based on Reserved Capacity but on Scheduled Capacity (energy). Thus, the earlier recovery of transmission charges for FY 2012-13 and FY 2013-14 by the Respondent has been due to erroneous application of the Regulations which has been rectified by the Respondent by issuing supplementary/ revised bill for the balance dues on 28.1.2015 and 16.4.2015. It is not a case of retrospective applicability of the Regulations notified by the Commission but it is a clear case of rectification of error made earlier in application of the notified Regulations of the Commission. Hence, the reliance of the Petitioner on the judgment in Appeal No. 69/2014 is not legal and valid and the same is not applicable in the present case.

7.25. Now, we deal with the issue as to whether the Respondent has violated the provisions of the Electricity Act, 2003 and Regulations framed under it and Orders of the Commission which attracts the penalty under Section 142 of the Electricity Act, 2003. We note that the aforesaid relief sought by the Petitioner is not legal and valid on the following grounds:

- I. As recorded in the earlier para the Respondent has claimed the Open Access Charges for FY 2012-13 and FY 2013-14 from the Petitioner by correct application of prevailing Regulations of GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 and first amendment therein.
- II. There is no violation of any Regulations notified by the Commission/Orders of the Commission/Provisions of the Act, as recorded in earlier paras of this Order.
- III. In the absence of any gross violation of provisions of the Act/Rules & Regulations framed thereunder and Orders of the Commission, the question of penalty under the Act does not arise.

7.26. Now we deal with the issue as to whether the Respondent is eligible to recover the dues for FY 2012-13 and FY 2013-14 as claimed in impugned invoice dated 16.4.2015 and 28.1.2015 retrospectively. We note that the transmission charges is recoverable from the Short Term Open Access consumers by the SLDC as per the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 and amendment made in it. The aforesaid Regulations are a sub-legislation having statutory force. If the charges recoverable under the aforesaid Regulations were wrongly recovered by the SLDC, there is no restriction to correct the error and recover the correct amount. Further, the recovery of charges is counted in the ARR of the licensee and given effect in the Long-Term Open Access and Medium-Term Open Access customers charges. Hence, the plea of the Petitioner that the recovery of transmission charges retrospectively for FY 2012-13 and FY 2013-14 by the Respondent is not legal and is not acceptable and valid. Hence, the said prayer of the Petitioner is rejected.

7.27. Moreover, we note that the Petitioner has objected to the contention of the Respondent that the Petitioner's case is already covered under the Order of this Commission dated 24.3.2015 in Petition No. 1440/2014, and submitted the differences in the submissions of the respective

Petitioners in these Petitions and observations of the Commission in that Order. However, as the foregoing paras deal with all the contentions raised by the Petitioner, we do not find it necessary to repeat the earlier decision on the contentions and to rely upon the said Order of the Commission in Petition No. 1440/2014.

8. In view of the above observations, we decide that the present petition is devoid of merits and hence, the same is dismissed.

9. We Order accordingly.

Sd/-

[P.J. THAKKAR]

MEMBER

Sd/-

[K.M. SHRINGARPURE]

MEMBER

Sd/-

[ANAND KUMAR]

CHAIRMAN

Place: Gandhinagar

Date : 8/9/2017