

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

CASE NO. 44/2017

Appellant: M/s. M.V.Steel
13, SBS Colony
Kalanala, Bhavnagar-364002.

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

V/s.

Respondent: Executive Engineer,
Paschim Gujarat Vij Company Limited
Rural Division Office, BHAVNAGAR

Represented by: Shri Y.B.Baraiya, DE, PGVCL, Rural D.O.,Bhavnagar

:::PROCEEDINGS:::

- 1.0.** The Appellant had submitted representation aggrieving with the order 2657 dated 30.03.2017 passed by the Consumer Grievances Redressal Forum, Paschim Gujarat Vij Company Limited, Bhavnagar, in case No. 302/2016-17. The representation was registered at this office as Case No.44/2017. The hearing was kept on 20.07.2017.
- 2.0.** Appellant has represented the case as under.
 - 2.1.** Appellant is a proprietary firm, manufacturer of MS and metal scrap by melting process. Considering the severe recession in the market, Appellant had opted HTP-IV tariff for consumer No. HT-23712. The bill for the month of January,2017 was issued under HTP-IV tariff but the energy units are charged with rate equivalent to HTP-I tariff.
 - 2.2.** Against the subjected energy bill Appellant had filed grievance before CGRF, but the plea was denied by CGRF. Appellant had paid all the bills under question with protest, and there is no any outstanding amount.

- 2.3. It is submitted that power is used for making ingots from metal scrap by melting process. Appellant has opted HTP-IV tariff and used power from 10.00 p.m. to 06.00 a.m. next day for manufacturing. Appellant has referred the tariff conditions of HTP-IV category and has stated that energy bill for the month of Jan.,2017 was received under HTP-IV tariff, but energy charges in the bill are calculated as per HTP-I tariff, resulting in loss of Rs. 19 lakhs.
- 2.4. Appellant has submitted various grounds for appeal as under.
- (1) As per option HTP-IV tariff Appellant can use 10% of total energy consumed during billing period beyond prescribed hours. In the month of January,2017, Appellant has consumed total 9,26,450 units, out of which 8,32,900 units are consumed during night hours while 93,550 units are used in remaining hours. Therefore, 905 units are used more than the limit specified in the tariff. Hence Respondent has issued energy bill with energy rate equivalent to HTP-I tariff. The basic energy rate is increased from Rs. 2.25 per unit to Rs. 4.30 per unit, resulting in additional bill of approximately Rs. 19 lakhs.
 - (2) HTP-IV tariff comes into existence due to more availability of power during night hours compared to day time. To support the energy guzzling industry without additional transmission capacity and to run generator at optimum efficiency, the tariff HTP-IV is introduced.
 - (3) The conditions are introduced in the tariff with a view that the consumer must not take undue advantage of the tariff by continuous production during day time. The main purpose of tariff is for production during the night hours only. Therefore, limit of 15% on contract demand and 10% on total units consumed during billing cycle is imposed on power used during the day time.
 - (4) The units consumed during the night hours for production is quite less than the normal units on night of 14th January,2017 due to fault during the production. Therefore, night

consumption is reduced but accordingly day consumption is not reduced, resulting in more percentage than stipulated units.

- (5) The increased units consumption during day time is less than 0.1% as per stipulated units of 10%. Energy consumption is increased but at the same time demand has not crossed to stipulated limit. This shows that Appellant has not taken any production during the day time as industry of Appellant is single process industry with 4000 KVA furnace. It is stated that it is not possible to take production without full load as the scrap will not melt at reduced load. Hence it is confirmed that Appellant has not taken any production during the day time.
- (6) It is stated that the meter installed in of 0.5 Class. The accuracy class suggests that the meter is having inherited accuracy is half percent at full scale. The meter is connected with CT of 250/5 ampere. The error at full load will be 0.5%. Therefore $250 \times 0.5/100 = 1.25$ Ampere. At 125 Ampere of load the error will be 1% (1.25/125). The load in the day time is nearly 10% of maximum load of 4000 KVA i.e. 20 Ampere. The inherited accuracy will be $1.25/20 = 6.25\%$. Therefore, the units recorded during the day time will be with +/- error of 6.25%. The reason behind explaining this logic that the margin is less than 0.1% of total consumption. Therefore, penalty of Rs. 19 lakhs is against the law of gravity.
- (7) It is submitted that in case of violation in load demand in a large load curve of particular sub-station is disturbed this is against the grid discipline. While energy violation is not affecting respondent's system in any way. Therefore, the penalty is too high.
- (8) Appellant has referred Case No.31 of 2007, in which Electricity Ombudsman has clearly opined that the penalty amount is against the rule of equity and natural justice. The Respondent be asked to explain the loss occurred due to violation of this

condition of energy limit. The laws are made for discipline but justice should be given based on the gravity of the situation. It is submitted that when steel industry is fighting to survive, this type of penalty should not be imposed.

Appellant has referred the order issued by Hon'ble High Court in SCA 95/2008 in which it is clearly opined that for minor lapse in condition, reasonable penalty should be imposed.

- (9) It is stated that in case of violation of energy consumption condition the entire consumption should be billed as per HTP-I tariff. There is a provision for night rebate in HTP-I tariff. A rebate 40 paise per unit is granted for unit consumed during night hours. In the subjected bill energy is charged at HTP-I tariff but refund is not granted. The said matter was put up before CGRF but same was not considered. This is an error on face of the record of CGRF.

2.5. Appellant has prayed as under.

- (1) The bill for the month of January,2017 should be revised with energy charges as per HTP-IV tariff and excess amount so collected should be refunded with interest considering the minor lapse in the condition.
- (2) Law of equity and natural law of justice should be applied considering the loss to respondent-PGVCL and amount of penalty.
- (3) The penalty should be minimized considering the gravity of situation and case.

3.0. Respondent has represented the case as under.

3.1. As mentioned in Para No. 2.1, Appellant is a HT consumer of Respondent, bearing consumer No. HT-23712, having HTP-IV tariff.

3.2. HT bill for January,2017 was prepared on the basis of final reading of 16.01.2017, 00.00 hours. As per tariff category conditions, Appellant had violated the HTP-IV tariff conditions i.e. day consumption units have exceeded the allowable 10% limit. Hence energy charge is taken as per HTP-I tariff.

3.3. The energy bill for January,2017 was prepared as under:

Particulars	Date and Time.	Total KWH.	Night KWH
Final reading	16.01.2017:00.00	170323	154188
Initial reading	16.12.2016:00.00	151794	137530
Difference		18529	16658
MF		50	50
Total units		926450	832900
Day consumption		Total KWH-Night KWH=93550	
%of day consumption		10.09768471	

3.4. Respondent has referred the HTP-IV tariff conditions as under:

- (1) 15% of the contracted demand can be availed beyond the night hours prescribed as per Para 16.0 above.
- (2) 10% of total units consumed during the billing period can be availed beyond the night hours prescribed as per Para 16.0 above.
- (3) In case the consumer failed to observe condition No.1 above during any of the billing month, then demand charge during the relevant billing month shall be billed as per HTP-I category demand charge rates given in Para 13.1 of this schedule.
- (4) In case the consumer failed to observe condition No.2 above during any of the billing month, then entire energy consumption during the relevant billing month shall be billed as per HTP-I category energy charge rates given in Para 13.2 of this schedule.
- (5) In case the consumer failed to observe above condition No.1 and 2 both during any of the billing month, then demand charge and entire energy consumption during the relevant billing month shall be billed as per HTP-I category demand charge and energy charge rates given in Para 13.1 and 13.2 respectively, of this schedule.
- (6) This tariff shall be applicable if the consumer so opts to be charged in place of HTP-I tariff by using electricity exclusively during night hours as above.

- (7) The option can be exercised to switch over from HTP-I tariff to HTP-IV tariff and vice versa twice in a calendar year by giving not less than one month's notice in writing.
- 3.5. It is submitted that Appellant has crossed day consumption limit of 10% of total units, therefore energy charge calculated as per HTP-I tariff. The energy bill for January,2017 is prepared as per the provisions of tariff.
- 3.6. Appellant has opted HTP-IV tariff. So appellant should utilize power as per the terms and conditions given in HTP-IV tariff. The energy bill for January,2017 is prepared for the duration 16.12.2016, 00.00 hours to 16.01.2017, 00.00 hours for the complete calendar month which is accurate as per Supply Code Notification No.4 of 2015, Section 6.17.
- 3.7. In the energy bill for January,2017, energy charge has been calculated as per tariff condition of HTP-I tariff, however demand charges are taken as per HTP-IV tariff.
- 3.8. Respondent has submitted details of meter installed at the premises of Appellant, which are as under.
- | | | | |
|-----------|-----------|---------|---------------------|
| Make: | Secure. | Sr.No.: | PG5A4715 |
| Mfg.Year: | Mar.2015. | AT No. | Secure/716/09.01.15 |
| Class: | 0.5 S. | | |
- Meter accuracy is the criteria for technical specifications. Hence, meter accuracy class cannot be considered for billing of the Appellant.
- 3.9. As per Para No. 2.4(8), Appellant has referred the order passed by Electricity Ombudsman in case No. 31/2007 and it is stated that case to case the elements and aspects might be dissimilar. Therefore, findings of such case should not be applicable to all the cases.
- 3.10. It is submitted that HTP-IV tariff conditions No.4 speaks as under:
“In case the consumer fails to observe condition No.2 above during any of the billing month, then entire energy consumption during the relevant billing month shall be billed as per HTP-I tariff category.”
Energy charge rates given in Para No. 13.2 of tariff schedule is

applicable for calculation of energy charge. There is no any provision in night rebate under HTP-IV tariff.

3.11. Respondent has submitted daily reading and consumption details for January,2017 as under:

Day	Date	KWH reading at 00.00	Consumption
	16.12.16	151794.50	
1	17.12.16	152424.50	630.00
2	18.12.16	153049.00	624.50
3	19.12.16	153672.00	623.00
4	20.12.16	154305.50	633.50
5	21.12.16	154934.00	628.50
6	22.12.16	155550.50	616.50
7	23.12.16	156175.50	625.00
8	24.12.16	156797.00	621.50
9	25.12.16	157377.00	580.00
10	26.12.16	157983.00	606.00
11	27.12.16	158607.50	624.50
12	28.12.16	159243.50	636.00
13	29.12.16	159893.00	649.50
14	30.12.16	160501.00	608.00
15	31.12.16	161077.00	576.00
16	01.01.17	161709.50	632.50
17	02.01.17	162305.00	595.50
18	03.01.17	162909.00	604.00
19	04.01.17	163528.00	619.00
20	05.01.17	164132.50	604.50
21	06.01.17	164750.50	618.00
22	07.01.17	165367.50	617.00
23	08.01.17	165969.50	602.00
24	09.01.17	166583.00	613.50
25	10.01.17	167201.50	618.50
26	11.01.17	167793.50	592.00
27	12.01.17	168424.00	630.50
28	13.01.17	169008.50	584.50
29	14.01.17	169595.00	586.50
30	15.01.17	169974.00	379.00
31	16.01.17	170323.00	349.00

3.12. It is submitted that the energy bill prepared for January,2017 is in order as per prevailing tariff provisions and there is no any error. There is no any penalty in the bill.

::: ORDER :::

4.0. I have considered the contentions of the Appellant and the Respondent and the facts, statistics and relevant papers, which are on record, and considering them in detail, my findings are as under.

4.1. Aggrieved by CGRF order, Appellant has prayed as per Para No. 2.5 for revising the energy bill for the month of January,2017. The tariff is made applicable as per Tariff Orders issued by the Commission from time to time. As per Section 62(3) of Electricity Act, 2003, tariff is based on the purpose of use. Appellant is a HT consumer of Respondent, bearing consumer No. HT-23712 having contracted demand of 4000 KVA under HTP-IV tariff. Appellant is aware of use of electric supply during night hours i.e. 10.00 p.m. to 06.00 a.m. next day. Similarly, conditions of HTP-IV tariff is applicable for billing to appellant.

4.2. The energy bill for the month of January,2017 was prepared as per energy recorded as mentioned in Para 3.3. Percentage of day consumption found 10.09768471.

Tariff schedule published by GERC for HTP-IV tariff condition, Para 16.00 Note-2 speaks about use of 10% of total units consumed during the billing period can be availed beyond the night hours prescribed as per Para 16.0 above, while energy consumption record more than 10% and in such case Note No.2 and 4 is require to be read with.

“(2) 10% of total units consumed during the billing period can be availed beyond the night hours prescribed as per Para-16 above.

(4) In case the consumer failed to observe condition No.2, above during any of the billing month, then entire energy consumption during the relevant billing month shall be billed as per HTP-I category energy charge rates given in Para 13.2 of this schedule.”

Accordingly, Respondent has prepared energy bill for the month of January,2017 with HTP-I tariff as per Clause 13.2, fulfilling the criteria of tariff conditions

- 4.3. Tariff for the year 2016-17 rate of HTP-I Clause 13.2 states as under:
Energy charges:

For entire consumption during the month		
(a)	Up to 500KVA of billing demand	400 paise per Unit
(b)	For billing demand above 500KVA and up to 2500 KVA	420 paise per Unit
(c)	For billing demand above 2500 KVA	430 paise per Unit

Appellant has recorded 926450 total units consumption out of which 832900 units consumed during night hours while 93550 units are consumed during day time, i.e. 905 units, which is more than 10% of total energy consumption, as per conditions for opting HTP-IV tariff. Under such violation, as per Condition No.4 energy bill has to be prepared with Clause 13.2 of HTP-I tariff. In case of Appellant having contracted demand of 4000 KVA, applicable energy charges become 430 paise/unit instead of 225 paise/unit under HTP-IV category tariff. The whole energy consumption charged as per 430 paise/unit under violation of HTP-IV tariff condition Note-2.

- 4.4. The argument narrated as per para 2.4(4) regarding less consumption recorded during night hours in which Respondent has replied with daily consumption sheet as per Para 3.11, from which it seems that per day average consumption of Appellant is more than 617 units with Multiplication Factor 50.
- 4.5. Meter accuracy logic as argued by Appellant as per Para 2.4(6). In this regard it is to state that meter will record the parameter as per technical specification of meter for whole calendar month as per the use of energy as per connected load of Appellant. For the energy consumption more than specified limit i.e. 10% during day time, reason of accuracy of meter cannot be taken on account for taking benefit, under head of more energy consumption during day time.
- 4.6. It is on record that Appellant has recorded more than 10% energy during day time which is accepted by both parties.

As per record submitted by Appellant before CGRF, day time energy consumption recorded between 8 to 10% during the period July,2015 to December,2016 and 10.10% during the month of January,2017, which shows that Appellant's day time consumption is around 8% to below 10%.

4.7. Appellant has referred judgement of Hon'ble Ombudsman in case No.31 of 2007. In the said case, marginal violation of 19 units more consumption during day time has been taken into account against HTP-IV tariff conditions. Relevant conditions are as under.

- (i) *5% of total units consumed and 10% of the contract demand can be availed beyond the prescribed hours for the purpose of maintenance.*
- (ii) -
- (iii) -
- (iv) -
- (v) *In case the consumer is not fulfilling the conditions of this tariff category, then such consumer for the relevant billing period will be billed under tariff category HTP-I.*

In instant case 905 units were recorded during day time under HTP-IV tariff option by Appellant. Here it is worth to note that as per said order it is mentioned that this judgement should not be straight way applied in all such infringements of conditions without considering the facts and merits.

4.8. It is worth to state that HTP-IV tariff conditions are changed as per the recommendations of consumers by GERC from financial year 2009-2010.

For the Financial Year 2007-08 conditions under HTP-IV were

- (i) *5% of total units consumed and 10% of the contract demand can be availed beyond the prescribed hours for the purpose of maintenance.*
- (ii) *For the purpose of office lighting, fans etc., the consumer may apply for a separate connection.*

- (iii) *This tariff shall be applicable if the consumer so opts to be charged in place of HTP-I tariff by using electricity exclusively during night hours as above.*
- (iv) *The option can be exercised to switch over from HTP-I tariff to HTP-IV tariff and vice versa twice in a calendar year by giving not less than one month's notice in writing.*
- (v) *In case the consumer is not fulfilling the conditions of this tariff category, then such consumer for the relevant billing period will be billed under tariff category HTP-I.*

While conditions were revised for the Financial Year 2009-10 as under for HTP-V tariff.

- (i) *10% of total units consumed and 15% of the contract demand can be availed beyond the prescribed hours for the purpose of maintenance.*
- (ii) *For the purpose of office lighting, fans etc., the consumer may apply for a separate connection.*
- (iii) *This tariff shall be applicable if the consumer so opts to be charged in place of HTP-I tariff by using electricity exclusively during night hours as above.*
- (iv) *The option can be exercised to switch over from HTP-I tariff to HTP-IV tariff and vice versa twice in a calendar year by giving not less than one month's notice in writing.*
- (v) *In case the consumer is not fulfilling the conditions of this tariff category, then such consumer for the relevant billing period will be billed under tariff category HTP-I.*

Thus from the above criteria of use of energy during day time was revised from financial year 2009-10. Instead of 5%, 10% of total units consumed and instead of 10%, 15% of contract demand can be availed beyond the prescribed hours for the purpose of maintenance fixed up by GERC, under the option of HTP-IV tariff. For the maintenance point of view relaxation under utilization of energy and demand have been taken care by GERC.

Again said conditions under HTP-V tariff was revised from Financial Year 2016-17, which is mentioned by Respondent in Para No. 3.4.

From the said conditions, it is revealed that both, energy consumption and record of demand parts separate out with maximum limit to use during day time for getting benefit under HTP-IV tariff. On failure of that conditions, billing under HTP-I tariff is scheduled as per the Condition No. 3 and 4 separately for energy consumption and demand charges. Therefore failure in record of energy or demand, that parts are to be billed under HTP-I tariff. This is not a case of double penalty for violation of any part i.e. energy charges or demand charges.

- 4.9. The arguments about violation in energy is not affecting the distribution system. It is to note that no technical damage to the distribution system cannot be accepted in view of number of consumers having HTP-IV tariff plan and distribution company has to maintain grid discipline and if all consumers are pardoned for deviation in electric supply access to the condition, it would be impossible for distribution company to regulate electric supply in its area.
- 4.10. From the above observations, energy bill issued under violation of HTP-IV tariff conditions is as per schedule tariff approved by GERC for the year 2016-17. Appellant should have observed the conditions as specified in tariff order under option of HTP-IV tariff. The prayer of Appellant is not accepted and hence dismissed.
- 4.11. I order accordingly.
- 4.12. No order as to costs.
- 4.13. With this order, representation/Application stands disposed of.

(Dilip Raval)
Electricity Ombudsman
Gujarat State

Ahmedabad.
Date: 29.07.2017.