

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No.1640/2017.

In the Matter of:

Petition under Section 86 of the Electricity Act, 2003 read with Regulations 23 and 80 of the GERC (Conduct of Business) Regulations, 2004 for direction/clarification that the Petitioners and the Respondent are permitted to jointly examine and discuss the techno-commercial issues of the Parallel Operation Charges in respect of the Captive Power Plants at Petitioner No. 1's manufacturing plants/units situated at Dahej and Hazira, so as to evolve a mutually acceptable resolution under the aegis of the Commission.

Petitioner No. 1 : Reliance Industries Limited,
"Vraj", Near Suvidha Shopping Centre,
Paldi, Ahmedabad – 380007.

Petitioner No. 2 : Reliance Utilities and Power Private Limited
CPP Control Room, Village Padana,
Taluka Lalpur, Jamnagar – 361280.

Represented By : Learned Senior Advocate Shri Saurabh Soparkar
with learned Advocate Amrita Thakore

V/s.

Respondent : Gujarat Energy Transmission Corporation Limited,
Sardar Patel Vidyut Bhavan,
Race Course Circle, Vadodara-390007.

Represented By : Learned Advocate Shri Anand Ganesan with
Shri Amit Sachan

CORAM:

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

Date: 10/11/2017.

ORDER

- 1] The present petition has been filed by the Petitioner seeking the direction/ clarification that the Petitioners and the Respondent are permitted to jointly examine and discuss the techno-commercial issue of Parallel Operation Charges in respect of the Captive Power Plants at the Reliance Industries Limited's manufacturing plants/ units situated at Dahej and Hazira, so as to evolve a mutually acceptable resolution under the aegis of and subject to the approval of the Commission.

- 2] The brief facts of the petition are as under:
 - 2.1. The Petitioner No. 1 has a manufacturing unit at Dahej which manufactures polymers and fibre intermediates and petrochemicals. The Petitioner also has a manufacturing unit at Hazira which manufactures petrochemicals, polymers, polyesters and polyester intermediates. The Petitioner has established a Gas based Captive Power Plant at each of the aforesaid manufacturing units and each CPP caters to the load requirement of the manufacturing plant at which it is located.

 - 2.2. It is submitted that during the period from 2003 to 2009, several long drawn litigations had taken place between several persons operating CPPs and the erstwhile Gujarat Electricity Board (GEB) and its unbundled power utilities before the Commission and before the Hon'ble Gujarat High Court in regard to the matter of Parallel Operation Charges (POC) leviable in respect of CPPs having the facility of Parallel Operation with the Grid. Ultimately, on the suggestion of the Hon'ble Gujarat High Court, several parties to the aforementioned litigations which were operating CPPs had met and discussed the issues with the power utilities and had agreed to a broad consensus for a long term resolution. Pursuant thereto, on 28.4.2009, the Hon'ble Gujarat High Court made suitable

observations and gave directions so as to give effect to such broad consensus and long term resolution arrived at between the parties. By virtue of this, the parties' broad consensus regarding POC was recorded and the parties who had agreed to the said consensus were directed to sign a settlement agreement and place the same before the Commission for passing necessary orders in terms of the settlement.

- 2.3. Pursuant to this order, the Petitioner and several other persons operating CPPs entered into settlement agreements in terms of the broad consensus recorded in the aforesaid order passed by the Hon'ble Gujarat High Court. The Petitioner has entered into such settlement agreements in respect of the RIL-Dahej unit and the RIL Hazira unit. The said settlement agreements were thereafter placed before the Commission, which approved the same. Thus, a very long drawn litigation was resolved in a commercially viable manner, thereby curtailing long drawn and expensive litigations.
- 2.4. In 2015, the Petitioner, having implemented the third phase of its CPP at the RIL-Dahej unit, has approached the Commission by way of Petition No. 1475 of 2015 inter alia seeking a clarification that the same falls within the scope of the settlement agreement executed by the parties.
- 2.5. The Petitioner has recently set up parallel and alternate Coal based generating capacities through the Petitioner No. 2 (one of the Petitioner's group companies in which the Petitioner holds minimum 26% of the equity shares) at the RIL-Dahej unit and at the RIL-Hazira unit, which are equivalent to the respective existing Gas based generating capacities of the existing CPPs at the RIL-Dahej unit and at the RIL-Hazira unit and which are meant for the Petitioner's respective manufacturing units where they are located. The primary objective of setting up

this Coal based generating capacity parallel /alternate to the existing Gas based Capacity is for fuel interchangeability, i.e. for fuel redundancy, so as to meet the manufacturing plants' power requirements at an economically viable cost. The actual load in terms of operating load and grid connectivity would not be altered on account of this additional Coal based generating capacity. The setting up of Coal based generating capacity parallel to the existing gas based capacity does not alter or increase the support from grid. This situation is unprecedented and therefore requires to be looked into afresh. Gujarat State is progressive and encourages new investments. In future, it may lead to increase in process load of the complexes due to new investments. In such scenario, the Respondent may demand additional POC from beneficiary. These above stated scenarios and different situations with associated techno-commercial conditions are required to be jointly discussed with the Respondent as the same are unique and unprecedented.

2.6. The Petitioners submitted that the aforesaid issue of POC is therefore required to be jointly examined and discussed by the Petitioners' team along with the Respondent's team for a better understanding and resolution of the entire issue and to evolve a mutually acceptable resolution thereof under the aegis of the Commission. Such a course of action would be in the interest of justice inter alia since it may result in arriving at a just, equitable and commercially viable resolution and may curtail unnecessary litigation.

2.7. The Petitioners submitted that such joint examination and discussion may lead to a resolution as was the case at the time of the litigations before the Hon'ble Gujarat High Court wherein, in view of the suggestion/ direction of the Hon'ble Gujarat High Court, the parties met and arrived at a broad consensus, and this exercise led to curtailing of multiple, protracted and expensive litigations before the

Hon'ble Gujarat High Court and the Commission, and also put an end to the possibility of further appeals, etc. which would not only be long drawn but also enormously expensive for all parties.

2.8. The Petitioners submitted that, if, at the end of such joint examination and discussions between the parties, the parties are able to arrive at a resolution, the Commission would be approached in accordance with law for seeking necessary orders so as to give effect to such resolution.

2.9. In light of this, the present petition has been preferred seeking a direction/ clarification from the Commission permitting the Petitioners and Respondent to jointly examine and discuss the techno-commercial issue of POC in respect of the CPPs at the RIL Dahej unit and RIL Hazira unit so as to evolve a mutually acceptable resolution under the aegis of the Commission. The Petitioners state and submit that this petition is preferred so as to ensure that such joint examination and discussions are held under the aegis of the Commission, neither of the parties has any apprehension at the time of holding such joint examination and discussions, and such examination and discussions can be held in an open, transparent and mutually comfortable environment.

2.10. The Petitioners submitted that the present petition is preferred without prejudice to the rights and contentions of parties and is only for the purpose of exploring the possibility of evolving a mutually acceptable resolution.

3] The Respondent GETCO filed its reply on 07.04.2017 and submitted that the petition has been filed by the Petitioner - Reliance Industries Limited seeking a direction/ clarification for the parties to jointly consider aspects of Parallel Operation Charges in respect of Captive Power Plants. The present Reply is

without prejudice to the Petitions pending before the Commission on Parallel Operation Charges

- 3.1. It is submitted that the Parallel Operation Charges are also liable to be paid to the distribution licensee in the area to the extent of 25%. Therefore, the distribution licensee is a necessary party and the Petition is not maintainable for non-joinder of parties.
- 3.2. It is submitted that the Petitioners have filed the present Petition without there being any dispute which requires adjudication by the Commission.
- 3.3. It is submitted that prayer sought in the Petition is not maintainable. There can be no mutual discussions or mutually acceptable solution with regard to Parallel Operation Charges between the Petitioner and the Respondent. In the case before the Hon'ble High Court, there was no existing order on Parallel Operation Charges by the State Commission and the Parallel Operation Charges were being charged on the basis of the Commercial Circular of the Gujarat Electricity Board. During the pendency of Petition before the Hon'ble High Court, there was no determination of charges by the State Commission and therefore the Respondent was not required to and did not provide the services or facilities of Parallel Operation to the Captive Power Plants. However, the existing captive power plants, including the Petitioner No. 1, wanted the grid support i.e. Parallel Operation and had agreed to pay the charges equivalent to charges determined under the Commercial Circular. It is relevant to note that some of the captive power plants, including the Petitioner No. 1 are already disputing certain terms of the above settlement. Therefore, the contention of the Petitioners that the issue was resolved and litigations were curtailed is incorrect.

3.4. In the present case, in contrast to the matter before the Hon'ble High Court, the Parallel Operation Charges have already been decided by the Commission and the Respondent cannot independently discuss the commercial mechanism. It is not open to the Respondent or any other licensee to agree to anything contrary to the decision of the Commission. The orders of the Commission on the parallel operation charges have to be implemented by the Respondent as such without discrimination for all persons similarly placed including the Petitioner herein.

3.5. The Parallel Operation Charges are determined by the Commission and are applicable to the captive power plants connected to the grid. The above charges received are then considered for reduction in the aggregate revenue requirement of the Respondent, thereby reducing the tariff for the consumers at large. Therefore, the Respondent cannot unilaterally consider any reduction in Parallel Operation Charges or waive off the charges, which would impact the tariff to the consumers.

3.6. In this regard, the Hon'ble Supreme Court has in All India Power Engineer Federation & Ors V/s. Sasan Power Limited and Ors Etc in Civil Appeal No. 5881-5882 of 2016 dated 08.12.2016 held as under:

"20.... It is also clear that if any element of public interest is involved and a waiver takes place by one of the parties to an agreement, such waiver will not be given effect to if it is contrary to such public interest. This is clear from a reading of the following authorities.

24. *It is thus clear that if there is any element of public interest involved, the court steps in to thwart any waiver which may be contrary to such public interest.*

25. *On the facts of this case, it is clear that the moment electricity tariff gets affected, the consumer interest comes in and public interest gets affected....."*

- 3.7. It is thus clear that if there is any element of public interest involved, the court steps in to thwart any waiver which may be contrary to such public interest.
- 3.8. On the facts of this case, it is clear that the moment electricity tariff gets affected, the consumer interest comes in and public interest gets affected
- 3.9. It is further submitted that the Petitioners are seeking to extend the existing Settlement Agreement entered into by the Petitioner No. 1 to Petitioner No. 2 which is not permissible.
- 3.10. In view of the above, it is submitted that the present Petition is not maintainable and may be dismissed in limine.
- 4] The matter was kept for hearing on 03.04.2017.
- 5] Learned Senior Advocate Shri Saurabh Soparkar, on behalf of the Petitioners, reiterated the facts as mentioned in para 2 above. He further submitted that the parties have to necessarily approach the Commission after joint discussion on the issues and arriving at a mutually acceptable solution for approval. Hence, in interim arrangement, the Commission may allow for joint discussion of the issues and arrive at some amicable solution between the parties.
- 6] Learned Advocate Shri Anand Ganesan, on behalf of the Respondent, reiterated the facts as mentioned in para 3 above.
- 7] The Commission vide its order dated 18.4.2017 had concluded that there is no dispute between the parties at present. The Commission had also concluded that appropriate order after receipt of written submissions from the parties and accordingly directed the Petitioner and the Respondent to file their submissions within 7 days.

8] The Petitioner filed its submission on affidavit on 27.4.2017. While reiterating the submission made in the petition as well as during the hearing held on 3.4.2017, the Petitioner submitted that the present petition nowhere speaks of implementing any resolution if so arrived at without seeking permission of the Commission. If and when any resolution is worked out after joint examination and discussion by the parties, the Commission would examine as to whether such resolution is within the four corners of law and can be implemented. If the parties do not jointly examine and discuss the matter, they can never arrive at any possible resolution. Therefore, the Respondent's stand is unwarranted and untenable.

8.1 It is stated that the connectivity of both the plants at Dahej and Hazira with the grid is at 220 KV. Network of voltage level from 66 KV upward is provided by the Respondent and belongs to the Respondent and cost related to this part of the grid is solely a matter of the Respondent's domain. Network of voltage level below 66KV is provided by DISCOMs. In view of this and in view of the fact that the Dahej and Hazira plants are connected only to the Respondent's grid at 220 KV level, distribution licensee is not a necessary party to examine the support given by the Respondent's grid and cost involved thereof. Joint examination and discussions are necessary only between the parties and the Respondent herein. Hence, there is no question of any distribution licensee being a necessary party in this petition.

8.2 It is further submitted that filing of the present petition and obtaining prior permission/clarification is the first step towards arriving at a resolution which can thereafter be put to the Commission for approval.

This is very much permissible under the law considering the fact that it is the Commission which decides upon the POC after considering the views of the parties. It is a matter which may result in avoiding the conflict or dispute and it is a matter which seeks to arrive at a resolution to assist the Commission in determining the POC in such an unprecedented scenario.

8.3 It is submitted that the POC is a charge levied for the grid support to the unit having a captive power plant and hence, it is a charge to be levied in conformity to the grid support being actually provided and in conformity with the network cost actually being incurred by the Respondent for providing such grid support. The Commission in its order dated 25.6.2004 in Petition No. 256/2003 held that the support extended by the grid has to be identified and quantified. Hence, in this case, looking to the unprecedented situation of coal based generating capacity being set up only for fuel interchangeability and not for meeting the increase in the load, it is necessary for the parties to jointly examine the issue and approach the Commission with a viable resolution to enable to the Commission to decide upon.

8.4 The Respondent appears to be under wrong impression that this Commission has dealt with such a situation before and/or that determination of POC is a one-time exercise in which the Commission has no jurisdiction to revisit looking to the changing scenarios. It would be the duty of the Commission to freshly examine and decide upon the levy of POC in such a situation which is vastly different from the situation prevalent earlier in respect of CPPs whose capacity against the load was being fully utilised. It is also submitted that the Judgment of

the Hon'ble Supreme Court in All India Power Engineers' Federation & Others V/s. Sasan Power Ltd. & Others in Civil Appeal No. 5881-5882/2016 dated 8.12.2016 is not relevant and does not justify the Respondent's stand as this is not a case of determination of tariff for purchase of electricity U/s. 61 to 63 of the Electricity Act, 2003 and the Petitioner is not seeking to implement anything unless and until it is approved by the Commission. The Petitioner is willing to demonstrate by installation of appropriate meters and instruments that the generation/ consumption by each site, i.e. Dahej and Hazira, from respective total capacity of CPP is not increased vis-à-vis the implementation of the coal based addition of capacity in the CPPs.

9] The Respondent GETCO filed its submissions on 6.09.2017 stating as under:

".....

2. *M/s Reliance in their reply dated 27.04.2017 and in the preliminary discussions have mentioned that the additional CPP capacity that is installed is coal based and that shall be utilized only for fuel interchangeability for cost effectiveness for the fuel for running their plant at Dahej and Hazira. It is also mentioned that there will be no increase as such in the load and therefore the Petitioner RIL will not at any time increase the agreed quantum of the CPP as on the date of settlement Agreement at any point of time without approval of GETCO.*

3. *The Hon'ble Commission in their order of determination of Parallel Operation charges Dtd. 01.06.2011, at para 23.29 have already decided that the POC should be levied at Rs.26.5 per KVA per month for the installed capacity of the CPP.*

4. *The Petitioner has showed their willingness to demonstrate the above position by installation of appropriate instruments at GETCO for monitoring actual capacity of CPP that is connected at the site so as to*

establish and ensure that at any given time capacity of the connected CPP with the grid is limited to the quantum existing at the time of Settlement Agreement.

5. As at present, as the prevailing GERC Order of 1-6-2011, the POC is calculated on the aggregate installed capacity and therefore GETCO does not have such facility to ensure the actual connectivity of any CPP with Grid. As mentioned in the prayer of the Petitioner, GETCO can examine the proposal and discuss the techno-commercial issue of Parallel Operation Charges in respect of the Captive Power Plants at the Petitioners manufacturing plants situated at Dahej and Hazira so as to explore the possibility to evolve a methodology under the aegis of and subject to the approval of the Hon'ble Commission so long it can be ensured that there are no adverse financial or other consequences to GETCO.

.....”

- 10] From the above submission it is apparent that the Respondent has agreed for joint examination and discussion of the techno-commercial issues involved in the Petitioner's proposal and arrive at a mutually acceptable resolution so long as it is ensured that there are no adverse financial or other consequences to the Respondent. As the Petitioner desires to avoid future litigation and has accordingly filed the present petition seeking direction/clarification from the Commission to discuss jointly with the Respondent and arrive at a mutually acceptable resolution to be put up to the Commission for approval and that the Respondent has also agreed to jointly examine and discuss the issues to arrive at a mutually acceptable solution, the Commission does not have any objection to the parties entering into joint discussion and arriving at a mutually acceptable solution. However, it is clarified that it is for the Commission to finally decide whether such a solution is

within the four corners of law and whether the comments/ suggestions of any other stakeholders are necessary before finally approving it.

11] We order accordingly.

Sd/-
[P. J. THAKKAR]
Member

Sd/-
[K. M. SHRINGARPURE]
Member

Sd/-
[ANAND KUMAR]
Chairman

Place: Gandhinagar.
Date: 10/11/2017.