

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT
GANDHINAGAR

PETITION NO OF 2016

IN THE MATTER OF:

Petition under Section 86 read with Section 181 of the Electricity Act, 2003 for amendment of the Gujarat Electricity Regulatory Commission (Multi Year Tariff) (First Amendment) Regulations, 2016 and for directions.

AND IN THE MATTER OF:

Gujarat Energy Transmission Corporation Ltd
Sardar Patel Vidyut Bhavan,
Race Course Circle,
Vadodara- 390007
Gujarat

PETITIONER

MOST RESPECTFULLY SHOWETH:

1. By this petition, the Petitioner is seeking rectification and amendment of the Gujarat Electricity Regulatory Commission (Multi Year Tariff) (First Amendment) Regulations, 2016 (herein after referred to as '**the Amendment Regulations**') notified by the Hon'ble Commission whereby the Petitioner has to bear the entire cost of providing exemption to gas based generating capacity from payment of transmission charges. A copy of the Regulations is attached hereto and marked as **Annexure A.**
2. The said regulation was placed as a draft Regulations by Hon'ble Commission On 18.12.2015 for submission of comments/ suggestions, and on 20.01.2016, the Petitioner submitted its comments on the draft Regulations. A copy of the comments of the Petitioner to the draft Regulations are attached hereto and marked as **Annexure B.**
3. The Petitioner, Gujarat Energy Transmission Corporation Limited is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Sardar Patel, Vidyut Bhavan Race Course, Vadodara - 390007. The Petitioner is engaged in the business of transmission of electricity in the State of Gujarat and is a transmission licensee under the Electricity Act, 2003. The Petitioner has been vested with the functions of undertaking transmission of electricity from the erstwhile Gujarat Electricity Board pursuant to the reorganization of the Board.

4. It is submitted that under the Electricity Act, 2003, the licensees such as the Petitioner are entitled to recovery of all reasonable costs and reasonable return and the requirement for the licensee to bear the costs is contrary to the Electricity Act, 2003 as explained hereunder.
5. The Electricity Act, 2003 inter alia, under Part VII deals with the Tariff. Under the Act, the licensee are not permitted to determine their own tariff but the tariff is determined by the Appropriate Commissions as per principles provided under the Electricity Act, 2003. The licensees such as the Petitioner cannot charge a tariff in excess of the tariff determined by the State Commission.
6. The Act provides for principles of determination of tariff under Section 61 as under:

“61. Tariff Regulations -

The Appropriate Commission shall subject to the provisions of this Act, specify the terms and conditions for determination of tariff, and in doing so, shall be guided by the following, namely:

- (a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;*
- (b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;*
- (c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*
- (d) safeguarding of consumers’ interest and at the same time, recovery of the cost of electricity in a reasonable manner;*
- (e) the principles of rewarding efficiency in performance;*
- (f) multi-year tariff principles;*
- (g) that the tariff progressively reflects the cost of supply fo electricity and also reduces cross-subsidies in the manner specified by the Appropriate Commission;*
- (h) the promotion of co-generation and generation of electricity from the renewable sources of energy;*
- (i) the National Electricity Policy and tariff Policy”*

(Emphasis Supplied)

7. The Electricity Act, 2003 also requires the Central Government to formulate the National Electricity Policy and Tariff Policy in

consultation with Central Electricity Authority (CEA) and State Governments. Section 3(1) reads as under:

“The Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilization of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy”

8. The Government of India has notified the National Electricity Policy. One of the aims/ objectives of the National Electricity Policy is “Financial Turnaround and Commercial Viability of Electricity Sector”.

The Policy recognizes the need for ensuring recovery of costs. The relevant extracts of the National Electricity Policy are as under:

5.5 Recovery of Cost of Services & Targetted Subsidies

5.5.1 There is an urgent need for ensuring recovery of cost of service from consumers to make the power sector sustainable.

.....

5.8.2 The public sector should be able to raise internal resources so as to at least meet the equity requirement of investments even after suitable gross budgetary support from the Government at the Centre and in the states in order to complete their on-going projects in a time-bound manner. Expansion of public sector investments would be dependent on the financial viability of the proposed projects. It would, therefore, be imperative that an appropriate surplus is generated through return on investments and, at the same time, depreciation reserve created so as to fully meet the debt service obligation. This will not only enable financial closure but also bankability of the project would be improved for expansion programmes, with the Central and State level public sector organizations, as also private sector projects, being in a position to fulfil their obligations toward equity funding and debt repayments.

.....

5.8.7 It will be necessary that all the generating companies, transmission licensees and distribution licensees receive due payments for effective discharge of their operational obligations as also for enabling them to make fresh investments needed for the expansion programmes. Financial viability of operations and businesses would, therefore, be essential for growth and development of the sector. Concerted efforts would be required for restoring the financial health of the sector.....

A copy of the National Electricity Policy 2005 is attached hereto and marked as Annexure C.

9. The Government of India also notified Tariff Policy 2016 (repealing the earlier Tariff Policy 2005) under Section 3 of the Electricity Act, 2003. One of the objectives of the Tariff Policy is to “ensure financial viability of the sector and attract investment”. The relevant extracts of the Tariff Policy are as under:

“5. GENERAL APPROACH TO TARIFF

.....

5.10 Consumer interest is best served in ensuring viability and sustainability of the entire value chain viz., generation, transmission and distribution of electricity, while at the same time facilitating power supply at reasonable rate to consumers. The financial turnaround/restructuring plans are approved by the Appropriate Government from time to time to achieve this objective. The Appropriate Government as well as the Appropriate Commission while implementing such plans shall ensure viability of the generation, transmission and distribution in terms of recovery of all prudent costs.

5.11 Tariff policy lays down the following framework for performance based cost of service regulation in respect of aspects common to generation, transmission as well as distribution. These shall not apply to competitively bid projects as referred to in para 6.1 and para 7.1 (6). Sector specific aspects are dealt with in subsequent sections.

a) Return on Investment

Balance needs to be maintained between the interests of consumers and the need for investments while laying down rate of return. Return should attract investments at par with, if not in preference to, other sectors so that the electricity sector is able to create adequate capacity. The rate of return should be such that it allows generation of reasonable surplus for growth of the sector.”

A copy of the Tariff Policy 2016 is attached hereto and marked as **Annexure D.**

10. The principle of tariff determination is to ensure that the transmission of electricity is conducted on commercial principles and the cost of such transmission is recovered by the licensee in a reasonable manner. It is a cost plus basis of tariff determination i.e. the licensee is entitled to all costs and expenses reasonably incurred plus a reasonable return on its investment. Any Regulations for determining the tariff has to be consistent with Section 61.

11. It is further submitted that the Hon'ble Appellate Tribunal for Electricity has also consistently emphasised the recovery of costs and reasonable return of the licensees:

i. BSES Rajdhani Power Ltd v. Delhi Electricity Regulatory Commission and Another 2007 ELR (APTEL) 1370

“51. The DISCOMs, a joint sector, has invested funds in proportion to 51:49 and there is no justification to expect the DISCOMs to carry on or run the business or service of distribution without a reasonable return or profit. Such an element of return is possible, provided if there is a reasonable increase in the tariff even though it may lead to hue and cry among a section of the consumers, who fail or refuse to acknowledge realities. The increase in tariff is concomitant as cost of various elements which go into the supply of electricity to the consumers has increased to a considerable extent. It is an admitted fact that costs are ever increasing even in respect to building of infrastructure, generation, transmission, building, collection, maintenance etc. including manpower and therefore a balance has to be struck instead of pinning down the DISCOMs to the old tariff rates. This shows failure to balance between the consumers and the service providers. The commission had in effect taken the role of controller instead of being a Regulator to regulate and determine the consumer tariff by adopting the Regulatory measure and mechanism. The object of DER Act 2000 and The Electricity Act 2003 has been lost sight by the DERC.

52. The reasonable expenditure approved yet denied and denial of assured return on capital and reserves, deserves to be interfered. Concedingly, with respect to NDPL the Regulatory Commission has approved Rs.358 crores as reasonable expenditure and when it is required to run its distribution service to meet its service obligations in the area of supply, there is no justification to withhold the said amount by ordering to create regulatory asset. This is not a regulatory measure but retrograde step. By resorting to such a course the appellant could not recover 47% of the approved and accepted annual revenue requirements during 2004-05. The denial of reasonable return also cannot be justified, if the only object of the commission is not to increase the tariff. The same reasons apply on all fours, to the other two appeals as well

53. In Premier Automobile v. Union of India reported in AIR 1972 SC 1690 with respect to fixation of a fair price the Supreme Court held that a reasonable margin of profit has to be provided for while fixing a fair price. Same view has been expressed by Supreme Court in Oil and Natural Gas Commission v. Association of Natural Gas Consuming Industries of Gujarat reported in AIR 1990 supplement SCC

397. *The Supreme Court held that "costs plus a reasonable return" is the reasonable, fair, just and proper method in fixation of price even under the control order."*

- ii. Uttar Pradesh Power Corporation Limited v. Noida Power Company Limited and Uttar Pradesh Electricity Regulatory Commission 2011 ELR (APTEL) 96

"33. Section 61(d) of the Electricity Act 2003 provides for recovery of cost of electricity in a reasonable manner. Section 61(i) provides that the State Commission will be guided by the National Electricity Policy and Tariff Policy in determining the tariff. Section 5.8.7 of the National Electricity Policy dated 12.2.2005 stipulates that all the generating companies, transmission licensees and distribution licensees should receive due payments for effective discharge of their operational obligations. Section 5.3 (h) (4) of the Tariff Policy dated 6.1.2006 stipulates that all uncontrollable costs such as power purchase cost should be recovered speedily. Section 8.2.1 (1) of the Tariff Policy stipulates that all power purchase costs need to be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates. The Respondent distribution licensee had to procure additional power from other sources to meet its obligation to meet the consumers' requirement. Thus the cost of additional procurement of power from other sources cannot be denied to the Respondent and has to be allowed as an expenditure in the ARR. If this amount is not adjusted in determining the bulk supply tariff, it will result in the distribution licensee not receiving reasonable return or incur loss. However, the State Commission has ensured that the Appellant recovers its cost of supply and no loss is incurred by the Appellant on this account. Thus, this point is also decided against the Appellant."

12. Further the Electricity Act, 2003 recognizes the provision of subsidy by the State Government for any class of consumers for reduction in the tariff of such consumer. However the Act requires the State Government to pay such amount in advance to the person affected by the grant of subsidy, notwithstanding any direction under Section 108. Section 65 reads as under:

"Section 65. (Provision of subsidy by State Government):

If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall,

notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government:

Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard.”

Therefore in case any exemption is to provided for any category of consumers, the amount is to be provided to licensee who is not being allowed to recover the costs.

13. It is submitted that the Gujarat Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011 (hereinafter referred to as the ‘**Tariff Regulations 2011**’) also upholds the above principle of recovery of reasonable costs and returns of the licensee. The Tariff Regulations, 2011 provide for Aggregate Revenue Requirements of the Petitioner as the allowable expenses and the return on capital pertaining to the transmission which are to be recovered through tariff. Regulation 2(6) provides as under:

“(6) “Aggregate Revenue Requirement” means the requirement of the Transmission Licensee or Distribution Licensee for recovery, through tariffs, of allowable expenses and return on equity pertaining to its licenced Business, in accordance with these Regulations;”

14. The Tariff Regulations 2011 provides for the various expenses to be allowed under the Aggregate Revenue Requirements of the Petitioner under Regulation 71. Regulation 71.1 of the Tariff Regulations, 2011 read as under:

71.1 Aggregate Revenue Requirement of transmission licensee shall comprise the following components, viz.

- (a) Return on Equity (ROE);*
- (b) Interest and Finance Charges on Loan Capital;*
- (c) Depreciation;*
- (d) Operation and maintenance expenses;*

(e) Interest on working capital and deposits from Transmission System Users;

(f) Contribution to contingency reserves, if any;
minus:

(g) Non-Tariff Income;

(h) Revenue from short-term transmission charges projected on the basis of latest audited figures; and

(i) Income from Other Business, to the extent specified in these Regulations.

15. The expenses include return on equity which is the element of profit/reasonable return for the licensee. Such return on equity under the Regulation 38 of Tariff Regulations, 2011 is 14%. The Aggregate Revenue Requirement so determined is the approved expenses of the Petitioner/licensee which is to be recovered.

16. The Regulations further provides for determination of the annual transmission charges for recovery of the above Aggregate Revenue Requirement of the Petitioner. The relevant Regulations are as under:

“66.1 The Annual Transmission Charges for each financial year of the Control Period shall provide for the recovery of the Aggregate Revenue Requirement of the Transmission Licensee for the respective financial year of the Control Period, as reduced by the amount of Non-Tariff Income, income from Other Business and short-term transmission charges of the previous year, as approved by the Commission:”

17. Thus the Annual Transmission Charges are to be determined in such a way that the aggregate revenue requirements of the transmission licensee is recovered. The transmission licensee cannot be denied the expenses reasonably and prudently incurred or the return on equity.

18. Further the energy losses in the transmission system is recognized as an uncontrollable factor which is beyond the control of the Petitioner. Such losses are to be also shared by the users of the transmission system:

“77. Transmission losses:

77.1 The energy losses in the transmission system of the Transmission Licensee, as determined by the State Load Despatch Centre, shall be borne by the Transmission System Users in proportion to their usage of the intra-State transmission system.”

19. It is submitted that the above Regulations seek to provide reasonably recovery of costs and return on investment for the Petitioner. Therefore the requirement for the Petitioner to bear the cost of exemption is contrary to the Electricity Act, 2003, the Tariff Policy and National Electricity Policy, the decisions of the Hon'ble Appellate Tribunal as well as the Hon'ble Commission's own Regulations.
20. It is submitted that the Amended Regulations was introduced under the Government of India Scheme for providing exemption to certain gas based projects. The Office Memorandum dated 27.03.2015 framed the scheme for utilisation of gas based power generation capacity for the years 2015-16 and 2016-17. The scheme, inter alia, provided for exemption from transmission charges and losses as under:

“x. Exemption from transmission charges and losses for stranded gas based power projects on lines of solar power on generation from the e-bid RLNG: Transmission charges and transmission losses of the CTU and/or STU as the case may be, for the incremental gas based power so produced by the e-bid RLNG are waived off, on lines of solar power.”

A copy of the Office Memorandum dated 27.03.2015 is attached hereto and marked as Annexure E.

21. On 17.11.2015, the Government of Gujarat issued Direction under Section 108 of the Electricity Act 2003 for the implementation of the above Scheme of the Government of India, inter alia, as under:

“(a) No Transmission Charges and Losses, shall be levied for the transmission of incremental gas based power, so produced from the e-bid RLNG by the Gas based Power Projects.”

A copy of the Direction dated 17.11.2015 is attached hereto and marked as Annexure F.

22. It is submitted that the Scheme envisages exemption from transmission charges and losses for incremental gas based power produced from e-bid RLNG. However, the Scheme does not envisage that the transmission companies be not allowed to recover their costs as this would affect the financial viability of the transmission activity who would be forced to operate at losses.
23. It is submitted that under Section 61(a), the State Electricity Regulatory Commissions are to be guided by the principles and methodologies

specified by the Hon'ble Central Electricity Regulatory Commission (hereinafter referred to as 'the Central Commission') for determination of tariff applicable to inter alia transmission licensees. The Central Commission has also amended the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges & Losses) Regulations, 2010 on 03.07.2015 for inter state transmission system under the above Scheme dated 27.03.2015 of the Government of India. The relevant extracts of the Fourth Amendment Regulations, 2015 are as under:

"2. Amendment to Regulation 7 of the Principal Regulations:
The following sub-clauses shall be added after sub-clause (v) of clause (1) of Regulation 7 of the Principal Regulations:

"(w) No transmission charges for the use of ISTS network shall be charged to incremental gas based generation from e-bid RLNG for the years 2015-16 and 2016-17.

(x) No transmission losses for the use of ISTS network shall be attributed to incremental gas based generation from e-bid RLNG for the year 2015-16 and 2016-17."

A copy of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) (Fourth Amendment) Regulations, 2015 is attached hereto and marked as **Annexure G**.

24. Further vide the Statement of Reasons for the above Amendment, the Central Commission has provided a procedure for incorporating the waiver. The Procedure inter alia provides for recovery of the waived transmission charges of the Central Transmission Utility (CTU) as under:

"5.(vi) Such amount which have been waived for e-RLNG scheme (in case of LTA transactions), CTU shall recover such waived monthly transmission charges from the monthly STOA charges collected and CTU would disburse the balance STOA charges collected to DICs as per the regulations."

25. On 05.11.2015, the Central Commission vide First Amendment Regulations 2015, has amended the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 adding a new Regulation 23A:

"23A. Tariff Determination of Gas based generating stations:
The tariff of gas based generating stations covered under the Scheme for Utilization of Gas based power generation capacity"

issued by the Government of India, Ministry of Power vide Office Memorandum No. 4/2/2015-Th.1 dated 27.3.2015 shall be determined in due consideration of the provisions of that scheme in deviation of the relevant regulations”

A copy of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2015 is attached hereto and marked as Annexure H.

26. It is submitted that the Central Commission under the same scheme while exempting the incremental gas based generation from e-bid RLNG, has also provided for recovery by CTU of such waived transmission tariff and losses. The Regulations do not require the CTU to bear the burden of such waived charges. It is submitted that this is consistent with principles of Electricity Act, 2003 to ensure recovery of reasonable costs and returns of the licensee. If the regulated entity is required to render services to any section of its customers at a reduced or exempted tariff, the annual revenue requirements of the regulated entity is to be allowed to be recovered from other customers in total.
27. It is submitted that the effect of the Policy Directive given by the Government of India and the Government of Gujarat in regard to providing services of transmission free of cost including non-adjustment of losses for the Gas Power Station of a specific class can only lead to the designing of tariff to recover the annual revenue requirements in a manner that such exempted class is not charged any tariff. The above cannot lead to a reduction in the annual revenue requirements of the regulated entity. If the tariff determined by the Hon'ble Commission does not provide for recovery of costs, the Petitioner/Licensee would be unable to recover its costs otherwise and would have to function at losses. The decision of the Government to promote gas based generation cannot be at the cost of the Petitioner/licensee.
28. It is further submitted that the energy losses in the transmission system are uncontrollable factors as recognized in the Tariff Regulations 2011 itself. Therefore, such energy losses are to be recovered by transmission licensee such as the Petitioner from the beneficiaries of the transmission system. The Petitioner cannot be made to suffer the losses over which it has no control and which is not attributable to it.

29. The Petitioner submits that it has not filed any other petition or appeal in respect of the Amendment Regulations.
30. The Petitioner has paid the requisite court fees.
31. In view of the above, the Petitioner herein respectfully prays that this Hon'ble Commission may be pleased to:
- (a) Amend Gujarat Electricity Regulatory Commission (Multi Year Tariff) (First Amendment) Regulations, 2016 and delete the Amendments to Regulation 75 and 77;
 - (b) Formulate a procedure for recovery of these waived transmission charges and losses for gas based generating stations covered under the Scheme of Government of India dated 27.03.2015;
 - (c) Pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.

DECLARATION

Declaration that the subject matter of the petition has not been raised by the petitioner before any other competent forum, and that no other competent forum is currently seized of the matter or has passed any orders in relation thereto.

PETITIONER
GUJARAT ENERGY TRANSMISSION CORPORATION LIMITED

PLACE: Vadodara

DATED: 02.05.2016