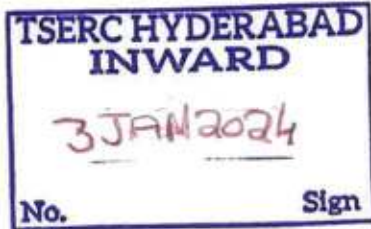


BEFORE THE TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
AT HYDERABAD

In the Matter of :

GRID COORDINATION COMMITTEE REPORT ON GRID SUPPORT CHARGES

Name & full address of the Objector along with e-mail id and contact number	Brief details of Objection(s)/Suggestions against levy of Grid Support Charges	Whether copy of Objection/Suggestion & proof of delivery at Licensee's office enclosed (Yes/No)	Whether Objector wants to be heard in person (Yes/No)
ITC Ltd., 106 Sardar Patel Road, Secunderabad 500003 LakshmiKumar.Velpuri@itc.in 9000080461	As per the enclosed objection statement	Yes	Yes, and/or through its Advocate



Lakshmi Kumar Velpuri

From: Lakshmi Kumar Velpuri
Sent: 27 December 2023 14:08
To: 'cgmir@tsnpdcl.in'
Cc: 'deipc@tsnpdcl.in'; 'derac@tsnpdcl.in'
Subject: Filing of Objections to the Grid Co-ordination Committee Report of October,2023
Attachments: Filing of Objections to GCC Report of Oct,2023_TSNPDCL.pdf
Importance: High

Dear Sir,

Please find the attached Objections to the Grid Co-ordination Committee Report of October,2023. The copy of the same being sent through registered post.

Thanks & Regards,
ITC Limited - Paperboards & Specialty Papers Division.,
ITC Bhadrachalam House, 106, Sardar Patel Road.
Secunderabad-500003, Telangana.
Ph.:+91-40-40096324, Mobile:+91-9000080461.



ITC Limited
PAPERBOARDS & SPECIALTY PAPERS DIVISION
Divisional Headquarters : ITC Bhadrachalam House
106, Sardar Patel Road,
Secunderabad - 500 003, Telangana, India.
Telephone : 91- 40 - 27846566 -73
Fax : 91 - 40 27842997, Expts : 27810034
27849509, 27896048

DT: 27.12.2023

To
Chief General Manager (RAC)
TSSPDCL,
Corporate Office
First Floor, Mint Compound
Hyderabad - 500 063.

Sub: Filing of objections to the Grid Co-ordination Committee Report of October 2023 on Grid Support Charges

Dear Sir,

Please find enclosed a copy of objections filed on behalf of ITC Ltd. 106 Sardar Patel Road, Secunderabad- 500003 to the aforesaid Grid Co-ordination Committee Report.

Kindly, acknowledge the receipt of same at TSSPDCL.

Yours faithfully,


For ITC Limited



BEFORE THE TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
AT HYDERABAD

In the Matter of :

GRID COORDINATION COMMITTEE REPORT ON GRID SUPPORT CHARGES

OBJECTIONS ON BEHALF OF

ITC LTD

106, Sardar Patel Road, Secunderabad 500003

INDEX

<i>Sl</i>	<i>Description</i>	<i>Page</i>
1.	Objections on behalf of ITC Ltd	1-4
2.	<i>Annexure-A</i> Copy of initial written submissions of ITC Ltd to the ARR & Tariff Proposals of Discoms for 2022-23	5-10
3.	<i>Annexure-B</i> Copy of additional written submissions of ITC Ltd to the ARR & Tariff Proposals of Discoms for 2022-23	11-28
3.	<i>Annexure- C</i> Copy of initial written submissions of ITC Ltd to the ARR & Tariff Proposals of Discoms for 2023-24	29-36
4.	<i>Annexure- D</i> Copy of additional written submissions of ITC Ltd to the ARR & Tariff Proposals of Discoms for 2023-24	37-70

filed on behalf of

ITC LTD

106, Sardar Patel Road, Secunderabad 500003

**BEFORE THE TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
AT HYDERABAD**

In the Matter of :

GRID COORDINATION COMMITTEE REPORT ON GRID SUPPORT CHARGES

OBJECTIONS ON BEHALF OF

ITC LTD

106, Sardar Patel Road, Secunderabad 500003

May it please the Hon'ble Commission :-

1. Pursuant to the proposals of the Discoms to levy Grid Support Charges on co-located Captive Power plants in the ARR and Tariff Proposals for FY 2022-23 and the public hearing, ITC had submitted elaborate objections and submissions against the proposed charges. Copies of the initial written objections/submissions and additional written submissions are attached as *Annexure A* and *Annexure B*, respectively, for ready reference. Significantly, on the basis of the objections of ITC, this Hon'ble Commission decided to refer the matter to Grid Co-ordination Committee for a detailed study on the issue of parallel operation of CPPs and consequent levy of GSC.
2. No report of the Grid Co-ordination Committee was made available to the affected parties even at the time of the public hearing for the tariff of the succeeding year.
3. Pursuant to the proposals for levy of Grid Support Charges on the captive generating plants, co-generation plants, third party generation units, merchant power plants, rooftop solar power plants who do not have PPAs with the licensees in the ARR and Tariff Proposals for FY 2023-24, ITC had again made detailed objections and submissions before the Hon'ble Commission at the public hearing referring to the earlier submissions for FY 2022-23. Copies of the initial written objections/submissions and additional written submissions for FY 2023-24 are attached as *Annexure C* and *Annexure D*, respectively, for ready reference. The Discoms had stated that the study of the GCC had been initiated but not finalised. No report of the GCC was made available. It was submitted that principles of natural justice require that the GCC give opportunity to affected parties to make submissions and that the report be made available for objections and comments. The matter was deferred for the final report of the GCC.



4. It is not known whether the extensive submissions of the Objector herein were communicated to the GCC by the Office of the Hon'ble Commission at or after the reference to the GCC. In any case, the Discoms, whose representative were members of the GCC, were fully aware of the substantial and extensive objections of the Objector herein. It appears that the Discoms too have deliberately suppressed the issues raised by the Objector herein and the entire proceedings of the GCC are grossly vitiated by non-advertence and non-application of mind to the relevant and important issues raised by the Objector herein. The GCC never gave any intimation or opportunity to the Objector herein to raise relevant and crucial issues. The report of the GCC is vitiated by gross violation of the principles of natural justice apart from other incurable vices as hereinafter submitted.
5. According to the letter dated 07.10.2023 addressed by the Chairperson of the GCC to the Commission Secretary, the GCC "submitted final report after detailed analysis, on Levy of Grid Support Charges (GSC) for FY 2022-23" under cover of letter dated 27.12.2022. On the other hand, para 7.5.4 of the Tariff Order for FY 2023-24 mentions that the GCC submitted its report on 05.08.2022. It is all contradictory and the whole matter is in a haze of high opacity. Neither report is made available to us even to this day. The present so-called Final Report of October 2023 refers to conclusions in the report dated 27.12.2022 with no indication of the material contents thereof and without appending that report to the present report. Proceedings cannot be initiated and carried on with such gross opacity and hidden documents.
6. The present final report of October 2023 is a perfunctory pretence of so-called technical study bereft of any proper or rational application of mind. It is a farce of a document without any consistency, technical competence, rationality or reasoning.
7. There is no reference, discussion or application of mind to any of the objections previously raised by the Objector herein. It appears that there is a deliberate intention and design not to consider and deal with the specific technical issues and objections raised by the Objector herein with regard to the scope, justification and applicability of grid support charges as originally proposed and thereafter irrationally extended to all generation. The approach of the GCC is clearly to manifest a pre-determined outcome to the desire and whim of the Discoms. There has been no fair and unbiased consideration of the issues involved. Clearly the excessive dominance of the State Utilities in the Committee and the indifference and incompetence of other members of the GCC has resulted in this biased, incoherent, technically incompetent and irrational report.
8. The recommendation of the GCC is for the levy of grid support charges on an irrational and even basis to co-located CPPs, third party generating units availing Open Access, solar power plants, wind power plants and renewable energy power plants. The interaction of each of these different categories with the grid is distinct and different. They cannot all be painted with the same brush.



It is trite law that unequals cannot be treated as equals. It is constitutionally impermissible. The approach is indicative of the GCC being unable to, or deliberately unwilling to, differentiate the chaff from the grain and/or the wood from the trees.

9. Since there is nothing in the present report specifically dealing with co-located thermal CPPs, and any other purported report is not disclosed so far, the specific case of ITC is not considered at all together with the specific and extensive submissions of ITC. We are disabled from an effective response in a manner contrary to law, justice and good conscience. However, we submit as follows on what is contained in the report if only to show how ill-conceived and pretentious it is.
10. Pages 6 to 10 of the report deal with solar power to tenuously contend that solar power should be subject to grid support charges in the same way and to the same extent as other generators. The graphs and illustrations on pages 6 to 10 are incomprehensible. The inferences sought to be drawn from them are perverse. It is incomprehensible as to how the graphs on page 10 lead to a so-called adverse conclusion that grid tied inverters of solar power plants need a voltage reference for injection of active power and that this is a grid support. Voltage reference is taken from the grid as a safety measure to ensure that there is no power flowing into the grid from the inverter when the grid connection is isolated; otherwise any person working on the isolated element of the grid is subject to threat to life. The voltage parameters of the grid are those specified by the Grid Code and/or CEA Regulations. Since the A.C. output from inverters are to be synchronised with the grid, the inverters together with any interconnecting transformers are designed to be at the same voltage as that at the interconnecting point on the grid. The approach of the GCC is clearly perverse. The purported conclusion in para 3.2 of the report that the power angle of the bus is "getting diverged" with the outage of grid connection is by itself meaningless and incomprehensible. It is stated, perhaps correctly, that solar power plants draw reactive energy while injecting active energy into the grid. That may make out a case for reactive energy charges on the actually measured quantum of rective energy drawn; but there cannot be a case for imposing grid support charges as with other generators. The report itself speaks of a reactive charge of 5paise/KVArh in line with the IEGC as considered by the CERC. In fact, reactive energy charges are already collected for wind and hydel power projects.
11. With reference to para 5 on page 17, there is a mention of technical analysis and study. No technical analysis or study is evident from the report. The words are used as a cover up for no material or objective consideration at all.
12. The measure of grid support charges as recommended is arbitrary, devoid of any reason or rationality. More particularly, no such method can reasonably be applied to all the different cases in one stroke.

4

13. The measure of charges appears to have no foundation at all except for an unmindful aping of the irrational and arbitrary determination of GSC by the APERC. To illustrate -

Take the case of a generator supplying energy under open access. The R&M charges are already included in the transmission/wheeling charges for the capacity contracted under open access. There is therefore an irrational and unreasonable double charging on the same account.

Take the case of a renewable energy generator supplying under open access. Because of the infirm nature of renewable energy, every consumer of such a generator would invariably have a CMD with the licensee for the whole of the demand of the load. The Demand charges paid by the consumer would include for the R&M charges. Again, the transmission/wheeling charges are paid for the OA contracted capacity which includes for the R&M charges. Now, if so-called grid support charges are levied at a rate based on the R&M charges, there is a triple charging on the same account.

14. There is therefore no merit whatsoever in the recommendations of the GCC which are arbitrary, bereft of diligent enquiry and study and proper application of mind. It is most appropriate that the GCC report be duly binned.
15. The Hon'ble Commission may hear and consider the extensive submissions hitherto made by the Objector herein and to determine the criteria for levy of grid support charges and the measure thereof, if any, as applicable to each class / category of cases in a manner that is reasonable and rational and in accordance with law.
16. The Objector herein seeks leave of the Hon'ble Commission to be heard at length and in detail on the various submissions made herein and the submissions made earlier in the tariff proceedings.
17. The Objector seeks to be heard in person and/or through Sri K. Gopal Choudary, Advocate.

2023 December 27


On behalf of the Objector

5

Annexure - A

BEFORE THE TELANGANA STATE ELECTRICITY REGULATORY
COMMISSION
AT HYDERABAD

O.P. Nos. 58 & 59/2021

In the Matter of :

ARR and Tariff proposals for FY 2022-23 filed by TS DISCOMs .

MEMORANDUM OF OBJECTIONS

filed on behalf of

ITC LTD,
Paperboards and Specialty Papers Division,
ITC Bhadrachalam House, 106, Sardar Patel Road, Secunderabad 500003
Contact Email: lakshmikumar.velpur@itc.in Mobile:9000080461

May it please the Hon'ble Commission :-

Background Facts of the Objector

1. The Objector herein is engaged in the manufacture of paper and paperboard at Sarapaka Village, Bhadrachalam District, Telangana. The Objector also has a Captive Generating Plant at Sarapaka Village.
2. The generation of electricity at the plant is by co-generation process whereby heat energy used for pulp cooking, humidification and drying is produced along with electricity.

The Objector has presently six T-G Sets of varying capacities aggregating to about 172 MVA. One TG-Set of 23 MVA is kept as a stand-by. The TG-sets and the loads are segregated into three networks internally, with 77 MVA in one network, 46 MVA in another network 26 MVA in another network. Under normal operation, the TG-Sets are operated in island mode and the entire load is met exclusively from the TG-sets, no power being consumed from the TSNPDCL.



A handwritten signature in blue ink, appearing to be "Raj", with a horizontal line drawn through it.

6

The Consumer Service with TSNPDCL is with a CMD of 5MVA. Power is drawn from TSNPDCL against the CMD of 5 MVA only for start-up purposes of the TG-sets. The starting currents during start-up is minimised by soft start arrangements. The power drawn during start-ups is always within the CMD of 5 MVA.

The Objector also receives and consumes power form its wind energy plant through inter-state open access when ever available. When such Open Access power is availed, the connection with the grid is only to enable consumption by direct loads utilizing the OA energy and TSNPDCL energy.

There are electrical inter-locks in place to ensure that the connected loads trip whenever there is a tripping of the TG-Sets. Therefore, there is no transfer of load to the grid in the event of TG-Set failure or shut down. Mandatory protection arrangements are in place to clear internal faults within the time prescribed in the Grid Code.

In the normal operation of the Objetor's continuous process plant, there are no equipment which impose intermittennt or transient loads.

Therefore there is no circumstance by which it can be considered that any grid support is actually availed by the Objector. The connection to the grid is utilised only for for start power within the CMD with TSNPDCL or for import of open access power.

Objections to Proposal for Grid Support Charges

3. It is proposed by the DISCOMs that grid support charges be levied at the same rates as in the APERC order for 2002-2003. Presumably the levy is sought only on those CPPs which are co-located and operate in parallel with the grid. The proposal is unreasonable both with respect to the levy itself and also with respect to the quantum.



4. There was nothing in the Grid Code which enables and/or authorises the levy of grid support charges.
5. Other than merely reproducing the provision in the previous APERC order for 2002-03, there is no reasoning given in the proposal with regard to the justification for levying grid support charges and/or the quantum of such charges with due regard to the sea change subsequently with the coming into force of the Electricity Act 2003.

The Hon'ble Commission may consider the matter afresh having regard to the completely changed environment and regime after the Electricity Act 2003 has come into force.

The proposed levy is of a nature that unreasonably mulct CPPs so as to discourage them. Such purpose or effect is contrary to the legislative policy and scheme of the Act which encourages captive generating plants and frees them from all manners of regulation. The proposal to levy grid support charges on captive generating plants deserves to be rejected on this ground alone.

6. The APERC order for 2002-2003 was made before the Electricity Act 2003 came into force. After the Electricity Act came into force, consumers have the right to source energy from any generator located anywhere under open access irrespective of whether a consumer has any contracted demand with the licensee or not. Every generator supplying energy operates in parallel with the grid. When no grid support charges are, or can be, levied based on the installed generating capacity of the source, whether it be an IPP or remote CPP under open access, there is no reason for levy of such a charge on CPPs or co-generation plants. The power and energy are measured and accounted for only with respect to the 15 minute time blocks.



8

7. It may be that certain kinds of industries may instantaneously draw large currents intermittently (e.g. in arc / induction furnaces) or produce harmonics which may or may not be in excess of the limits specified by the GTCS and/or the Grid Code. The incidence of such large intermittent / instantaneous loads and/or injection of harmonics in such industries may occur irrespective of their having a contracted demand with the licensee for the whole of their demand or for a part of their demand in conjunction with a CPP. These industries may have to be considered as a separate class. It is unreasonable that the incidents in such separate class taints all industries with CPPs even when no such instantaneous or intermittent loads or injection of harmonics are involved.

8. Industries may have CPPs with a capacity in excess of the captive requirement, and operation in parallel with the grid may be necessitated by the need to export their surplus power under open access or otherwise. There can be no justification for levy of grid support charges in such cases.

An industry with a CPP may connect to the grid for the pupose of importing additional power from another source under open access. There can be no justification for levy of grid support charges in such cases also.

An industry with a CPP may also connect to the grid to avail start-up power for which a contracted demand is arranged and paid for by the consumer. There can be no justification for any grid support charges.

9. If at all, it is the load (and more particularly, certain kinds of load) that may be alleged to impose instaneous / intermittent demands on the grid. If some loads in some type of industries are considered to cause instantaneous demand on the grid, then it is only such loads that could be relevant if at all any grid support charge is to be levied.

The installed generation capacity is irrelevant and the levy on a charge on the generation capacity is irrational.



9

10. Without prejudice to the above, the quantum proposed is entirely arbitrary, exorbitant and irrational. There is no justification or rationale for the quantum proposed. The licensee can be allowed a charge only if the licensee demonstrates actual costs related to such charge. There are no extra costs incurred by the licensee for the alleged or presumed effects of operation of CPPs in parallel with the grid. There has to be some cogent methodology for arriving at the quantum of the charge. It cannot be arbitrary and without any data or rational basis.

Capacity of the surplus being sold under open access cannot be subjected to any such charges.

11. The following position in other States which have levied / considered Grid Support Charges may also be duly considered.

<i>State</i>	<i>Parallel Operation / Grid Support Charge</i>
Gujarat	Rs. 26.50 / kVA / month
Rajasthan	Rs. 20.00 / kVA / month
Madhya Pradesh	Rs. 20.00 / kVA / month
Tamil Nadu	Rs 30,000 /MW / month
Chhattisgarh	Rs.0.13 /kWh
Orissa	Nil – OERC rejected the proposal observing that the Grid Code has sufficient provisions for regulating the connected entity and no charges were called for.

It is evident from the above that the charges proposed by the DISCOMs are exorbitant apart from being without any rational basis or method.




10

12. It is submitted that the Honble Commission may cause a detailed scientific study by a competent organisation to be undertaken to assess the issue having regard to the diverse nature of the industries with CPPs, and to determine the particular criteria by which grid support may be considered to have been availed, and to lay out a methodology by which the quantum of charge, where considered leviable, is to be determined.
13. All Objections are made without prejudice to one another.

Participation at Public Hearing – Oral Submissions

The Objector desires to be heard in person or through counsel at the Public Hearing.

2022 January 28


On behalf of the Objector

(11)



ITC Limited
PAPERBOARDS & SPECIALTY PAPERS DIVISION
Divisional Headquarters : ITC Bhadrachalam House
106, Sardar Patel Road,
Secunderabad - 500 003, Telangana, India.
Telephone : 91- 40 - 27846566 -73
Fax : 91 - 40 27842997, Expts : 27810034
27849509, 27896048



To,
The Secretary,
Telangana State Electricity Regulatory Commission,
5th Floor, Singareni Bhavan,
Red Hills, Lakdi-ka-pul, Hyderabad 500004.
Email: secy@tserc.gov.in,

Date: 02/03/2022.

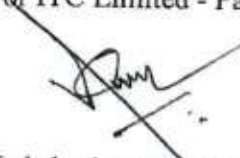
Respected Sir,

Sub.: Submission of additional submissions and Response to TSNPDCL reply to objection - Reg.

Ref.: TSERC Acknowledgement dated 28/02/2022.

We are herewith attaching the additional submissions and Response to TSNPDCL reply to objection duly signed by the objector as well Council for the objector ITC Ltd. Kindly take this on record please. It was already submitted on 28/02/2022 without the objector signature.

Thanking You,
For ITC Limited - Paperboards & Specialty Papers Division.


(Lakshmi Kumar V)
Manager - Energy.

BEFORE THE TELANGANA STATE ELECTRICITY REGULATORY
COMMISSION
AT HYDERABAD

O.P. Nos. 58 & 59/2021

In the Matter of :

ARR and Tariff proposals for FY 2022-23 filed by TS DISCOMs .

**ADDITIONAL SUBMISSIONS
AND RESPONSE TO APNPDCL REPLY TO OBJECTIONS**

filed on behalf of

ITC LTD

106, Sardar Patel Road, Secunderabad 500003

May it please the Hon'ble Commission :-

1. As the time available for making oral submissions was considerably and seriously restricted at the public hearing at Hanamkonda on 21.02.2022, these additional submissions are being filed as desired and permitted by the Hon'ble Commission.

It is reiterated that the issues involved require substantial arguments, explanation and hearing. These submissions may be read and considered together with and in addition to the Objections filed earlier.

2. The reponse of the Objector to the reply of TSNPDCL to the objections is also submitted herein.
3. The Objector haad also raised objection at the public hearing to the proposal for facilitation of open access. The written objection for the same are also given herein.

GRID SUPPORT CHARGES

Need for separate proceeding on the issue

4. It was emphasised at the hearing that the issues involved in the levy and/or quantification of grid support charges are complex and require to be heard, considered and decided in a separate proceeding. The issue requires elaborate arguments and consideration. In this context, it is submitted that –

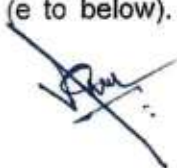


- (a) The licensees must first provide real data and facts on the incidence of grid support being actually availed by different types of industries, and they must also provide details of how the proposed quantification of the charges is justified with reasons.
- (b) The Hon'ble Commission may cause a scientific study to be conducted by an appropriate technical organisation on the issue of the actual incidence of avilment of grid support by CPPs of different types of industries and the appropriate methodology of computation of the quantum of grid support charges for each such type of industry.
- (c) The Hon'ble Commission may then issue a discussion paper on the levy and quantification of grid support charges for different types of industries with CPPs having regard to –
 - (i) The wide changes that have been brought about by the Electricity Act 2003, inter alia, the introduction of open access and the legislative policy of de-regulating CPPs and the legislative and national policy of promoting CPPs; and
 - (ii) The study report commissioned by this Hon'ble Commission and also the various studies conducted by various State Commissions; and
 - (iii) The approach and orders of various other State Commissions on the issue; and
 - (iv) Submissions made by parties in this proceeding.
- (d) Thereupon the Hon'ble Commission may initiate proceedings to determine the scope of levy or otherwise of grid support charges and/or the methodology for determination of the charges where applicable.

It is submitted that the further submissions herein are without prejudice to the aforesaid submission with regard to the need to undertake separate proceedings on the issue.

Classification of CPPs operating in parallel with the grid

- 5. The Tariff proposal of TSNPDCL (at page 32) purports to list the different types of CPPs operating in parallel with the grid, purportedly in terms of a 2008 discussion paper issued by the Chattisgarh SERC (a to d below). There are other cases as well (e to below). It is incorrect and arbitrary to



consider every CPP as availing grid support irrespective of their different nature and characteristics.

It is submitted that the different types of CPPs operating in parallel may more properly considered to be as follows with the characteristics stated hereunder relevant to levy of grid support charges –

- (a) *CPPs having surplus capacity over and above their own requirement, connected in parallel with the grid in order to sell power to the grid or bank such surplus energy, which is a general phenomenon in seasonal industries.*

These CPPs are connected to the grid to enable export of surplus power through open access (after start up). The CPP may or may not generate to its full installed capacity and the quantum of export may vary depending on exigencies from time to time. Grid support charges based on installed capacity, irrespective of the actual generation capacity, is clearly not for any support derived from the grid in the operation of the industry or the CPP.

Typically, there would not be any import of power from the grid. In the absence of any factual data with respect to any particular industry with such a CPP, it would be arbitrary and unreasonable to consider that such an industry with such a CPP avails of any grid support warranting imposition of grid support charges.

In fact, if grid support charges are levied on such CPPs which connect to the grid only to export surplus power, it is tantamount to invidious discrimination mulcting such CPPs with additional charges for mere connectivity to avail open access, which is arbitrary and unlawful.

Consider co-generation plants (such as in processing industries or sugar industries). They require power from the licensees only for start up. Their captive consumption is only a part of their captive generation. The surplus power has to be exported. They do not require or avail of any grid support whatsoever after start up. Any levy of grid support charges in such cases based on the generation capacity is unwarranted and unreasonable.

Properly, such CPPs must be considered as not availing or intending to avail any grid support for their loads unless it is established as a fact in a particular case that grid support for the loads is availed.

- (b) *CPPs having load of such nature that results in large momentary peaks, starting currents and runs the plant in parallel to avail the support of grid beyond the contract demand.*



Firstly, it must be noticed that the momentary loads or starting currents depend on the nature of the loads. The CPP, being the generating plant, is not the cause or source of such momentary loads or starting current, and it is wholly unreasonable to consider the generation capacity as relevant at all. The focus must therefore be on the load and not on the generating capacity.

It is possible that some industries like steel industries or with arc furnaces may be constantly throwing large momentary loads. For example, if a steel industry with an arc furnace of 20 MW is operating with a CPP of 30 MW capacity, it may be that some support may be taken from the grid. On the other hand, if the the same industry with an arc furnace of 20 MW is operating with a CPP of 100 MW capacity, it cannot be said that the operation of the arc furnace requires any support from the grid.

What is meant by "availing the support of the grid beyond the contract demand"? The contracted demand with the licensee gives the consumer a bundle of rights as to the use of electricity within the contracted demand. These limits are specified in the GTCS and/or the Grid Code with respect to, at least, starting currents. Necessarily, it must be construed that if the starting currents are within those permitted by the GTCS/Grid Code, such incidents are within the contracted demand.

- (c) *Process industries with CPPs runs in parallel in order to avail continuous power supply, in the event of failure of CPP generating units.*

In such cases, the industry must necessarily have a contracted demand with the licensee to the extent of at least the expected recorded demand that would occur when the failure of the generating plant occurs.

It cannot be said or presumed that there is any grid support availed even when the generating plant is operating.

Further, it is the load and its nature that is relevant, not the generation capacity.

- (d) *Black start of CPP, where the startup power is required to restart the units.*

In such cases, the industry would invariably have a contracted demand with the licensee to the extent of start up power required.

- (e) *CPPs connected to the grid to receive / import renewable power to meet their RPPO.*

RPPO is imposed on consumption from captive generation. In order to comply with the RPPO, the industry needs to import renewable power. It is irrational to mulct such units when their connection to the grid is to avail open access for complying with a statutory obligation.

- (f) *CPPs whose generation capacity is intended to meet a part of their electricity requirement while the rest is met from the contracted demand with the licensee and/or through open access.*

Consider the following parameters of an industry –

Connected load	60 MW
Largest single motor	5 MW
Pulsating / Momentary Loads	Nil
Actual Demand of Load	50 MW
CPP capacity	30 MW
Contracted Demand	10 MW
Through Open Access	10 MW

It requires consideration in the above case that there is a contracted demand of 10 MW with the licensee. The largest single motor being 5 MW, the starting current will always be within what is permissible within the contracted demand. Now, when this industry is in normal full operation, there is no grid support availed because all fluctuations in the load are within the contracted demand for which demand charges are fully paid. Unless it can be shown by measurable and verifiable means that the industry is availing anything beyond its contracted demand it cannot be subjected to any grid support charges arbitrarily.

In the above example, the proposed levy on 10 MW is unreasonable and irrational.

Salient relevant changes brought about by the Electricity Act 2003

- 6. Prior to the coming into force of the Electricity Act 2003, CPPs were regulated in terms of section 21(3) of the Reform Act 1998 read with section 44 of the Supply Act 1948. At that time, the then APERC followed a policy of restricting CPPs on various grounds, inter alia, that the captive use of captive generation was affecting the finances of the licensee, and that "repatriation" of captive capacity to the grid was a necessity.
- 7. The Electricity Act 2003 completely de-regulated captive generation and captive consumption. The legislative policy manifested freedom, encouragement and promotion of captive generation. The statutory National

Electricity policy emphasises the need to encourage captive power plants as distributed generation and to tap the surplus capacity of captive generation plants. Thus CPPs were not only encouraged for meeting captive requirements but the setting up of capacity beyond captive requirements was contemplated and encouraged. This sea change in the legislative and statutory policy must be given due consideration.

The proposed grid support charges cannot be such as to be a measure of a punitive charge on CPPs with an effect of discouraging CPPs and/or to an effect of making CPPs unviable and/or with the hidden motive of "repatriation of captive consumption to the grid" and/or to facilitate purchase only from the licensee contrary to the legislative and statutory policy under the Act.

8. The Electricity Act 2003 introduced mandatory open access whereby a consumer could source power from anywhere. It has been held by a Constitution Bench of the Hon'ble Supreme Court in PTC's case that open access is one of the most important features of the Act. When Open Access consumers are not sought to be mulcted with any grid support charges, it needs to be carefully examined and considered as to whether CPPs and/or captive consumption ought to be mulcted merely because the CPPs are co-located with the consuming loads. A fresh look at the concept in the changed legislative environment is necessary.

Open Access Source vs CPP source of power

9. Consider the case of a consumer with a connected load of 20 MW, recorded maximum demand of 15 MW, and contracted demand of 5 MW with the licensee sourcing 10 MW power at exit point under open access. The OA power is constant and load factor for this source would be 100%. The load fluctuations (including starting current, momentary loads etc) of the consumer are all taken by the contracted demand with the licensee, and the load factor with the licensee supply would be much less. No grid support charges are levied for the load fluctuations being taken by the licensee alone.
10. Now, if the same 10 MW that was being sourced under open access is sourced from a co-located CPP, then grid support charges are sought to be levied. There is essentially no difference between the two, except that the source of the 10 MW is now co-located with the load. It is *per se* discriminatory against the CPP.



Analysis of stated advantages and disadvantages of parallel operation as per the licensee.

11. The Tariff proposal of TSNPDCL (at pages 32-34) purports to enumerate advantages and disadvantages of parallel operation from the licensee's point of view purportedly in terms of a Chattisgarh SERC order dated 31.12.2008.

The following remarks against each of them may be considered with respect to each of the enumerated items.

- (a) *The fluctuations in the load are absorbed by the utility grid in the parallel operation mode. This will reduce the stresses on the captive generator and equipments. The bulk consumer can operate his generating units at constant power generation mode irrespective of his load cycle.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

Consider an industry with load fluctuating between 8 to 10 MW where the CPP capacity is 12 MW and the industry has a 2 MW contracted demand for start up. Clearly the CPP itself can meet the fluctuation of the loads without resort to the grid or even the contracted demand. In such cases, levy of charge on 10 MW (i.e 12 MW – 2 MW) is wholly unfair, unreasonable and unjustifiable.

Consider another case of an industry with load fluctuating between 10 MW to 15MW where the CPP capacity is 10 MW and contracted demand is 5 MW. It is alleged that the CPP can run constantly at 10 MW and the variations within 5 MW alone are taken by the grid. But the contracted demand with the licensee is already 5 MW and the load fluctuations over 10 MW are within the contracted demand for which demand charges are being paid. In such cases also, levy of charge on 5 MW (i.e 10 MW – 5 MW) is wholly unfair, unreasonable and unjustifiable. In case the 10 MW is sourced from elsewhere under open access, there would be no such charges even though in that case also the 10 MW under oA is utilised fully and the fluctuations alone are met from the contracted demand.

- (b) *Fluctuating loads of the industries connected in parallel with the grid inject harmonics into the grid. The current harmonics absorbed by the utility grid is much more than the CPP generator. These harmonics flowing in the grid system are harmful to the equipments and are also responsible for polluting the power quality of the system.*



This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

Harmonics from fluctuating loads is dependant on the load and its nature. It is not at all related to the generating capacity of the CPP on which the charge is irrationally proposed.

Not all loads inject harmonics into the grid as alleged. The issue may be related to certain specific kind of industries such as steel mills or arc furnaces which need to be properly and distinctly identified.

The Grid Code specifies the limits of harmonics for consumers. If the harmonics are within the specified limits, there is no issue. If the harmonics are excessive, the Grid Code must be enforced and the consumer must be asked to reduce the harmonics by installing filters or other means. It cannot be that excess harmonics, if at there are any, are allowed, and a charge is levied. In any case, this is specific to certain kinds of industries only.

- (c) *Negative phase sequence current is generated by unbalance loads. The magnitude of negative phase sequence current is much higher at the point of common coupling than at generator output terminal. This unbalance current normally creates problem of overheating of the generator and other equipments of CPP, if not running in parallel with grid. When they are connected to the grid, the negative phase sequence current flows into the grid and reduces stress on the captive generator.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

Where there is some CMD with the licensee, the question as to whether the effect of unbalanced loads is within the CMD or not is to be carefully considered.

- (d) *Captive power plants have higher fault level support when they are running in parallel with the grid supply. Because of the higher fault level, the voltage drop at load terminal is less when connected with the grid.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.



It is also an issue relating to starting currents and momentary loads which depend on the load and its nature in specific types of industries. It is stated too broadly. What is to be seen and considered is whether, in relation to specific types of industries, any alleged support from the grid is inconsistent with the contracted demand that the industry has with the licensee having regard to the provisions of the GTCS and the Grid Code.

Fault level is relevant only when a fault occurs. The Grid Code provides for the time within which faults may be cleared which is less than 0.06 seconds in case of fault and 0.10 seconds in case of overloads. On fault, it is not a case of grid support being taken, rather it is a case where a fault current flows for a short duration necessary to clear the fault and isolate it. Even in a domestic connection, faults do occur randomly, and it cannot be said that any grid support is being availed during the short period required for a fuse to blow or an MCB to trip.

It is also true that the CPP itself adds to the fault handling capacity of the grid. In the event of an earth fault in the grid at any location nearby to the CPP, fault current is also drawn from the CPP because of the low impedance path to the CPP, and the CPP itself may trip in such circumstances of earth fault in the grid. So, while waxing on the fault handling support of the grid to the industrial loads, it must not be forgotten that the CPP is also affected by faults in the grid.

- (e) *On account of increase in plant load factor of captive generator, additional revenues can be generated by the CPP by sale of surplus power to the utility.*

This is meaningless. There is never any simultaneous import and export of power. In the case of surplus power export, the loads are fed entirely from the CPP, and in addition the CPP exports surplus power for sale through the grid.

- (f) *In case of fault in a CPP generating unit or other equipment, bulk consumers can draw the required power from the grid and can save their production loss.*

This is only where the consumer industry has arranged for a stand-by from the grid by taking a contracted demand from the licensee for which the industry continuously pays demand charges to the licensee. In such circumstances, it is not understandable as to how this is an advantage to the generating plant. On the other hand, in this case, the licensee gets continuous revenue for the billing demand even though the contracted demand is utilised only when the CPP trips.

- (g) *The grid provides stability to the plant to start heavy loads like HT motors.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

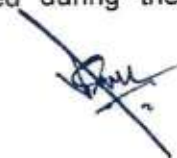
Where the capacity of the CPP is intended for the entire industrial load, it is usually dimensioned to take the starting current of motors generally. The industry also has some contracted demand with the licensee. The GTCS and Grid Code provide limitations on starting currents. While DOL starting currents may be high, soft-start alternatives are there to reduce the starting currents. In any case, what needs to be seen and considered is that, in a given case, whether the starting currents of motors alleged to be drawn from the grid are inconsistent with the arranged contracted demand with the licensee. If it is consistent, then the licensee is already compensated through demand charges and there is no justification whatsoever for anything more.

- (h) *The variation in the voltage and frequency at the time of starting large motors and heavy loads, is minimized in the industry, as the grid supply acts as an infinite bus. The active and reactive power demand due to sudden and fluctuating load is not recorded in the meter.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

As stated supra, high starting currents for motors are recognised and permitted by the GTCS and the Grid Code. What requires to be considered is, again, whether such starting currents are consistent with the contracted demand that the industry has with the licensee.

On the issue of active and reactive power demand not being recorded in the meter, it is only because the metering methodology approved is to integrate over a 15 minute duration. There is no concept of instantaneous demand measurement. Demand is itself computed from the energy during the 15 minute interval. It cannot be denied that the active and reactive energy is duly recorded in the meter. Therefore, the demands due to fluctuating loads are also included and part of the demand measurement over the 15 minute integrating interval. Even in the cases where there is no CPP, the instantaneous demands due to load fluctuations are never separately measured, and these are subsumed in the measurement of demand as computed from the energy measured during the 15 minute interval.



- (i) *The impact created by sudden load throw off and consequent tripping of CPP generator on over speeding is avoided with the grid taking care of the impact.*

Load throw off is a random and rare event. When load is thrown off, the power generated flows to the grid till the generation is brought down within a few minutes by measures such as venting of steam and reduction of firing in the boiler. There is no "impact" on the grid as such. On the contrary, during the few minutes following the load throw off, the licensee receives inadvertent power free of charge. Such compensation by way of free power itself is more than sufficient for the alleged "impact" or event.

- (j) *The transient surges reduce the life of equipment of the CPP. In some cases, the equipment fails if transient is beyond a limit. If the system is connected to the grid, it absorbs the transient load. Hence, grid enhances the life of the CPP equipment.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

Transient surges are significantly absorbed by the CPP itself as the impedance path to the CPP is the lowest. There may or may not be any spill over to the grid depending on the nature of the load and the capacity of the CPP (higher CPP capacity means lesser spill over to the grid). Further, transient surges are load nature related specific to specific types of load in specific kinds of industries. Over-generalisation is unwarranted and unreasonable.

- (k) *Load fluctuation of captive consumer are passed on to the utility's system thereby the efficiency of utility's system may be affected, which may also impact on utility's other consumers.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

The statement is an unwarranted and unreasonable over generalisation. It is not correct to say that load fluctuations are not handled by the CPPs because the generation of the CPPs can be matched to the load fluctuations. In the case of fluctuations in the nature of starting currents or the like, the submissions supra may be considered. In any case, the issue that also needs to be considered is whether the load fluctuations alleged to be passed on to the grid are consistent with the contracted demand arranged with the licensee or not.

The statement about effect on the efficiency of the utility's system is vague and hypothetical. There is no data or details as to how precisely, how often and to what extent the utility's efficiency is affected.

- (l) *In case of an ungrounded (or grounded through resistance) system supply, fault on interconnecting line (consumer's side) results in interruption of system. For single phase to ground fault which are 80 to 85% of the short circuit fault level, the grounding of the system is achieved through the neutral or step-down transformer of the utility, when the generators runs in parallel with the utility's grid. This supply is likely to cause damage to the terminal equipment's at utility's sub-stations and line insulators, as voltage on the other two healthy phases rise beyond the limit, under such conditions.*

This is entirely hypothetical. Supply system is grounded.

- (m) *The utility has to sustain the impact of highly fluctuating peak loads like that of arc furnace, rolling mill etc. for which it does not get any return on the capital invested to create system reserve.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

As stated supra, if it is shown by real and factual data that certain kinds of loads and/or certain kinds of industry impact the grid as alleged, then the issue must be restricted to those cases only. It is wrong and unreasonable to paint all other industries and/or kind of loads with the same brush.

- (n) *The variation in reactive power requirement increases the system losses and lowering of the voltage profile. Utility has to bear the cost of such effects.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

The statement is also vague. It also needs to be recognised that a CPP with a synchronous generator supplies reactive power to the grid which aids and improves the voltage profile of the grid.

- (o) *The lower voltage profile and fluctuations affect the service to the neighbouring consumers due to deterioration in quality of supply, thus resulting in revenue loss to the utility.*

This is an entirely vague statement without any factual basis in relation to CPPs or the generation capacity of the CPP.

- (p) *Non-recording of high fluctuating/ sudden active and reactive demand by the meter results in financial losses.*

This is incorrect. The submissions made supra with regard to metering may be considered.

12. From the above submissions it is clear that the fluctuations, harmonics etc mentioned by the licensees are all load related specific also to particular kinds of loads specific to particular kinds of industries. There is no case whatsoever made out in respect of the CPP installed capacity with respect to any of these issues so as to warrant or justify levy of a charge on the installed capacity of a CPP.
13. Moreover, it may be seen and considered that, if Open Access is availed instead of having a CPP, the alleged incidences would occur even in that case, but there would be no such charges levied.
14. It is therefore submitted that the levy of any charges based on the capacity of the CPP is unreasonable and unjustified. If there are no sales of surplus power at a given time, the levy of charge on idle CPP capacity is also most irrational and unreasonable. Even if the contracted demand from all sources and the export sale demand is deducted from the installed capacity, the very basis of CPP capacity as a starting point is irrational and incorrect.

Evolution of Criteria to determine when and to what extent grid support may be considered to have been availed.

15. Clearly the loads of all industries are not the same. Different industries have different loads. Different loads of different kinds of industries have different characteristics. Fluctuating loads are peculiar to certain kinds of industries only. High starting currents for large motors are specific to certain kinds of industries only. The CMD that an industry has with the licensee and the fluctuations that are consistent with such contracted demand are also relevant.
16. It is therefore necessary for the Hon'ble Commission to evolve criteria to determine when and to what extent grid support may be considered to have been availed. It is only after such criteria on relevant considerations is evolved, the question of levy of charges (uniform or differentiated according to nature of industry/load) may be considered. It is submitted that all industries should not be painted with the same brush that suits only specific kinds of industries / loads.



Particular Relevant Facts with regard to the Objector's CPP

17. Particulars of the CPPs of the Objector herein and the other characteristics of the loads and their nature, CMD with TSNPDCL, and particulars of the relevant electrical protection arrangements are detailed in the Objection filed earlier, and the same may be perused and considered.

Approach of Other Regulatory Commissions

18. Other Regulatory Commission have adopted various approaches and determined grid support charges in diverse ways. The decision of the other State Commissions may be taken into consideration.

Chattisgarh SERC

19. CSERC first determined a Parallel Operation Charge (POC) for CPPs on an arbitrary basis in or around 2006. Thereafter it commissioned ERDA to carry out a study. On that basis POC was determined on the Installed Capacity of the CPP less the CMD and capacity exported to CSEB and the capacity exported outside the State under open access. Subsequently, this was modified such that the actual generation capacity was substituted for the installed generation capacity.

It is submitted that the ERDA report was on the basis of a study of sponge iron, arc furnace, aluminium, ferro-alloy, rolling mill and cement industries alone. The conclusions from those reports were wrongly sought to be applied to all industries which do not have the kind of loads as those in the study report.

Subsequently, the methodology of POC was changed. The levy was only on the captive consumption. The rate was determined with reference to the Transmission ARR.

As per the CSERC Order dated 02.08.2021 in Petition Nos 03, 04, 05 and 09/2021(T), the CSERC determined POC at 13 paise/KWh of captive consumption.

Gujarat ERC

20. By Order dated 01.06.2011 in Petition No 256/2003 and 867/2006, the GERC determined POC for CPP at Rs 26.50/kVA/month for the installed capacity of the CPP. The charge was arrived at on consideration of the transmission and distribution related fixed costs, the total connected load in the system, and also considering 50% reduction on the transmission and distribution related fixed costs considering that the operation of the CPP is also beneficial to the grid.



Madhya Pradesh ERC

21. By Order dated 31.12.2012 in Petition No 73/2012, the MPERC determined POC at Rs 20/kVA/month on installed capacity after deducting load pertaining to auxiliary consumption considering, inter alia, that the object of the Act is to delicense generation and freely permit CPPs and in order to promote CPPs.


TamilNadu ERC

22. In terms of the Tamil Nadu ERC Grid Connectivity and Intra-State Open Access Regulations, 2014, Clause 26, the POC for CPPs are fixed at Rs 30,000/- per MW capacity per month. No reasoning or rationale is available.

Odisha ERC

23. By order dated 26.03.2021 in Case No 73 of 2020, the OERC rejected the proposal for charges observing that the Grid Code has sufficient provisions for regulating the connected entity and no charges were called for.
24. From the above, it is seen that different Commissions had considered the issue in different ways. The charges fixed by them are far lower than those proposed by the licensees in the present proposal. It is submitted however that, insofar as the other ERCs have considered the CPP capacity as the basis of the charge, it is erroneous and unjustified.

Quantification of Grid Support Charge, if levied

25. The proposed charges at 50% of demand charges on the CPP capacity operating in parallel with the grid, after deduction of CMD from all sources of supply, is exorbitant, arbitrary and unreasonable.
26. The CPP capacity is, in any event, not at all a justifiable basis of charge; more particularly when the support is alleged to be required by the loads, and certain kinds of load in particular.
27. Even if the charges were to be levied on a finding that grid support is indeed availed by any kind of industry with particular kinds of loads, or otherwise, the charges must be on a rational basis with some methodology relatable to the issue involved. Different studies and different ERCs have tried to evolve some methodology, albeit not wholly correct. The Hon'ble Commission must propose a methodology that is proposed for arriving at the quantum of charge where it is justifiable to be levied. A study may be commissioned for the purpose and the affected consumers may be given an opportunity to respond to the outcome of such study and the consequent proposals for levy and quantification of the charge.
- 

Prayer


28. The Hon'ble Commission may initiate separate proceedings for the determination of grid support charges after a study report is obtained and a discussion paper is issued. Thereafter, the Hon'ble Commission may evolve the criteria as to when and to what extent grid support can be considered to be availed and to determine the charges leviable duly differentiated on the nature of load and/or nature of the industry duly providing for hearing of the affected parties.

FACILITATION CHARGES FOR OPEN ACCESS

29. The proposal is to levy a fee of Rs 20,000/- per month with 5% increment each year for providing open access. The proposal is arbitrary, wholly unjustified and unreasonable.
30. SLDC is the nodal agency for grant of open access. SLDC Fees are payable for processing, scheduling and accounting for open access.
31. The entire cost of ABT meters and their installation are borne by the consumers as per the Regulations. The Discom incurs no expense. This is a one-time activity and a one-time cost.
32. The entire cost of managing the distribution system, including the costs of staff and facilities, is part of the ARR for the distribution business and the wheeling charges are determined taking into account all such costs. The present application is with respect to the Retail Supply Business of the licensee, and distribution business costs and expenses ought not to be considered.
33. There is no justification whatsoever in the distribution licensee claiming any additional costs to be recovered and that too on a monthly basis. The proposal deserves to be rejected outright.

RESPONSE TO THE TSNPDCL TO OBJECTIONS

34. The response of the TSNPDCL has been largely evasive on the real issues raised in the objection.
35. In the case of a CPP connected to the transmission system at 132 kV is not understandable as to how the DISCOM is entitled to grid support charges as part of fixed charges incurred by the Discoms. It is the transmission system with which the CPPs are operating in parallel, not the distribution



system. It is also not correct to contend that any such charges, if payable, can be part of retail sale tariff. There is no retail sale at all of any electricity by reason merely of operation in parallel.

36. The computation example given by the DISCOM purporting to show that the charges proposed are reasonable and comparable with those in other states is grossly misleading and wrong.

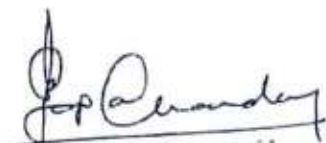
They have considered an industry with 100 MVA CPP capacity having a CMD of 90 MVA. This is preposterous as there would be no such case. It is also likely that a 100 MVA CPP would be of multiple units and not a single unit.

An industry with 100 MVA CPP capacity would have a CMD sufficient to start-up its largest generating unit, and would not in any case be more than 10 MVA. Now, for a CPP capacity of 100 MVA with CMD of 10 MVA, the differential demand subject to charge would be 90 MVA; and accordingly the grid support charges would be Rs 2.14 crores per month. This is nearly 10 times the charges that would be payable by a CPP with 100 MVA in other states.

37. The earlier APERC Order which was the subject of the matter before the Supreme Court was for 2002-2003 before the Electricity Act 2003 came into force. The entire environment is changed. The Hon'ble Commission has to consider the matter afresh considering the completely changed legislative environment, and also after carrying out the necessary technical studies as relevant to this State.

2022 February 28

On behalf of the Objector



K. Gopal Choudary
Advocate
Counsel for Objector ITC Ltd



29

Annexure - C

o/c



ITC Limited
PAPERBOARDS & SPECIALTY PAPERS DIVISION
Divisional Headquarters : ITC Bhadrachalam House
106, Sardar Patel Road,
Secunderabad - 500 003, Telangana, India.
Telephone : 91- 40 - 27846566 -73
Fax : 91 - 40 27842997, Expts : 27810034
27849509, 27896048



To,
The Secretary,
Telangana State Regulatory Commission,
5th Flor, 11-4-660, Singareni Bhavan,
Red Hills, Hyderabad – 500 004.

Date: 31/01/2023.

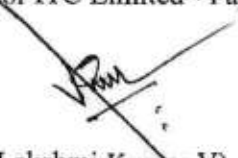
Lr. No. : ARR and Tariff Objection FY 2023-24/01

Dear Sir,

Subject: Objections on ARR & Tariff Proposals for FY 2023-24 filed by TSNPDCL - Reg.

We are herewith attaching the copy of the Company's objections on ARR & Tariff proposals of TSNPDCL & TSSPDCL for FY 2023-24.

Thanking You,
For ITC Limited - Paperboards & Specialty Papers Division.


(Lakshmi Kumar V)
Manager – Energy.

30



ITC Limited
PAPERBOARDS & SPECIALTY PAPERS DIVISION
Divisional Headquarters : ITC Bhadrachalam House
106, Sardar Patel Road,
Secunderabad - 500 003, Telangana, India.
Telephone : 91- 40 - 27846566 -73
Fax : 91 - 40 27842997, Expts : 27810034
27849509, 27896048

**BEFORE THE TELANGANA STATE ELECTRICITY REGULATORY
COMMISSION
AT HYDERABAD**

O.P. Nos 80 & 81/2022

In the Matter of :

ARR and Tariff proposals for FY 2023-24 filed by TS DISCOMs .

MEMORANDUM OF OBJECTIONS

filed on behalf of

ITC LTD,
Paperboards and Specialty Papers Division,
ITC Bhadrachalam House, 106, Sardar Patel Road, Secunderabad 500003
Contact Email: lakshmikumar.velpur@itc.in Mobile:9000080461

May it please the Hon'ble Commission :-

Background Facts of the Objector

1. The Objector herein is engaged in the manufacture of paper and paperboard at Sarapaka Village, Bhadradi Kothagudem District, Telangana. The Objector also has a Captive Generating Plant at Sarapaka Village.
2. The generation of electricity at the plant is by co-generation process whereby heat energy used for pulp cooking, humidification and drying is produced along with electricity.

utilised only for for start power within the CMD with TSNPDCL or for import of open access power.

Objections to Proposal for Grid Support Charges for FY 2023-24 is submitted herewith on various grounds hereinunder which are raised without prejudice to each other:

Based on the objections on GSC for FY 2022-23, the Hon'ble Commission has referred the matter to the Grid Coordination Committee (constituted in accordance with Clause 5.1 of the Regulation No. 4 of 2018). The relevant extracts of the Hon'ble Commission's ruling in RETAIL SUPPLY TARIFFS & CROSS SUBSIDY SURCHARGE Order FOR FY 2022-23, dated 23.03.2022 is as follows:

"6.25.6 In accordance with Clause 5.1 of the Regulation No. 4 of 2018, a Grid Coordination Committee has been constituted with representation from wide spectrum of generating companies, transmission licensees, distribution licensees, electricity traders, OA consumers etc. Clause 5.2(v) of the Regulation No. 4 of 2018 specifies that "the Grid Coordination Committee shall be responsible for such matters as may be directed by the Commission from time to time". The Commission finds it appropriate to refer the matter to the Grid Coordination Committee for a detailed study on the issue of parallel operation of CPPs and consequent levy of GSC."

Even as per the proposed ARR for 2023-24, the Grid Coordination Committee has initiated the detailed study on the matter of parallel operation of CPPs and consequent levy of GSC. And the proposal for levy of GSC for FY 2022-23 has not attained finality as on date. The Objector submits that the levy of GSC being pending with the Grid Coordination Committee, the proposal to levy the GSC for the year 2023-24 and the basis for computation of the levy is pre-mature and liable to be rejected.

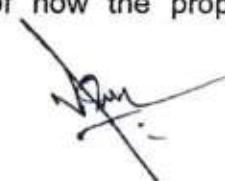


3. DISCOMs have proposed that grid support charges be levied on captive generating plants, co-generation plants, third party generation plants, merchant power generation units, rooftop power plants etc. that do not have PPA or have PPA for partial capacity with the licensees. . The proposal is unreasonable both with respect to the levy itself and also with respect to the quantum. The Objector submits that grid support charges cannot be levied in light of the revised regime under the Electricity Act, 2003

The policies of both State and Central Government and the Regulations of TSERC and CERC encourage the investments in renewable energy plants including waste heat recovery plants, the plants based on municipal solid waste and the co-generation plants by offering incentives. So, such GSC proposal will discourage the investments in this sector as well as defeat the purpose of the policies and the Regulations.

GSC should not be levied at all on rooftop solar plants to encourage the investments as per the State government policy and the Regulation of TSERC. This investment helps in self sustainability of the industry as well as reduces the dependency on the grid. Therefore, such GSC proposal will discourage the investments in rooftop solar plants and it will defeat the policies of both Central and State Government issued for such investments and the Regulations by respective ERCs specific to solar renewable energy.

4. There is nothing in the Grid Code which enables and/or authorises the levy of grid support charges.
5. The issues involved in the levy and/or quantification of grid support charges are complex and require to be heard, considered and decided in a separate proceedings. The licensees must first provide real data and facts on the incidence of grid support being actually availed by different types of industries, and they must also provide a details of how the proposed quantification of the charges is justified with reasons.



6. Other than merely reproducing the provision in the previous APERC order dated 08/02/2002 and the Supreme Court order dated 29/11/2019, there is no reasoning given in the proposal with regard to the justification for levying grid support charges and/or the quantum of such charges with due regard to the sea change subsequently with the coming into force of the Electricity Act 2003.

The Hon'ble Commission may consider the matter afresh having regard to the completely changed environment and regime after the Electricity Act 2003 has come into force.

The proposed levy is of a nature that unreasonably mulct CPPs so as to discourage them. Such purpose or effect is contrary to the legislative policy and scheme of the Act which encourages captive generating plants and frees them from all manners of regulation. The proposal to levy grid support charges on captive generating plants deserves to be rejected on this ground alone.

7. The APERC order for 2002-2003 was made before the Electricity Act 2003 came into force. After the Electricity Act came into force, consumers have the right to source energy from any generator located anywhere under open access irrespective of whether a consumer has any contracted demand with the licensee or not. Every generator supplying energy operates in parallel with the grid. When no grid support charges are, or can be, levied based on the installed generating capacity of the source, whether it be an IPP or remote CPP under open access, there is no reason for levy of such a charge generation plants. The power and energy are measured and accounted for only with respect to the 15 minute time blocks.

8. It may be that certain kinds of industries may instantaneously draw large currents intermittently (e.g. in arc / induction furnaces) or produce harmonics which may or may not be in excess of the limits specified by the GTCS and/or the Grid Code. The incidence of such large intermittent /



instantaneous loads and/or injection of harmonics in such industries may occur irrespective of their having a contracted demand with the licensee for the whole of their demand or for a part of their demand in conjunction with a CPP. These industries may have to be considered as a separate class. It is unreasonable that the incidents in such separate class taints all industries with CPPs even when no such instantaneous or intermittent loads or injection of harmonics are involved.

9. Industries may have CPPs with a capacity in excess of the captive requirement, and operation in parallel with the grid may be necessitated by the need to export their surplus power under open access or otherwise. There can be no justification for levy of grid support charges in such cases since all the applicable charges towards transmission and wheeling are already being paid for export of surplus power.

An industry with a CPP may connect to the grid for the pupose of importing additional power from another source under open access. There can be no justification for levy of grid support charges in such cases also.

An industry with a CPP may also connect to the grid to avail start-up power for which a contracted demand is arranged and paid for by the consumer. There can be no justification for any grid support charges.

10. In co-generation plants (such as in processing industries or sugar industries), power may be required from the licensees only for start up. Their captive consumption is only a part of their captive generation. The surplus power has to be exported. They do not require or avail of any grid support whatsoever after start up. Any levy of grid support charges in such cases based on the generation or installed capacity shall be unwarranted and unreasonable. Properly, such CPPs must be considered as not availing or intending to avail any grid support for their loads unless it is established as a fact in a particular case that grid support for the loads is availed.





- 11. If at all, it is the load (and more particularly, certain kinds of load) that may be alleged to impose instantaneous / intermittent demands on the grid. If some loads in some type of industries are considered to cause instantaneous demand on the grid, then it is only such loads that could be relevant if at all any grid support charge is to be levied.

The installed generation capacity is irrelevant and the levy on a charge on the basis of generation capacity is irrational and arbitrary. It must be noticed that the momentary loads or starting currents depend on the nature of the loads. The CPP, being the generating plant, is not the cause or source of such momentary loads or starting current, and it is wholly unreasonable to consider the generation capacity as relevant at all. The focus must therefore be on the load and not on the generating capacity.

- 12. Without prejudice to the above, the quantum proposed is entirely arbitrary, exorbitant and irrational. There is no justification or rationale for the quantum proposed. The licensee can be allowed a charge only if the licensee demonstrates actual costs related to such charge. There are no extra costs incurred by the licensee for the alleged or presumed effects of operation of CPPs in parallel with the grid. There has to be some cogent methodology for arriving at the quantum of the charge. It cannot be arbitrary and without any data or rational basis.

Capacity of the surplus being sold under open access cannot be subjected to any such charges.

- 13. In continuous process industries, CPP would runs in parallel in order to avail continuous power supply, in the event of failure of CCP generating units. In such cases, the industry must necessarily *have a contracted demand with the licensee to the extent of at least the expected recorded demand that would occur when the failure of the generating plant occurs.* It cannot be said or presumed that there is any grid support availed even when the generating

plant is operating. Therefore, it is the load and its nature that is relevant, not the generation capacity.

- 14. RPPO is imposed on consumption from captive generation. In order to comply with the RPPO, the industry needs to import renewable power. It is irrational to mulct such units when their connection to the grid is to avail open access for complying with a statutory obligation.
- 15. It is submitted that the Honble Commission may await detailed scientific study by Grid Coordination Committee to assess the issue having regard to the diverse nature of the industries with CPPs, and to determine the particular criteria by which grid support may be considered to have been availed, and to lay out a methodology by which the quantum of charge, where considered leviable, is to be determined.
- 16. The Objector reserves its right to make additional objections or revise or supplement the present objections.

Participation at Public Hearing – Oral Submissions

The Objector desires to be heard in person or through counsel at the Public Hearing. *in both the Debates.*

[Handwritten signature]

[Handwritten signature]

2023 January 30

On behalf of the Objector

37

o/c Annexure - D



ITC Limited
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To,
The Secretary,
Telangana State Regulatory Commission,
5th Flor, 11-4-660, Singareni Bhavan,
Red Hills, Hyderabad – 500 004.

Date: 28/02/2023.

Lr. No. : ARR and Tariff Objection FY 2023-24/02

Respected Sir,

Sub: Submission of additional submissions & response to TSNPDCL reply to objections-Reg.

We are herewith attaching the additional submissions and response to TSNPDCL reply to objections duly signed by the objector and the council for the objector. Kindy take this on record.

Thanking You,
For ITC Limited - Paperboards & Specialty Papers Division.

(Lakshmi Kumar V)
Manager – Energy.

BEFORE THE TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
AT HYDERABAD

In the Matter of :

ARR and Tariff proposals for FY 2023-24 filed by TS DISCOMs .

ADDITIONAL SUBMISSIONS
AND RESPONSE TO TSNPDCL REPLY TO OBJECTIONS

INDEX

<i>Sl</i>	<i>Description</i>	<i>Page</i>
1	Additional submissions and Reply to TSNPDCL reply to objections	1 - 17
2	Copy of APTEL Judgement dated 08.10.2015 in Appeal No 167 of 2014	18 - 32

filed on behalf of

ITC LTD

106, Sardar Patel Road, Secunderabad 500003



39

1

BEFORE THE TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
AT HYDERABAD

In the Matter of :

ARR and Tariff proposals for FY 2023-24 filed by TS DISCOMs .

ADDITIONAL SUBMISSIONS
AND RESPONSE TO TSNPDCL REPLY TO OBJECTIONS

filed on behalf of

ITC LTD

106, Sardar Patel Road, Secunderabad 500003

May it please the Hon'ble Commission :-

1. As the time available for making oral submissions was considerably and seriously restricted at the public hearing at Hyderabad on 24.02.2023, these additional submissions are being filed as desired and permitted by the Hon'ble Commission.

It is reiterated that the issues involved require substantial arguments, explanation and hearing. These submissions may be read and considered together with and in addition to the Objections filed earlier.

2. The reponse of the Objector to the reply of TSNPDCL to the objections is also submitted herein.
3. At the ARR & Tariff hearings for FY 2022-23, the Objector had filed detailed submissions (copy handed over at the hearing) with respect to proposals for Grid Support Charges. Thereupon, this Hon'ble Commission was pleased to direct a study by the Grid Co-ordination Committee. The DISCOMs say that the study has been initiated and that it is not finalised. The submissions hereunder re-iterate the submissions made for 2022-23 with additional comments and also comments on the functioning of the grid co-ordination committee in respect of grid support charges.

GRID SUPPORT CHARGES

Scope of proposed Grid Support Charges in proposals for FY 2023-04

4. The present proposal of the TS DISCOMs is for levy of grid support charges at various rates on all the generators (including captive generating plants, third party generation units, merchant power generation units, rooftop power plants etc) who are not having PPA or having PPA for partial capacity with the licensees.
5. The proposed scope of the grid support charges is wholly misconceived and without any proper understanding or consideration of the concept of grid support / parallel operation as further explained below.

Need for separate proceeding on the issue

6. It was once again emphasised at the hearing, as was done for the previous year, that the issues involved in the levy and/or quantification of grid support charges are complex and require to be heard, considered and decided in a separate proceeding. The issue requires elaborate arguments and consideration. In this context, it is submitted that –
 - (a) The licensees must first provide real data and facts on the incidence of grid support being actually availed by different types of industries, and they must also provide details of how the proposed quantification of the charges is justified with reasons.
 - (b) The Hon'ble Commission may cause a scientific study to be conducted by an appropriate technical organisation on the issue of the actual incidence of availment of grid support by CPPs of different types of industries and the appropriate methodology of computation of the quantum of grid support charges for each such type of industry.
 - (c) The Hon'ble Commission may then issue a discussion paper on the levy and quantification of grid support charges for different types of industries with CPPs having regard to –
 - (i) The wide changes that have been brought about by the Electricity Act 2003, inter alia, the introduction of open access and the legislative policy of de-regulating CPPs and the legislative and national policy of promoting CPPs; and
 - (ii) The study report commissioned by this Hon'ble Commission and also the various studies conducted by various State Commissions; and
 - (iii) The approach and orders of various other State Commissions on the issue; and



- (iv) Submissions made by parties in this proceeding.
- (d) Thereupon the Hon'ble Commission may initiate proceedings to determine the scope of levy or otherwise of grid support charges and/or the methodology for determination of the charges where applicable.
7. This Hon'ble Commission has directed a study by the Grid Co-ordination Committee. The DISCOMs say that the study has been initiated but not finalised. No report of the Grid Co-ordination Committee has been made available. Principles of natural justice require that the issue cannot be considered further till the study is done and the report made available for objections and comments.

So far as this Objector is informed, there has been no reasonable or proper consideration of the issue by the committee. At its various meetings, the committee has only asked for members to submit written briefs on the issue. No meaningful discussion ever took place. The meetings were largely dominated by the licensees and state utility representatives seeking only to emphasise their unreasonable views and also expanding the scope of the charges. This Objector's detailed submissions on the proposals for the previous year were never tabled or considered by the committee. No opportunity whatsoever was given by the committee to the real stake-holders and parties likely to be affected to make any submissions. The proceedings of the committee with respect to this issue has been grossly perfunctory and without any seriousness or diligence. It cannot be a mere sham.

8. It is submitted that the further submissions herein are without prejudice to the aforesaid submission with regard to the need to undertake separate proceedings on the issue.

Classification of CPPs operating in parallel with the grid

9. It is submitted that the different types of CPPs operating in parallel may more properly considered to be as follows with the characteristics stated hereunder so far as may be relevant to levy of grid support charges –
- (a) *CPPs that are located at a different or distant location from the load with the energy for captive use being wheeled / transmitted under open access duly paying wheeling / transmission charges.*

These CPPs cannot be considered to be availing of grid support so as to be subject to levy of any grid support charges. Grid support charges can only be levied, where warranted subject to considerations hereinafter submitted, only on the CPPs which are interconnected with their load and the utility grid by a point of common coupling [vide

APTEL Judgement dated 08.10.2015 in Appeal No 167 of 2014, para 13.21, copy attached] .

- (b) *CPPs having surplus capacity over and above their own requirement, connected in parallel with the grid in order to export power for sale through bilateral / IEX transactions under open access or to bank such surplus energy.*

These CPPs are connected to the grid to enable export of surplus power through open access (after start up). The CPP may or may not generate to its full installed capacity and the quantum of export may vary depending on exigencies from time to time. Grid support charges based on installed capacity, irrespective of the actual generation capacity, is clearly not for any support derived from the grid in the operation of the industry or the CPP.

Example was cited of a CPP with a capacity of 200 MW where captive co-located load is only 50 MW with 150 MW being intended for export. Since availment of grid support is only alleged in respect of part of the 50 MW load alone, there cannot be any alleged grid support with respect to the 150 MW export capacity. To mulct the entire 200 MW to any grid support charges is grossly disproportional, unjustified and irrational.

Typically, there would not be any import of power from the grid. In the absence of any factual data with respect to any particular industry with such a CPP, it would be arbitrary and unreasonable to consider that such an industry with such a CPP avails of any grid support warranting imposition of grid support charges.

In fact, if grid support charges are levied on such CPPs which connect to the grid only to export surplus power, it is tantamount to invidious discrimination mulcting such CPPs with additional charges for mere connectivity to avail open access, which is arbitrary and unlawful.

Consider co-generation plants (such as in processing industries or sugar industries). They require power from the licensees only for start up. Their captive consumption is only a part of their captive generation. The surplus power has to be exported. They do not require or avail of any grid support whatsoever after start up. Any levy of grid support charges in such cases based on the generation capacity is unwarranted and unreasonable.

Properly, such CPPs must be considered as not availing or intending to avail any grid support for their loads unless it is established as a fact in a particular case that grid support for the loads is availed.



- (c) *CPPs having load of such nature that results in large momentary peaks, starting currents and runs the plant in parallel to avail the support of grid beyond the contract demand.*

Firstly, it must be noticed that the momentary loads or starting currents depend on the nature of the loads. The CPP, being the generating plant, is not the cause or source of such momentary loads or starting current, and it is wholly unreasonable to consider the generation capacity as relevant at all. The focus must therefore be on the load and not on the generating capacity.

It is possible that some industries like steel industries or with arc furnaces may be constantly throwing large momentary loads. For example, if a steel industry with an arc furnace of 20 MW is operating with a CPP of 30 MW capacity, it may be that some support may be taken from the grid. On the other hand, if the the same industry with an arc furnace of 20 MW is operating with a CPP of 100 MW capacity, it cannot be said that the operation of the arc furnace requires any support from the grid.

What is meant by "*availing the support of the grid beyond the contract demand*"? The contracted demand with the licensee gives the consumer a bundle of rights as to the use of electricity within the contracted demand. These limits are specified in the GTCS and/or the Grid Code with respect to, at least, starting currents. Necessaily, it must be construed that if the starting currents are within those permitted by the GTCS/Grid Code, such incidents are within the contracted demand.

- (d) *Process industries with CPPs run in parallel in order to avail continuous power supply, in the event of failure of CPP generating units.*

In such cases, the industry must necessarily have a contracted demand with the licensee to the extent of at least the expected recorded demand that would occur when the failure of the generating plant occurs.

It cannot be said or presumed that there is any grid support availed even when the generating plant is operating.

Further, it is the load and its nature that is relevant, not the generation capacity.

- (e) *Renewable Energy CPPs (solar, or possibly eve hydel or wind) which may be co-located with the loads.*

The power from these CPPs is inherently infirm depending on the availability of the renewable energy source. In such cases, there would invariably be a CMD with the licensee for the whole of the demand. All alleged grid support are already included in the rights arising from the



CMD itself. No reason and justification can exist for any further charges for any alleged grid support.

- (f) *Black start of CPP, where the startup power is required to restart the units.*

In such cases, the industry would invariably have a contracted demand with the licensee to the extent of start up power required.

- (g) *CPPs connected to the grid to receive / import renewable power to meet their RPPO.*

RPPO is imposed on consumption from captive generation. In order to comply with the RPPO, the industry needs to import renewable power. It is irrational to mulct such units when their connection to the grid is to avail open access for complying with a statutory obligation.

- (h) *CPPs whose generation capacity is intended to meet a part of their electricity requirement while the rest is met from the contracted demand with the licensee and/or through open access.*

Consider the following parameters of an industry –

Connected load	60 MW
Largest single motor	5 MW
Pulsating / Momentary Loads	Nil
Actual Demand of Load	50 MW
CPP capacity	30 MW
Contracted Demand	10 MW
Through Open Access	10 MW

It requires consideration in the above case that there is a contracted demand of 10 MW with the licensee. The largest single motor being 5 MW, the starting current will always be within what is permissible within the contracted demand. Now, when this industry is in normal full operation, there is no grid support availed because all fluctuations in the load are within the contracted demand for which demand charges are fully paid. Unless it can be shown by measurable and verifiable means that the industry is availing anything beyond its contracted demand it cannot be subjected to any grid support charges arbitrarily.

In the above example, the proposed levy on 30 MW is unreasonable and irrational.



Salient relevant changes brought about by the Electricity Act 2003

10. Prior to the coming into force of the Electricity Act 2003, CPPs were regulated in terms of section 21(3) of the Reform Act 1998 read with section 44 of the Supply Act 1948. At that time, the then APERC followed a policy of restricting CPPs on various grounds, inter alia, that the captive use of captive generation was affecting the finances of the licensee, and that "repatriation" of captive capacity to the grid was a necessity.
11. The Electricity Act 2003 completely de-regulated captive generation and captive consumption. The legislative policy manifested freedom, encouragement and promotion of captive generation. The statutory National Electricity policy emphasises the need to encourage captive power plants as distributed generation and to tap the surplus capacity of captive generation plants. Thus CPPs were not only encouraged for meeting captive requirements but the setting up of capacity beyond captive requirements was contemplated and encouraged. This sea change in the legislative and statutory policy must be given due consideration.

The proposed grid support charges cannot be such as to be a measure of a punitive charge on CPPs with an effect of discouraging CPPs and/or to an effect of making CPPs unviable and/or with the hidden motive of "repatriation of captive consumption to the grid" and/or to facilitate purchase only from the licensee contrary to the legislative and statutory policy under the Act.

12. The Electricity Act 2003 introduced mandatory open access whereby a consumer could source power from anywhere. It has been held by a Constitution Bench of the Hon'ble Supreme Court in PTC's case that open access is one of the most important features of the Act. When Open Access consumers are not sought to be mulcted with any grid support charges, it needs to be carefully examined and considered as to whether CPPs and/or captive consumption ought to be mulcted merely because the CPPs are co-located with the consuming loads. A fresh look at the concept in the changed legislative environment is necessary.

Open Access Source vs CPP source of power

13. Consider the case of a consumer with a connected load of 20 MW, recorded maximum demand of 15 MW, and contracted demand of 5 MW with the licensee sourcing 10 MW power at exit point under open access. The OA power is constant and load factor for this source would be 100%. The load fluctuations (including starting current, momentary loads etc) of the consumer are all taken by the contracted demand with the licensee, and the load factor with the licensee supply would be much less. No grid support charges are levied for the load fluctuations being taken by the licensee alone.



14. Now, if the same 10 MW that was being sourced under open access is sourced from a co-located CPP, then grid support charges are sought to be levied. There is essentially no difference between the two, except that the source of the 10 MW is now co-located with the load. It is *per se* discriminatory against the CPP.

Non Co-located CPPs and Merchant/Independent Power plants

15. Non co-located CPPs, merchant power plants, third party generating units or other generators which inject into the grid for conveyance of electricity under open access duly paying the transmission / wheeling charges can never be the subject of any grid support charges. That is settled law pursuant to the Judgement of APTEL in Appeal No 167 of 2014 cited supra.

Roof-top Solar generation

16. In all cases of rooftop solar generation, the capacity is within the CMD/Connected load with the licensee. All the incidents of the alleged grid support are already fully covered by the arrangement for CMD / Connected load with the licensee and the Demand / fixed charges relating thereto. There cannot be any further charge as proposed or otherwise.
17. Without prejudice to the above, rooftop solar generation has a CUF of less than 15% and there can be no rationale or reasonableness to consider the nominal generation capacity for the proposed charge.
18. Rooftop solar generation is required to be encouraged under the National Policy and also the legislative policy of the Electricity Act 2003. The proposed levy on rooftop solar energy capacity is a retrograde measure and cannot be countenanced.

Analysis of stated advantages and disadvantages of parallel operation as per the licensee in respect of co-located CPPs.

19. The TSNPDCL, in its reply to the objection, purports to enumerate advantages and disadvantages of parallel operation from the licensee's point of view. In the previous year (for 2022-23) a more detailed enumeration was put forth purportedly in terms of a Chattisgarh SERC order dated 31.12.2008.

It must be recognised that the enumerated effects are with respect only to co-located CPPs with load and connection to grid at a common point of coupling. These cannot irrationally be extended arbitrarily and unreasonably to other cases.



The following remarks against each of them may be considered with respect to each of the enumerated items.

- (a) *The fluctuations in the load are absorbed by the utility grid in the parallel operation mode. This will reduce the stresses on the captive generator and equipments. The bulk consumer can operate his generating units at constant power generation mode irrespective of his load cycle.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

Consider an industry with load fluctuating between 8 to 10 MW where the CPP capacity is 12 MW and the industry has a 2 MW contracted demand for start up. Clearly the CPP itself can meet the fluctuation of the loads without resort to the grid or even the contracted demand. In such cases, levy of charge on entire installed capacity of CPP of 12 MW is wholly unfair, unreasonable and unjustifiable.

Consider another case of an industry with load fluctuating between 10 MW to 15MW where the CPP capacity is 10 MW and contracted demand is 5 MW. It is alleged that the CPP can run constantly at 10 MW and the variations within 5 MW alone are taken by the grid. But the contracted demand with the licensee is already 5 MW and the load fluctuations over 10 MW are within the contracted demand for which demand charges are being paid. In such cases also, levy of charge on 10 MW is wholly unfair, unreasonable and unjustifiable. In case the 10 MW is sourced from elsewhere under open access, there would be no such charges even though in that case also the 10 MW under OA is utilised fully and the fluctuations alone are met from the contracted demand.

- (b) *Fluctuating loads of the industries connected in parallel with the grid inject harmonics into the grid. The current harmonics absorbed by the utility grid is much more than the CPP generator. These harmonics flowing in the grid system are harmful to the equipments and are also responsible for polluting the power quality of the system.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

Harmonics from fluctuating loads is dependant on the load and its nature. It is not at all related to the generating capacity of the CPP on which the charge is irrationally proposed.

Not all loads inject harmonics into the grid as alleged. The issue may be related to certain specific kind of industries such as steel mills or arc furnaces which need to be properly and distinctly identified.

The Grid Code specifies the limits of harmonics for consumers. If the harmonics are within the specified limits, there is no issue. If the harmonics are excessive, the Grid Code must be enforced and the consumer must be asked to reduce the harmonics by installing filters or other means. It cannot be that excess harmonics, if at all any, are allowed, and a charge is levied. In any case, this is specific to certain kinds of industries only.

- (c) *Negative phase sequence current is generated by unbalance loads. The magnitude of negative phase sequence current is much higher at the point of common coupling than at generator output terminal. This unbalance current normally creates problem of overheating of the generator and other equipments of CPP, if not running in parallel with grid. When they are connected to the grid, the negative phase sequence current flows into the grid and reduces stress on the captive generator.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

Where there is some CMD with the licensee, the question as to whether the effect of unbalanced loads is within the CMD or not is to be carefully considered.

- (d) *Captive power plants have higher fault level support when they are running in parallel with the grid supply. Because of the higher fault level, the voltage drop at load terminal is less when connected with the grid.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

It is also an issue relating to starting currents and momentary loads which depend on the load and its nature in specific types of industries. It is stated too broadly. What is to be seen and considered is whether, in relation to specific types of industries, any alleged support from the grid is inconsistent with the contracted demand that the industry has with the licensee having regard to the provisions of the GTCS and the Grid Code.

Fault level is relevant only when a fault occurs. The Grid Code provides for the time within which faults may be cleared which is less than 0.06 seconds in case of fault and 0.10 seconds in case of overloads. On fault, it is not a case of grid support being taken, rather it is a case where a fault current flows for a short duration necessary to clear the fault and isolate it. Even in a domestic connection, faults do occur randomly, and it cannot be said that any grid support is being availed during the short period required for a fuse to blow or an MCB to trip.

It is also true that the CPP itself adds to the fault handling capacity of the grid. In the event of an earth fault in the grid at any location nearby to the CPP, fault current is also drawn from the CPP because of the low impedance path to the CPP, and the CPP itself may trip in such circumstances of earth fault in the grid. So, while waxing on the fault handling support of the grid to the industrial loads, it must not be forgotten that the CPP is also affected by faults in the grid.

- (e) *On account of increase in plant load factor of captive generator, additional revenues can be generated by the CPP by sale of surplus power to the utility.*

This is meaningless. There is never any simultaneous import and export of power. In the case of surplus power export, the loads are fed entirely from the CPP, and in addition the CPP exports surplus power for sale through the grid.

- (f) *In case of fault in a CPP generating unit or other equipment, bulk consumers can draw the required power from the grid and can save their production loss.*

This is only where the consumer industry has arranged for a stand-by from the grid by taking a contracted demand from the licensee for which the industry continuously pays demand charges to the licensee. In such circumstances, it is not understandable as to how this is an advantage to the generating plant. On the other hand, in this case, the licensee gets continuous revenue for the billing demand even though the contracted demand is utilised only when the CPP trips.

- (g) *The grid provides stability to the plant to start heavy loads like HT motors.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

Where the capacity of the CPP is intended for the entire industrial load, it is usually dimensioned to take the starting current of motors generally. The industry also has some contracted demand with the licensee. The GTCS and Grid Code provide limitations on starting currents. While DOL starting currents may be high, soft-start alternatives are there to reduce the starting currents. In any case, what needs to be seen and considered is that, in a given case, whether the starting currents of motors alleged to be drawn from the grid are inconsistent with the arranged contracted demand with the licensee. If it is consistent, then the licensee is already compensated through demand charges and there is no justification whatsoever for anything more.

- (h) *The variation in the voltage and frequency at the time of starting large motors and heavy loads, is minimized in the industry, as the grid supply*

acts as an infinite bus. The active and reactive power demand due to sudden and fluctuating load is not recorded in the meter.

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

As stated supra, high starting currents for motors are recognised and permitted by the GTCS and the Grid Code. What requires to be considered is, again, whether such starting currents are consistent with the contracted demand that the industry has with the licensee.

On the issue of active and reactive power demand not being recorded in the meter, it is only because the metering methodology approved is to integrate over a 15 minute duration. There is no concept of instantaneous demand measurement. Demand is itself computed from the energy during the 15 minute interval. It cannot be denied that the active and reactive energy is duly recorded in the meter. Therefore, the demands due to fluctuating loads are also included and part of the demand measurement over the 15 minute integrating interval. Even in the cases where there is no CPP, the instantaneous demands due to load fluctuations are never separately measured, and these are subsumed in the measurement of demand as computed from the energy measured during the 15 minute interval.

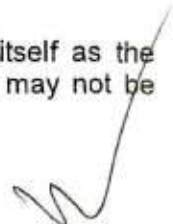
- (i) *The impact created by sudden load throw off and consequent tripping of CPP generator on over speeding is avoided with the grid taking care of the impact.*

Load throw off is a random and rare event. When load is thrown off, the power generated flows to the grid till the generation is brought down within a few minutes by measures such as venting of steam and reduction of firing in the boiler. There is no "impact" on the grid as such. On the contrary, during the few minutes following the load throw off, the licensee receives inadvertent power free of charge. Such compensation by way of free power itself is more than sufficient for the alleged "impact" or event.

- (j) *The transient surges reduce the life of equipment of the CPP. In some cases, the equipment fails if transient is beyond a limit. If the system is connected to the grid, it absorbs the transient load. Hence, grid enhances the life of the CPP equipment.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

Transient surges are significantly absorbed by the CPP itself as the impedance path to the CPP is the lowest. There may or may not be



any spill over to the grid depending on the nature of the load and the capacity of the CPP (higher CPP capacity means lesser spill over to the grid). Further, transient surges are load nature related specific to specific types of load in specific kinds of industries. Over-generalisation is unwarranted and unreasonable.

- (k) *Load fluctuation of captive consumer are passed on to the utility's system thereby the efficiency of utility's system may be affected, which may also impact on utility's other consumers.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

The statement is an unwarranted and unreasonable over generalisation. It is not correct to say that load fluctuations are not handled by the CPPs because the generation of the CPPs can be matched to the load fluctuations. In the case of fluctuations in the nature of starting currents or the like, the submissions supra may be considered. In any case, the issue that also needs to be considered is whether the load fluctuations alleged to be passed on to the grid are consistent with the contracted demand arranged with the licensee or not.

The statement about effect on the efficiency of the utility's system is vague and hypothetical. There is no data or details as to how precisely, how often and to what extent the utility's efficiency is affected.

- (l) *In case of an ungrounded (or grounded through resistance) system supply, fault on interconnecting line (consumer's side) results in interruption of system. For single phase to ground fault which are 80 to 85% of the short circuit fault level, the grounding of the system is achieved through the neutral or step-down transformer of the utility, when the generators runs in parallel with the utility's grid. This supply is likely to cause damage to the terminal equipment's at utility's sub-stations and line insulators, as voltage on the other two healthy phases rise beyond the limit, under such conditions.*

This is entirely hypothetical. Supply system is grounded.

- (m) *The utility has to sustain the impact of highly fluctuating peak loads like that of arc furnace, rolling mill etc. for which it does not get any return on the capital invested to create system reserve.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.

As stated supra, if it is shown by real and factual data that certain kinds of loads and/or certain kinds of industry impact the grid as alleged, then

the issue must be restricted to those cases only. It is wrong and unreasonable to paint all other industries and/or kind of loads with the same brush.

- (n) *The variation in reactive power requirement increases the system losses and lowering of the voltage profile. Utility has to bear the cost of such effects.*

This is clearly an issue related to the load and its nature. It is not related at all to the generating capacity of the CPP which is irrationally sought to be made the subject of a charge.


The statement is also vague. It also needs to be recognised that a CPP with a synchronous generator supplies reactive power to the grid which aids and improves the voltage profile of the grid.

- (o) *The lower voltage profile and fluctuations affect the service to the neighbouring consumers due to deterioration in quality of supply, thus resulting in revenue loss to the utility.*

This is an entirely vague statement without any factual basis in relation to CPPs or the generation capacity of the CPP.

- (p) *Non-recording of high fluctuating/ sudden active and reactive demand by the meter results in financial losses.*

This is incorrect. The submissions made supra with regard to metering may be considered.

20. From the above submissions it is clear that the fluctuations, harmonics etc mentioned by the licensees are all load related specific also to particular kinds of loads specific to particular kinds of industries. There is no case whatsoever made out in respect of the CPP installed capacity with respect to any of these issues so as to warrant or justify levy of a charge on the installed capacity of a CPP.
21. Moreover, it may be seen and considered that, if Open Access is availed instead of having a CPP, the alleged incidences would occur even in that case, but there would be no such charges levied.
22. It is therefore submitted that the levy of any charges based on the capacity of the CPP is unreasonable and unjustified. If there are no sales of surplus power at a given time, or the CPP is on stand-by mode, the levy of charge on idle CPP capacity is also most irrational and unreasonable. Even if the contracted demand from all sources and the export sale demand and/or stand-by capacity are deducted from the installed capacity, the very basis of CPP capacity as a starting point is irrational and incorrect.
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Evolution of Criteria to determine when and to what extent grid support may be considered to have been availed.

23. Clearly the loads of all industries are not the same. Different industries have different loads. Different loads of different kinds of industries have different characteristics. Fluctuating loads are peculiar to certain kinds of industries only. High starting currents for large motors are specific to certain kinds of industries only. The CMD that an industry has with the licensee and the fluctuations that are consistent with such contracted demand are also relevant.
24. There are limitations imposed on starting currents under the Grid Code and/or the GTCS. There are also limitations on the harmonics that may be injected. The Hon'ble Commission may have to seriously consider if the requirements of the Grid Code/GTCS are to be enforced, or whether grid support charges levied condone and allow deviations.
25. It is therefore necessary for the Hon'ble Commission to evolve criteria to determine when and to what extent grid support may be considered to have been availed. It is only after such criteria on relevant considerations is evolved, the question of levy of charges (uniform or differentiated according to nature of industry/load) may be considered. It is submitted that all industries should not be painted with the same brush that suits only specific kinds of industries / loads.

Particular Relevant Facts with regard to the Objector's CPP

26. The generation of electricity at the plant is by co-generation process whereby heat energy used for pulp cooking, humidification and drying is produced along with electricity.

The Obiector has presently seven T-G Sets of varying capacities aggregating to about 260.187 MVA. Four TG-Sets (T-G#3, T-G#4, T-G#5 and T-G#6) of aggregating capacity of 95.50 MVA is kept as a stand-by. The seven TG-sets and the loads are segregated into two networks internally, with 133.437 MVA of T-G#8 & T-G#9 in one network and the T-G#7 31.25 MVA in another network. Under normal operation, the TG-Sets are operated in island mode and the entire load is met exclusively from the TG-sets, no power being consumed from the TSNPDCL.

The Consumer Service with TSNPDCL is with a CMD of 15 MVA. Power is drawn from TSNPDCL against the CMD of 15 MVA only for start-up purposes of the TG-sets. The starting currents during start-up is minimised by soft start arrangements. The power drawn during start-ups is always within the CMD of 15 MVA.

The Objector also receives and consumes captive wind power form its wind energy plant through inter-state open access. Under normal operation, the

connection with the grid is only to enable import of the energy under open access. At such times, only one of the networks is connected to the grid.

There are electrical inter-locks in place to ensure that the connected loads trip whenever there is a tripping of the TG-Sets. Therefore, there is no transfer of load to the grid in the event of TG-Set failure or shut down. Mandatory protection arrangements are in place to clear internal faults within the time prescribed in the Grid Code.

In the normal operation of the Objektor's continuous process plant, there are no equipment which impose intermittent or transient loads

Therefore there is no circumstance by which it can be considered that any grid support is actually availed by the Objektor. The connection to the grid is utilised only for start power within the CMD with TSNPDCL or for import of open access power.

Quantification of Grid Support Charge, if levied

27. The proposed rates of charges is without any method or basis. It is wholly arbitrary.
28. The CPP/ generation capacity is, in any event, not at all a justifiable basis of charge; more particularly when the support is alleged to be required by the loads, and certain kinds of load in particular.
29. Even if the charges were to be levied on a finding that grid support is indeed availed by any kind of industry with particular kinds of loads, or otherwise, the charges must be on a rational basis with some methodology relatable to the issue involved. Different studies and different ERCs have tried to evolve some methodology, albeit not wholly correct. The mere consideration of the network ARR divided by total generation capacity virtually computes a transmission / wheeling charge which is irrational and absurd in relation to alleged grid support charges when there is no use of the transmission / distribution system at all for any conveyance of electricity. The Hon'ble Commission must propose a methodology for arriving at the quantum of charge where it is justifiable to be levied. A study may be commissioned for the purpose and the affected consumers may be given an opportunity to respond to the outcome of such study and the consequent proposals for levy and quantification of the charge.

RESPONSE TO THE TSNPDCL REPLY TO OBJECTIONS


30. The response of the TSNPDCL has been largely evasive on the real issues raised in the objection.

31. The earlier APERC Order which was the subject matter before the Supreme Court was for 2002-2003 before the Electricity Act 2003 came into force. Moreover, the present proposals irrationally and significantly alter the scope of grid support charges. The entire environment is changed. The Hon'ble Commission has to consider the matter afresh considering the completely changed legislative environment, and also after carrying out the necessary technical studies as relevant to this State.
32. It is denied that the GCC has conducted meetings with all the stakeholders as stated by the licensee. No such meeting was ever called. The Objector herein was never called or given any opportunity to make any submissions. The detailed submissions of the Objector against the proposals for 2022-23 was never even tabled before the meeting. The licensee cannot say that merely because it has given some justification orally and/or in writing before the GCC, the same has been duly and diligently discussed or considered so as to arrive at any conclusion. No report of the GCC is made available.

Prayer

33. The Hon'ble Commission may initiate separate proceedings for the determination of grid support charges after a study report is obtained and a proper discussion paper is issued. Thereafter, the Hon'ble Commission may evolve the criteria as to when and to what extent grid support can be considered to be availed and to determine the charges leviable duly differentiated on the nature of load and/or nature of the industry duly providing for hearing of the affected parties.

2023 February 28


On behalf of the Objector



K. Gopal Choudary
Advocate
Counsel for Objector ITC Ltd

2015 SCC OnLine APTEL 26

Appellate Tribunal for Electricity at New Delhi
(BEFORE SURENDRA KUMAR, MEMBER (JUDICIAL) AND T. MUNIKRISHNAIAH, MEMBER (TECHNICAL))

In the Matter Of

HEG Limited Mandideep (Near Bhopal), Distt. Raisen, Madhya Pradesh, India - 462046 ... Appellant/Petitioner;

Versus

1. Madhya Pradesh Electricity Regulatory Commission 5th Floor, 'Metro Plaza', E-5, Arera Colony, Bittan Market, Bhopal-462016
2. Madhya Pradesh Power Transmission Co. Limited Shakti Bhawan, Rampur, Jabalpur - 482008 Madhya Pradesh ... Respondents.

Appeal No. 167 of 2014
Decided on October 8, 2015

Counsel for the Appellant ... Mr. M.G. Ramachandran
Mr. Deepak Biswas Ms. Poorva Saigal Ms. Anushree Bardhan Mr. Arjun Minocha
Counsel for the Respondent(s)... Mr. C.K. Rai
Mr. Paramhans for R-1
Mr. Aashish Bernard Mr. G. Maheshwari Mr. S.R. Sharma for R-2

JUDGMENT

SURENDRA KUMAR, MEMBER (JUDICIAL):— The instant Appeal under Section 111 of the Electricity Act, 2003, has been preferred by HEG Limited (in short, the '**Appellant/Petitioner**'), against the Orders, dated 12.12.2013 passed by the Madhya Pradesh Electricity Regulatory Commission (in short, the '**State Commission**') in Petitions No. 52/2013, whereby, the learned State Commission has dismissed the petition filed by the Appellant/petitioner seeking clarification of the order, dated 31.12.2012, by which the Parallel Operation Charges (POC) were levied on all the Captive Power Plants (CPPs) in Madhya Pradesh connected to the utility grid. This petition no. 52 of 2013, seeking a clarification, filed by the Appellant before the State Commission, has been dismissed by the impugned order, dated 12.12.2013, holding that the said clarificatory petition is, in fact, a review petition which is barred by limitation and, further, holding that the said order, dated 31.12.2012, is applicable to all the CPPs connected to the grid.

2. The Appellant is a Captive Power Plant. Respondent No. 1 is the State Commission which is authorized to discharge functions under various provisions of the Electricity Act, 2003. The Respondent No. 2 is the State Transmission Utility of Madhya Pradesh.

3. The Respondent No. 2, Madhya Pradesh Power Transmission Co Limited (MPPTCL), herein filed a petition, being petition no. 50 of 2010, for determination of parallel operation charges (POC) on intra-state power generating plants in the state of Madhya Pradesh. During the hearing of the said petition, the learned State Commission felt a need for getting some study conducted through some independent agency on this aspect on levy of POCs on intra-state power generating plants in Madhya Pradesh.

4. The State Commission, by an order, dated 10.9.2010, passed in Petition No. 50 of 2010, had directed that a study for determination of parallel operation charges on

Intra-state power generating plants be conducted through an independent agency and, thereafter, following the procedure, the process for determination of parallel operation charges to be levied in the state of Madhya Pradesh, be initiated. Accordingly, Electrical Research and Development Association (ERDA), was awarded the contract by the State Commission for providing consultancy services for evaluation of parallel operation charges.

5. Electrical Research and Development Association submitted its report on 21.2.2012, on the levy of POC to the State Commission. The State Commission, on 26.5.2012, issued a public notice inviting comments on the ERDA report. On 10.7.2012, the State Commission held public hearing on the said report including various parties. The Appellant/petitioner also participated in the said public hearing and raised various objections and concerns on the ERDA report. The State Commission registered suo-motu petition, being petition no. 73 of 2012, on the issue of determination of POC and passed the main order, dated 31.12.2012, whereby, it had determined the levy of POC on all the captive power plants (CPPs) connected to the grid. Thereafter, the Appellant filed the impugned petition, being petition no. 52 of 2013, before the State Commission seeking a clarification on the applicability of the order, dated 31.12.2012, on its Tawa Plant of the capacity 13.5 MW on the ground that its load is located at a distant place and is not co-located. It was also mentioned that while the CPP of the Appellant is connected to the grid, but because its load is not co-located, therefore, the POC should not be levied on it.

6. The main grievance of the Appellant/petitioner is that since, Tawa HEP does not have any captive load interconnected to the utility grid at a point of common coupling; it is not in parallel operation with the grid. In this respect, it is identical to an Independent Power Producer (IPP). Thus, since, the total power generated by the Tawa plant at any given point exported completely to the grid and since, Tawa plant has no contracted demand, going by the formula of the Base MVA Support method, as suggested by ERDA, the POCs payable by the Appellant for its Tawa plant amount to zero. This is exactly the reasoning provided by the MPPTCL for exempting Madhya Pradesh Power Generating Companies Limited from power plants owned and operated by Madhya Pradesh Power Generating Companies Limited.

7. The relevant facts for the purpose of deciding this Appeal are as under:

- (a) that the Appellant is a company engaged inter-alia, in the manufacturing of graphite electrodes having its manufacturing unit at Mandideep since May, 1977. The Government of Madhya Pradesh had permitted it to establish captive hydro electric power plant on Tawa Dam at Tawa Nagar in District Hoshangabad. Thus, the Appellant is a power generator who was permitted to wheel up to the place of its use at Mandideep through licensee's transmission system on payment of wheeling charges(in terms of units) & losses.
- (b) that the Appellant had entered into a 15 years wheeling agreement with licensee which expired on 29.11.2011. After the expiry of the wheeling agreement, the plant of the Appellant was governed through Section 9 of the Electricity Act, 2003 which deals with captive generation.
- (c) that the State Commission had conducted a study for determination of parallel operation charges through ERDA. The recommendations and study report has been the basis of order, dated 31.12.2012, for levy of parallel operation charges. The technical considerations to levy charges were as under:
 - (i) absorption of harmonics and negative phase sequence current.
 - (ii) improvement in power factor
 - (iii) meeting fluctuations
 - (iv) providing reactive power support

- (d) that the electrical pollutant has been the major consideration for imposing parallel operation charges. The injection of such pollutant is feasible provided the CPP and bulk load have common point of interconnection. Such charges were not intended to be imposed where CPP is operating independently or away from load. Since, the Tawa Hydro Electric Power Plant (Tawa Plant) is not directly connected to the load (consumer) therefore; it does not contribute to injecting pollutant into the system.
- (e) that in the letter, dated 21.8.2012, the Respondent No. 2 had clearly admitted that no charges could be levied if grid does not provide any support to CPP or there is no drawl of power. Tawa Hydro Electric Power Plant has an identical situation and, therefore, parallel operation charges should not be levied on it.
- (f) that Tawa Hydro Electric Power Plant was not considered for study of ERDA despite of its peculiar nature of operating conditions/parameters. The energy wheeled from Tawa gets adjusted against contract demand except for adjustment of wheeled energy and remaining charges are being paid as per tariff. This plant operates during irrigation period only and remains under shut down for a period of six months. Its base MVA varies with the depiction of reservoir level and ranges between 13.5 MW to 3.5 MW. The Tawa project is a small hydro power project and like wind power project, the parallel operation charges are not applicable to it.
- (g) that the Appellant, in its petition being petition no. 52 of 2013, has prayed to the State Commission to clarify:
 - (i) whether order, dated 31.12.2012, would be applicable on captibe plant not having common point of interconnection between bulk load and generating unit like Tawa wherein the plant is located at distance and power is wheeled through open access.
 - (ii) whether charges could be levied wherein base MVA changes with the passage of time and such type of plant which were not selected for study.
 - (iii) whether charges could be levied for the duration when the generating unit was under shut down.
- (h) that the State Commission, after hearing the parties and considering the matter, has passed the impugned order, dated 12.12.2013. The relevant paragraphs thereof is reproduced hereunder:

"7. Having heard both the parties and having considered carefully the written submissions made, the Commission is constrained to note that the present petition essentially seeks a review of the earlier order dated 31.12.2012, even though it has been presented in the garb of seeking clarification. The Commission also notes that the petitioner failed to raise the issues now agitated before the Commission during the two stage public hearings undertaken prior to the issue of the impugned order. This despite the fact that the petitioner had actively participated in the entire process. The Commission also would like to take note of the fact that the petitioner has a CPP and the order dated 31.12.2012 makes no distinction as among CPPs based on the location of the load. The Commission feels that adequate clarity is built into the order dated 31.12.2012 and no further initiative is required in this regard.

8. In view of the foregoing findings the petition is dismissed."

8. We have heard Mr. M.G. Ramachandran, the learned Counsel for the Appellant/petitioner, Mr. C.K. Rai, the learned counsel for the Respondent No. 1 and Mr. Aashish Bernard, the learned counsel for the Respondent No. 2 and gone through the written submissions filed by the rival parties. We have deeply gone through the evidence and other material available on record including the impugned order passed by the State Commission and written submissions.

9. The following issues arise for our consideration in the Instant Appeal:

- (A) *Whether the impugned petition being petition no. 52/2013 seeking clarification of the State Commission's order, dated 31.12.2012, amounts to review petition and the same can be summarily dismissed as the review petition being time barred?*
- (B) *Whether the parallel operation charges could only be levied on CPPs which were inter-alia interconnected with its load and the utility grid by a point of common coupling?*
- (C) *Whether the State Commission's order, dated 31.12.2012, levying POCs to all CPPs connected to the grid in the state of Madhya Pradesh is applicable to the Appellant's Tawa project?*

10. Since, all the issues are inter-connected; we are taking-up and deciding them together.

11. The following contentions have been made on behalf of the Appellant on these issues:

- (a) that the scope of study by the ERDA was limited to captive power plants, wherein such CPPs and their respective captive loads were connected to grid through common point of interconnection and were being operated in parallel to the grid. The Tawa plant could not have been brought within the scope and ambit of the order, dated 31.12.2012, since, the Tawa plant is located at a distance from the Appellant's plant at Mandideep and, consequently, load & generating plant are not connected to grid through common coupling. Hence, no POCs can be levied on the Appellant's Tawa project since the said plant is not being operated in parallel with the grid.
- (b) that the impugned petition is not a review petition or the Appellant never intended to seek review of the State Commission's order, dated 31.12.2012. The Appellant, for the sake of abundant caution, has sought the clarification of the said order, dated 31.12.2012, by filing the impugned clarificatory petition. If the main order, dated 31.12.2012, of the State Commission is not clarified as being inapplicable to Tawa project of the Appellant, it would amount to grave injustice and cause severe irreparable damage to the Appellant.
- (c) that the intent of the study by the ERDA and consequent ERDA report as well as Parallel Operation Petition was to determine levy of POCs wherein load and generating plant is connected to grid through common coupling i.e. CPP is being operated in parallel to the grid and not otherwise.
- (d) that the Appellant is engaged in the business of manufacturing graphite electrodes. He developed and operates and maintains two CPPs, i.e. a 63 MW Thermal Power Plant at Mandideep and 13.5 MW Tawa HEP with a combined generation capacity of both the captive plants ranging from 68 MW to 76.5 MW.
- (e) that the Appellant/petitioner challenged the findings of the ERDA report whilst restricting its submissions with respect to its Mandideep CPP and captive load which are connected to the grid at a point of common coupling. No submission was made by the Appellant with respect to its Tawa plant because the ERDA report itself did not contemplate levy of parallel operation charges on power plants similarly placed as the Tawa plant since there was no point of common coupling between the captive user and the Tawa plant at the point of connection between the Tawa plant and the grid i.e. a CPP not being operated in parallel to the grid. However, the Appellant raised the issue of discrimination as other power plants like IPP such as the power plants operated and maintained by the Madya Pradesh Power Generating Companies Limited have been exempted from levy of POC.

- (f) that the case of CPPs, being connected to the grid but not through a point of common coupling along with the captive user on account of the CPP not being at the site of the captive user, had not been taken into account by the State Commission while passing of the order, dated 31.12.2012, hence, the Appellant sought clarification seeking exemption of such CPPs, amongst others, from payment of parallel operation charges by filing the aforesaid clarificatory petition.
- (g) that the learned State Commission has dismissed the clarificatory petition of the Appellant on the ground that the same was actually a petition for review of the order, dated 31.12.2012, passed by the State Commission and that such a petition for review was time barred.
- (h) that the Tawa plant is located on Multipurpose Irrigation Tawa Dam, therefore, its machine rating (machine MVA rating) varies as per the net head of the Dam. The Tawa plant's generation capacity is the highest i.e. 13.5 MW during monsoon and its MVA rating reduces correspondingly with release of water for irrigation. Hence, its MVA rating varies from a maximum of 13.5 MW to a minimum of 3 MW. Tawa plant remains non-operational during no irrigation period that is May to July. The Respondent No. 2/Transmission Licensee continued to raise invoices at machine rating instead of actual generation capacity, even for shutdown period.
- (i) that the power plants run by Madhya Pradesh Power Generating Companies Limited had been specifically exempted from payment of parallel operation charges on the Base MVA Support method formula and that the Tawa Plant was an identically placed power plant despite the fact that it was a CPP.
- (j) that the learned State Commission has failed to appreciate that POC could be levied on CPP only when the CPP and its load were in parallel operation with the grid i.e. where the CPP and its load were inter-connected with a grid at a point of common coupling.
- (k) that the very basis on which the State Commission passed its order holding that there was a need to conduct a study by an independent agency on determination of POCs payable by all intra-state power generating plants, has been ignored by the State Commission while passing the impugned order.
- (l) that the State Commission has failed to appreciate that the independent agency, ERDA, appointed by the State Commission in pursuant to the order, dated 10.9.2010, however, analysed and issued a report on the need to levy parallel operation charges on CPPs and not all intra-state power generating plants thereby excluding all independent power plants.
- (m) that the State Commission has failed to appreciate that IPPs and similarly placed power plants did not adversely affect the grid in the manner that the CPPs interconnected with the grid along with their respective captive users at a point of common coupling did.
- (n) that the State Commission has failed to appreciate that the Tawa project, although, a CPP as defined under the Electricity Act, 2003, is for all practical purposes, an independent power plant exporting all the power generated by it to the grid.
- (o) that the State Commission has further failed to appreciate that the ERDA, in selecting the sample size for carrying out its analysis, selected only 10 CPPs out of the 32 CPPs operating in the state of Madhya Pradesh. Out of the 10 CPPs selected for the analysis, all of them were CPPs, which were interconnected with their captive user and the grid at a point of common coupling.
- (p) that the State Commission has also failed to appreciate that the case of the Appellant's Tawa project and similarly placed power plants was not studied by the ERDA and that such power plants were deliberately excluded from (i) the

- study/analysis for determination of payment of parallel operation charges; and (ii) the levy of parallel operation charges as suggested by the ERDA.
- (q) that the State Commission has also failed to appreciate that the ERDA, in its Report, which formed the basis of 31.12.2012 order, opined that the adverse effects on the grid by CPPs such as absorption of harmonics, absorption of negative phase sequence current as well as the beneficial effects on the captive user on account of the CPP being connected in parallel to the grid at a point of common coupling were solely on account of the load consumed by the captive user while being connected in parallel to the CPP and the grid at a point of common coupling.
 - (r) that the State Commission has further failed to appreciate that the Appellant's Tawa project is not located at the site of the captive user and, hence, is not and cannot be connected in parallel to the grid along with its captive load and, therefore, there was no fluctuation in load. Consequently, there arose no question of absorption of harmonics and negative phase sequencing and other adverse effects on the grid on account of Tawa plant's connection to the grid.
 - (s) that the State Commission has also failed to appreciate that Tawa plant since does not have any load is not required to maintain any demand. In this respect, it is identical to an IPP.
 - (t) that the State Commission has also failed to appreciate that since the total power generated by the Tawa plant, at any given point, is exported completely to the grid and since, Tawa plant has no contracted demand, going by the formula of the Base MVA Support method as suggested by the ERDA, parallel operation charges payable by the Appellant for its Tawa plant amount to zero.
 - (u) that the State Commission has failed to appreciate that even the explanation given by the Respondent No. 2, a Transmission Licensee, in its letter, dated 21.8.2012, addressed to the State Commission as to why power plants run by Madhya Pradesh Power Generating Company Limited were excluded from the levy of parallel operation charges was identical to that of Tawa plant's case. That is, the parallel operation charges payable by such power plants amounted to zero as there was no contracted demand and the total power generated by such power plants was exported to the grid.
 - (v) that the State Commission has further failed to appreciate that the ERDA Report clearly stated that the adverse effects on the grid were on account of the load (consumer) and the nature of industry of the load when such load along with the CPP was in parallel operation with the grid i.e. the said CPP and its load was interconnected with the grid at a point of common coupling and not otherwise.
 - (w) that the State Commission has also failed to appreciate that the Tawa plant, on account of its distance from its captive load, could never have been in parallel operation with the grid along with its captive load.
 - (x) that the basic condition for levy of Parallel Operation Charges is that the Captive Power Plant as well as the consuming units as co-located in the same place and the person derives grid support for constant running of his co-located facilities to protect from sudden variations in generation from the captive power plant. The nature of Parallel Operation involved is best explained in the Gujarat State Commission's order, dated 1.6.2011, in Petition No. 256 of 2003 and 867 of 2006, as under:-

"23.14 Now we deal with the issue of applicability of parallel operation charges. The load connected with CPPs is situated in the following manner.

- (1) *CPPs are situated at different places and part load of the consumer is connected at the place of CPP and part load receiving power through open access from it is situated at a different place.*

(2) CPPs and load connected with it are situated at the same place and connected with grid.

(3) CPPs and load connected with it are having reverse flow relay provided at their end and power flow is possible only from CPP to grid.

23.15 In case of the first situation, the part load which is situated at the CPP premises is only eligible for levy of parallel operation charges as they receive services from the grid as stated in earlier para No. 23.13 above. While the load which is situated at another place and getting power generated from CPP by wheeling/transmission through open access is equated with a consumer without CPP. Hence, for such quantity of power wheeled from CPP, no POC is leviable.

23.16 In case of the second situation, the load of the consumer connected with CPP at the same premises is fully receiving support from the grid as stated in para 23.13, shall have to pay POC as decided in this order.

23.17 In case of the third situation, whenever the load of the consumer connected with CPP falls instantaneously due to failure of equipment of the consumer's machine etc. in such a situation, the excess generation of CPP will affect CPP adversely. It might lead to tripping of the CPP, and a transient effect on it. In such eventuality, the excess power of the CPP will be injected to the grid and avoid tripping and other adverse effect on the CPP. Moreover, they are benefited by way of injecting harmonics into the grid, increase in fault level etc. Hence, for the load of the consumer of CPP with reverse flow relay, it is desirable to apply POC as decided in this order."

(y) that the pre condition for levy of Parallel Operation Charge is the co-location of the Captive Power Plant and load. If these are at different places there is no grid support and there is no parallel operation.

(z) that the Appellant's Tawa plant is a CPP which is not co-located with the consuming facilities (load). The captive plant is at a distance of over 100 kms from the consuming facilities i.e. where the power is used. The electricity generated from Tawa plant is injected in the grid through open access and conveyed through the grid. In fact, even auxiliary power for start up of the Tawa plant is obtained from a separate connection from the grid and the charges for the same are paid separately. There is, therefore, no support taken from the grid for which parallel operation charges can be levied.

(aa) that the State Commission itself had held that there was a need to conduct a study by an independent agency regarding determination of parallel operation charges payable by all intra-state power generating plants. The ERDA analyzed the entire matter considering co-located consuming units and not with reference to Captive Power Plant and consuming unit at different places such as in the case of Tawa plant and issued a report.

(bb) that the methodology for computation of parallel operation charges suggested by the ERDA which is the Base MVA Method where,
Base MVA = Installed Capacity - Contract Demand - Power Export to Grid.

Tawa plant does not have any load and is not required to maintain any demand and is placed in an identical position as Independent Power Plants, thereby making the parallel operation charges zero

(cc) that since the order, dated 31.12.2012, passed by the State Commission, was not specifically clear on the aspect of the CPP not co-located, the Appellant had sought for clarification in regard to Tawa plant by filing the aforesaid clarificatory petition before the State Commission, while challenging the order, dated 31.12.2012, of the State Commission on other aspects in the Writ Petition No. 12545 of 2013 filed before the Hon'ble Madhya Pradesh High

Court.

12. *Per contra*, the following submissions have been made on behalf of the contesting Respondents:

- (a) that the Appellant has challenged the order, dated 31.12.2012, before the Hon'ble Madhya Pradesh High Court in Writ Petition No. 12545/2013 invoking the extraordinary jurisdiction of the Hon'ble High Court under Article 226 of the Constitution of India.
- (b) that the Appellant has moved an amendment application before the Hon'ble Madhya Pradesh High Court to exclude the challenge pertaining to the Tawa plant from the writ petition and the Hon'ble High Court has, vide its order, dated 1.8.2014 allowed the said prayer but that does not *ipso-facto* make the instant appeal maintainable.
- (c) that once the State Commission has given clarification in the impugned order, dated 12.12.2013, of the main order, dated 31.12.2012, holding that the main order, dated 31.12.2012, is applicable to all the CPP's connected to the grid which, therefore, includes the Tawa plant, the issue pertaining to Tata plant is also directly and substantially in issue before the Hon'ble High Court.
- (d) that as per Section 111 of the Electricity Act, 2003, a person, aggrieved of an order, has the right to appeal before this Appellate Tribunal. In this case, the State Commission, vide impugned order, has clarified that the main order, dated 31.12.2012, makes no distinction between CPP plants based on their locations and, therefore, the order, dated 31.12.2012, is applicable to the Appellant's Tawa plant also. Hence, the Appellant is not the aggrieved person to file the instant appeal.
- (e) that the present appeal is barred by Section 10 of CPC as the same matter is pending in the aforesaid writ petition before the Hon'ble Madhya Pradesh High Court, where the appeal while challenging the main order, dated 31.12.2012, has challenged the legality of the levy of POCs on its three CPPs.
- (f) that the impugned order of the State Commission holding the petition seeking clarification filed by the Appellant as review petition legally correct because the Appellant, by way of seeking clarification indirectly has sought a review of the main order, dated 31.12.2012. Then the Appellant should have approached the Hon'ble High Court against the impugned order as the order rejecting a review petition is not appealable as per Order XLVII, Rule 7 of the of Civil Procedure Code, 1908. Apart from it, due to the 'doctrine of merger', the impugned order has got merged with the main order.
- (g) that as per regulation 40 of the Conduct of Business Regulations, 2004, the State Commission has the power to review its decisions and orders. The limitation for filing a review petition is 60 days and the Appellant was bound to file the said petition within the period of 60 days. Since, he has failed to file the petition within 60 days, the said petition is time barred and the State Commission's finding, in the impugned order, holding the said petition to be time barred is correct.
- (h) that since the Appellant had participated in the public hearing before passing of the main order and, he submitted his objections to the applicability of POCs on the ERDA report, he is estopped to raise the same issue again.
- (i) that the issue of payment of POCs has been decided by the State Commission in its main order, dated 31.12.2012. This Appellate Tribunal, in its judgment, dated 18.2.2011, passed in Appeal No. 120 of 2009, has also held that the parallel operation is the facility in the nature of a grid support to the Captive Power Plant.
- (j) That since the State Commission, in its main order, dated 31.12.2012, passed after considering the report of ERDA and objections/submissions of all parties,

held that the POCs are applicable on the Captive Power Plants which are connected to the grid, the Appellant, being a CPP, which is connected to the grid, is also liable to pay the POCs. The POCs are not leviable on a CPP which is not connected to the grid and is operating in islanding mode. If the CPP of any entity is connected to the grid and its load co-located or fed through the grid, that CPP is liable to pay POC.

(k) that the Chattisgarh State Electricity Regulatory Commission (CSERC) in its order, dated 13.10.2009, passed in petition No. 20 of 2009 (M) clearly held in para 4 as under:

"... Though the grid absorbs the pollution of the loads of the consumers who has agreement with the utility and utility charges to consumers as per the retail tariff fixed by the Commission, but the grid also used to absorb the pollution of the captive and non-captive loads of the CPP connected with the grid which is not the consumer of utility and, therefore, captive and non-captive load of CPP can be parameter for payment of POC. Such captive and non-captive load of CPP can either be co-located, supplied through the grid or may be supplied through dedicated system. We have thus come to the conclusion that the POCF shall be calculated at the rate of Rs. 21/- KVA per month (the rate as proposed by the ERDA) on the captive and non-captive load of CPP which may either be co-located, fed through the grid or through dedicated lines of CPP. The billing of parallel operation charges is therefore ordered...."

(l) that as per the order of the Chattisgarh State Electricity Regulatory Commission, the POCs are payable by a CPP on the captive or non-captive load of CPP which may either be co-located, fed through the grid (as in the case of the Appellant) or through dedicated lines.

(m) that the purported clarificatory application being Petition No. 52 of 2013 was filed by the Appellant before the State Commission basically on the ground that since the Appellant's Tawa plant was not having common point of interconnection between bulk load & generating unit and the plant is located at a distance and power is wheeled through open access, the POC determined by the State Commission, vide main order, dated 31.12.2012, is not applicable upon it. The said clarification has been given by the impugned order that all the CPPs, who are connected to the grid, are liable to pay POCs and the order, dated 31.12.2012, is applicable to all of them.

(n) that the main order, dated 31.12.2012, of the State Commission is a generic order applicable to all the CPPs with exemption only to those CPPs which are not connected to the grid.

(o) that the Appellant in the said clarificatory petition simply wants to bring-forth a new distinction among CPPs based on location of the load which is not permissible in the light of the main order, dated 31.12.2012.

(p) that the contention of the Appellant to the effect that ERDA report did not contemplate levy of parallel operation charges on power plants similarly placed as the Tawa plant on the ground that there was not point of common coupling between the captive user and the Tawa plant at the point of connection between the Tawa plant and the grid is wrong and misplaced because the main order, dated 31.12.12, makes no distinction as among CPPs based on the location of the load.

13. Our consideration and conclusion:

13.1 In the upper part of the judgment, we have dealt in details with the submissions raised by the contesting parties and we do not find necessary to repeat the same here again.

13.2 Now, we proceed to decide whether the impugned petition, being Petition No.

52/2013, filed by the Appellant/petitioner before the State Commission seeking clarification whether the main order, dated 31.12.2012, passed by the State Commission, is applicable to Tawa Plant of the Appellant amounts to review petition in true sense or amounts to the clarificatory petition in letter and spirit.

13.3 Before dealing with this controversy, we narrate below the facts which are undisputed between the parties.

- (a) that the Respondent No. 2, Madhya Pradesh Power Transmission Co Limited (MPPTCL), filed a petition, being Petition No. 50/2010, before the State Commission for determination of parallel operation charges on intra-state power generating plants in the state of Madhya Pradesh. During the hearing of the said petition, the learned State Commission felt a need for getting some study conducted through some independent agency on this aspect on levy of POCs on intra-state power generating plants in Madhya Pradesh. Then the State Commission, by an order, dated 10.9.2010, passed in Petition No. 50/2010, had directed that a study for determination of parallel operation charges on Intra-state power generating plants be conducted through an independent agency and, accordingly, Electrical Research and Development Association (ERDA) was awarded the contract by the State Commission for providing consultancy services for evaluation of parallel operation charges.
- (b) that the ERDA submitted its report on 21.2.2012, on the levy of POC to the State Commission. The State Commission, on 26.5.2012, issued a public notice inviting comments on the ERDA report and the State Commission held public hearing on the said report on 10.7.2012, in which the Appellant/petitioner also participated and raised various objections expressing his concerns on the said ERDA report.
- (c) that the State Commission, thereafter, registered suo-motu petition, being petition no. 73 of 2012, on the issue of determination of POC and passed the main order, dated 31.12.2012, having relied on the contents of the ERDA report whereby, the State Commission had determined the levy of POC on all the captive power plants (CPPs) connected to the grid.
- (d) that it was at that stage that the Appellant/petitioner filed the impugned petition, being petition no. 52 of 2013, before the State Commission seeking a clarification on the applicability of the order, dated 31.12.2012, passed by the State Commission on its Tawa Plant of the capacity 13.5 MW on the ground that its load is located at a distant place and is not co-located. The Appellant, further, made submission in the impugned petition that while the CPP of the Appellant is connected to the grid, but its load/consumption is not co-located, therefore, the POC should not be levied on the Tawa Plant of the Appellant.

13.4 Thus, by filing the impugned petition no. 52 of 2013, the Appellant prayed to the State Commission to clarify whether the State Commission's order, dated 31.12.2012, would be applicable on the CPP not having common point of interconnection between bulk load & generating unit like Tawa Plant of the Appellant wherein the CPP is located at a distance and power is wheeled through an open access and whether the parallel operation charges could be levied upon the Tawa Plant of the Appellant for a duration when the said CPP was under shutdown for more than three months in every year. Thus, the main question for our consideration is whether the main order, dated 31.12.2012, of the State Commission in the suo-motu petition, being petition no. 73 of 2012, by which the State Commission had determined the levy of POC on all the CPP connected to the grid would be applicable to the Tawa Hydro Electric Power Plant (Tawa Plant) of the Appellant where the Tawa Plant and its load is located at a distance and the same is not co-located.

13.5 As mentioned above, the learned State Commission, by the impugned order,

dated 12.12.2013, in the said clarificatory petition no. 52 of 2013, had dismissed the said petition holding that the so-called clarificatory petition, filed by the Appellant/petitioner, is in fact a review petition which is barred by limitation. The limitation for filing a review petition is 60 days and the said petition having been filed beyond the period of limitation, is barred by limitation. Further, clarifying that the main order, dated 31.12.2012, passed by the State Commission, is applicable to all the CPP who are connected to the grid.

13.6 We may point out here that the State Commission has, by the impugned order, dated 12.12.2013, dismissed the clarificatory petition of the Appellant/petitioner treating the same as review petition and dismissing the said petition on the ground of limitation without considering the facts and circumstances of the aforementioned Tawa Plant of the Appellant. The State Commission, by the impugned order, dismissed the said petition, holding the same as review petition finding the same time barred by period of limitation by writing a single clarificatory sentence that the order, dated 31.12.2012, is applicable to all the CPP connected to the grid. A perusal of the impugned order clearly indicates that the State Commission has not taken into consideration the facts and circumstances of the Tawa Plant of the Appellant and ignoring all the facts of the Appellant's case has dismissed the said petition.

13.7 The provisions regarding review given are enumerated in section 114 and order XLVII of The Code of Civil Procedure, 1908. Order XLVII Rule 1 of the CPC provides that a person considering himself aggrieved, by a decree or order from which an appeal is allowed but from which no appeal has been preferred and who from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made or on account of some mistake or error apparent on the fact of record or any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of the same to the Court which passed the decree or made the order.

13.8 We have considered in depth the contents of the petition no. 52/2013 filed by the Appellant/petitioner before the State Commission and prayers made therein. The Appellant/petitioner in his clarificatory petition has narrated the facts and circumstances of his Tawa Plant and made the aforesaid prayer whether the State Commission's order, dated 31.12.2012, is applicable to the Appellant's Tawa Plant.

13.9 The main facts mentioned in the said petition by the Appellant are that since, Tawa Hydro Plant of the Appellant does not have any captive load interconnected to the utility grid at a point of common coupling and it is not in parallel operation with the grid and it is identical to an Independent Power Producer (IPP). Further, since the total power generated by the Tawa plant at any given point is exported completely to the grid and since, Tawa plant has no contracted demand, the POC cannot be levied on the said Tawa Plant of the Appellant. The same reasoning was provided by the Respondent No. 2/MPPTCL before the State Commission through a letter, dated 21.8.2012, addressed to the State Commission for exempting power plants owned and operated by Madhya Pradesh Power Generating Companies Limited from levy of POC. The Respondent No. 2, in its communication, dated 21.8.2012, had clearly admitted that no POC could be levied if the grid does not provide any support to CPP or there is no drawal of power. The letter further stated that since Tawa Hydro Electric Power Plant has an identical situation and, therefore, parallel operation charges should not be levied on the Tawa Plant of the Appellant.

13.10 The material on record clearly makes it evident that Tawa Hydro Electric Power Plant of the Appellant was not considered for study of ERDA despite its peculiar nature of operating conditions/parameters. The energy wheeled from Tawa gets

adjusted against contract demand except for adjustment of wheeled energy and remaining charges are being paid as per tariff. The Tawa Plant is a small Hydro Power Plant and is like wind power project, hence, the parallel operation charges are not applicable to it. In the case of Tawa Plant, which is a CPP of the Appellant, the power generated from the plant is injected into a grid and then wheeled through the lines through open access and, thereafter, the same is consumed by its load/consumer.

13.11 The main contention of the Appellant/petitioner is that he challenged the findings of the ERDA report during the hearing of the main petition while restricting his submission with respect to Mandideep CPP and captive load which are connected to the grid at a point of common coupling. No submission was made by the Appellant with respect to its Tawa Plant because the ERDA report itself did not contemplate levy of POC on the power plants similarly placed as the Tawa Plant. Since, there was no point of common coupling between the captive user and the Tawa plant at the point of connection between the Tawa plant and the grid i.e. if CPP not being operated in parallel to the grid. According to the Appellant, he raised the issue of discrimination at that point of time before the State Commission as other power plants like IPPs such as the power plants operated and maintained by the Madhya Pradesh Power Generating Companies Limited have been exempted from levy of POC. The case of the Appellant is that the cases of CPPs, being connected to the grid but not through a point of common coupling along with the captive user, on account of the CPP not being at the site of the captive user had not been taken into account by the State Commission while passing the order, dated 31.12.2012, the Appellant sought clarification by filing the aforesaid clarificatory petition asking whether the order, dated 31.12.2012, of the State Commission would be applicable to Tawa Plant of the Appellant and would be exempted from payment of POCs. This fact is not disputed that the power plants run by Madhya Pradesh Power Generating Companies Limited had been specifically exempted from payment of parallel operation charges on the Base MVA Support method formula and that the Tawa Plant was an identically placed power plant despite the fact that it was a CPP.

13.12 According to the Appellant, POC could be levied on CPP only where the CPP and its load were inter-connected with a grid at a point of common coupling. One more contention of the Appellant is that the Tawa project, although, a CPP as defined under the Electricity Act, 2003, is for all practical purposes, an Independent Power Plant (IPP) exporting all the power generated by it to the grid subject to the condition that CPP is bound to consume 51% of the total capacity to its own use and the remaining generated power, it can sell through open access, after getting the open access permission from the State Commission as per Regulation 42(2) of the Electricity Act, 2003.

13.13 The evidence on record clearly establishes that Appellant's Tawa Plant is not located at the site of the captive user/load and, hence, does not and cannot be connected in parallel to the grid along with its captive load and, therefore, there is no possibility of injecting the harmonics into the grid. Thus, there is no adverse effect on the grid on account of Tawa Plant's connection to the grid like any other generators of IPPs. Further, since, the Tawa plant does not have any load, it is not required to maintain any demand and in this respect, it is identical to an IPP. The material on record, further, clarifies the situation that since the total power generated by Tawa Plant, at any given point, is exported completely to the grid and since, the Tawa Plant has no contracted demand, the POCs, if any, payable by the Appellant for its Tawa Plant amounts to zero.

13.14 Further, it is clear from the record that the basic condition for levy of POC is that the Captive Power Plant as well as the power consuming units/load are co-located in the same place will create harmonics due to sudden fluctuation of load.

13.15 We have cautiously and carefully gone through the reasoning recorded by the Gujarat Electricity Regulatory Commission, in its order, dated 1.6.2011, in Petition No. 256 of 2003 and 867 of 2006 where the Gujarat Commission has dealt with the issue of applicability of POCs. According to the Gujarat Commission, if the CPPs are situated at different places and part load of the consumer is connected at the place of CPP and part load receiving power through open access from it is situated at a different place, the part load which is situated at the CPP premises is only eligible for levy of parallel operation charges as they receive services from the grid. While the load/consuming unit situated at another place and getting power generated from CPP by wheeling/transmission through open access is equated with a consumer without CPP. Hence, for such quantity of power wheeled from CPP, no POC is leviable.

13.16 Considering the aforementioned reasons and further considering the reasoning recorded by the Gujarat Commission in its order, dated 1.6.2011, and also considering the facts that pre-condition for levy of POC is the co-location of the CPP and load and if the CPP and load are at different places, there is no grid support and hence, there is no question of levy of POC on such kind of CPP like Tawa Plant of the Appellant. The Appellant's Tawa Plant is a CPP which is not co-located with the consuming facilities/load. Further, the Tawa Power Plant is injecting its total power generated to the grid system and the open access consumer situated 100 Kms distance from the generating plant is drawing the power from the same grid system, like any other consumer and hence, creation of harmonics by Tawa Plant to disturb the grid does not arise. Hence, levying parallel operation charges is not justifiable. In fact, even auxiliary power for start-up of the Tawa plant is obtained from a separate connection from the distribution system of the licensee for which charges are paid separately by the Appellant. We find that in these circumstances, levying parallel operation charges to the Appellant/petitioner is not justifiable.

13.17 The main contention of the Respondent on the so-called clarificatory or review petition is that since the Appellant has challenged the main order, dated 31.12.2012, before the Hon'ble Madhya Pradesh High Court by filing a writ petition, the Appeal is not entertainable. We reject this contention of the Appellant simply on the ground that it is true that the Appellant had challenged the order, dated 31.12.2012, passed by the State Commission before the Hon'ble High Court but subsequently, the Appellant moved an amendment application before the Hon'ble Madhya Pradesh High Court to exclude the challenge pertaining to the Tawa plant from the writ petition which has been allowed by the Hon'ble High Court, vide its order, dated 1.8.2014. Thus, the writ petition filed by the Appellant before the Hon'ble Madhya Pradesh High Court against the order, dated 31.12.2012, is not with regard to Tawa Generating Plant of the Appellant but with regard to the two other CPPs.

13.18 The other contention of the Respondents are that the Appellant is not an aggrieved person hence, the instant appeal is not entertainable and also the present appeal is barred by Section 10 of CPC as the same matter is pending before the Hon'ble Madhya Pradesh High Court in the aforesaid writ petition. We reject this contention of the Respondent also because the Appellant, being a CPP, where the load is not co-located, is naturally an aggrieved person and the instant appeal filed by him is legally competent. The aforementioned principles provided in Section 10 of the CPC are also not applicable to the Tawa Plant of the Appellant as the Appellant's amendment application seeking exclusion of its Tawa Plant from the writ petition has been allowed by the Hon'ble Madhya Pradesh High Court by its order, dated 1.8.2014.

13.19 We made several queries to the Respondent's counsel to throw light about the true nature of the impugned petition but, they are unable to satisfy us that the impugned petition is, in reality, a review petition. The contents of the impugned petition clearly indicate that the Appellant narrating the facts and circumstances of its Tawa Plant by filing the aforesaid petition has simply sought clarification whether the

order, dated 31.12.2012, of the State Commission would be applicable to its Tawa Plant where CPP and its load are not co-located and when the whole power generated from the Tawa Plant is exported to the grid. The Appellant, in the said petition, has nowhere mentioned any fact or ground giving it the colour of a review petition. He simply stated the facts of its Tawa Plant simply seeking a clarification whether the State Commission's order, dated 31.12.2012, is applicable to its Tawa Plant or not. The learned State Commission, even without going into the facts of the clarificatory petition and also without going into the fact that Tawa CPP and its load are not co-located, has dismissed the clarificatory petition of the Appellant by merely observing that the said petition amounts to review petition and since the said petition having been filed beyond the period of 60 days a limitation fixed for filing a review petition before the State Commission, is barred by period of limitation and on this ground, has dismissed the clarificatory petition of the Appellant with a casual and cursory observation that its order, dated 31.12.2012, is applicable to all the CPPs which are connected to the grid. The impugned order is patently absurd and illegal which cannot be allowed to be sustained. The approach of the State Commission is quite illegal and the same cannot be appreciated by any stretch of imagination. The State Commission was required to go into the facts of the Tawa Plant of the Appellant. After considering the facts of the Tawa Plant and also considering the fact that Tawa Plant and its load are not co-located, the State Commission should have decided the clarification filed by the Appellant on merits. Thus, the State Commission has committed gross illegality while passing the impugned order.

13.20 In view of the above discussion and the reasoning, we hold that the impugned petition, being Petition No. 52/2013, does not amount to a review petition from any angle as the contents provided for the review petition are absolutely lacking therefrom. The said petition is really a clarificatory petition as the same is evident from the perusal of the contents or facts mentioned in the aforesaid petition. The Appellant/petitioner had given the peculiar facts and circumstances of its Tawa Plant submitting that its Tawa Captive Power Plant and its load are not co-located at the same premises but are located at a distance of more than 100 Kms. Thus, the Tawa Captive Power Plant and its load are not co-located and the POCs on the said Tawa Plant of the Appellant are not leviable by any interpretation of legal juris prudence.

13.21 We further hold that the impugned petition, being Petition No. 52/2013, is in reality, and letter and spirit, a clarificatory petition which cannot be said to be time barred. We further hold that the POCs can only be levied on the CPPs which are inter-connected with their load and the utility grid by a point of common coupling. Since, the Tawa Plant of the Appellant/petitioner is not inter-connected with its load/consumer and the utility grid by a point of common coupling, and hence, the POCs cannot be levied on the Tawa Plant of the Appellant. We, further, clarify that the main order, dated 31.12.2012, passed by the State Commission levying POCs to all the CPPs connected to the grid in the state of Madhya Pradesh, is not at all applicable to the Tawa Captive Power Plant of the Appellant/petitioner. **In this way, all these three issues are accordingly decided.**

ORDER

14. The present Appeal, being Appeal No. 167 of 2014, is allowed and the impugned order, dated 12.12.2013, passed by the State Commission, in Petition No. 52/2013, is hereby quashed/set-aside. It is clarified and ordered that the order, dated 31.12.2012, passed by the State Commission by which POCs were levied on all the CPPs in the state of Madhya Pradesh connected to the utility grid, is not at all applicable to the Tawa Captive Power Plant of the Appellant/petitioner. Consequently, the Appellant is not liable to pay any Parallel Operation Charges (POC) with regard to its Tawa Captive Power Plant. Thus, the clarificatory petition, being Petition No.

52/2013, filed by the Appellant/petitioner before the State Commission seeking aforesaid clarification is hereby allowed to the extent indicated above. There shall be no order as to costs.

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