

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
GANDHINAGAR

PETITION NO. 1454 OF 2014

IN THE MATTER OF:

Guidelines dated 04.06.2014 issued by the Office of the Hon'ble Commission

AND

IN THE MATTER OF:

1. Paschim Gujarat Vij Company Limited  
Paschim Gujarat Vij Seva Sadan,  
Nana Mava Road, Laxminagar,  
Rajkot -360 004
2. Dakshin Gujarat Vij Company Limited,  
"Urja Sadan"  
Nana Varachha Road,  
Kapodara Char Rasta, Surat - 395 006
3. Madhya Gujarat Vij Company Limited  
Sardar Patel, Vidyut Bhavan Race Course,  
Vadodara - 390 007 Gujarat
4. Uttar Gujarat Vij Company Limited,  
UGVCL Regd. & Corporate Office,  
Visnagar Road, Mehsana - 384 001

...Petitioners

PETITION UNDER SECTION 86 OF THE ELECTRICITY ACT, 2003 FOR  
DIRECTIONS

MOST RESPECTFULLY SHOWETH:

1. The Petitioners are companies incorporated under the provisions of the Companies Act, 1956. The Petitioners are the distribution licensees in the State of Gujarat having been vested with the functions of distribution and retail supply of electricity in their respective areas of operation in the State.
2. On 01.06.2011 the Hon'ble Commission notified the Gujarat Electricity Regulatory Commission (Terms and Conditions of Intra-State Open Access) Regulations, 2011 (hereinafter referred to as

“Intra-State Open Access Regulations”). The relevant extracts from the Open Access Regulations are as under:

**“2. Scope**

*These regulations shall apply to open access for use of intra-State transmission system and distribution systems in the State of Gujarat, including when such system is used in conjunction with inter-State transmission system.*

.....

**“3. Definitions**

*(10) In case of inconsistency between any provisions of these regulations and any other regulations or order passed by the Commission the provisions of these regulations shall prevail.”*

.....

**“9. Eligibility for Open Access and conditions to be satisfied**

*(3) Subject to the provisions of these regulations, open access shall be permissible to the consumers seeking open access for a capacity of 1 MW and above.*

*Provided that when a person, who has established a captive generating plant, opts for open access carrying the electricity to the destination of his own use, the limitation of 1 MW shall not be applicable.*

*Provided further that duties of the distribution licensee with respect to such open access customers shall be of a common carrier providing non-discriminatory open access as per section 42(3) of the Act.*

*Provided that the Commission may allow open access to consumers seeking open access for capacity less than 1 MW at such time as it may consider feasible having regard to operational constraints and other factors.”*

In the said Regulations notified by the Hon’ble Commission dealing with the application for Open Access under Regulation 12 in regard to Inter-State transactions the applicable regulation has been stated as the Regulation of the Central Commission as under:

**“15.Procedure for short-term Open Access**

**(1) Involving inter-State transmission system:**  
*Notwithstanding anything contained in clauses (2) to (3) herein below, procedure for inter-State short- term Open Access shall be as per Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, or its statutory re-enactments, as amended from time to time:*

*Provided that in respect of a consumer connected to a distribution system seeking inter-State short-term open access, the SLDC, before giving its consent to the RLDC as required*

*under the Central Commission's regulations, shall require the consumer to submit the consent of the distribution licensee concerned."*

.....

**"28. Scheduling:**

*(1) Notwithstanding anything contained in the succeeding clauses of this regulation, scheduling of inter-State open access transactions shall be as specified by the Central Commission.*

*(2) Subject to the foregoing clause, intra-State open access transactions in respect of consumers of load 4 MW and above and all generating stations irrespective of the capacity shall be scheduled by SLDC in accordance with the orders of the Commission in this regard.*

*(3) There shall be no scheduling required in respect of open access customer having load of less than 4 MW.*

*Provided that the generating station trader/other distribution licensee from which such consumer has contracted power shall be subjected to scheduling requirements in accordance with the orders of the Commission in this regard."*

.....

**"32. Imbalance Charge:**

*(1) Scheduling of all transactions pursuant to grant of long-term access or medium-term open access or short-term open access shall be carried out on day-ahead basis in accordance with the relevant provisions of IEGC/CERC Open Access Regulations for inter-State transactions and in accordance with State Grid Code/Commission's orders for intra-State transactions.*

..... "....."

A copy of the Open Access Regulations, 2011 is attached hereto and marked as **Annexure A**.

3. The Hon'ble Commission held a meeting on 24<sup>th</sup> November, 2011 to discuss various issues raised by the Utilities and Consumers regarding implementation of the Open Access Regulations, 2011 notified by the Hon'ble Commission. During the meeting it was clarified by the Hon'ble Commission that Open Access transactions through Power Exchanges are to be treated as collective transactions and to be dealt with according to the Inter-State Open Access regulations of Central Commission.

A copy of the Minutes of the Meeting held 24.11.2011 is attached hereto and marked as **ANNEXURE B**.

4. The Central Commission vide its Notification dated 06.01.2014 which came into effect on 17.02.2014 issued the CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014 (hereinafter referred to as the “Deviation Settlement Regulations”). In the said Regulations the Central Commission amongst other directed to apply the limits of 12% or 150 MW whichever is lower in case of over drawal and under drawal. The relevant extracts from the Deviation Settlement Regulations are as under:

*“(h) ‘Deviation’ in a time-block for a seller means its total actual injection minus its total scheduled generation and for a buyer means its total actual drawal minus its total scheduled drawal.”*

***“7. Limits on Deviation volume and consequences of crossing limits***

*(1) The over-drawals / under drawals of electricity by any buyer during a time block shall not exceed 12% of its scheduled drawal or 150 MW, whichever is lower, when grid frequency is “49.70 Hz and above”*

*Provided that no overdrawal of electricity by any buyer shall be permissible when grid frequency is “below 49.70 Hz”.*

***Explanation:*** *The limits specified in this clause shall apply to the sum total of over-drawal by all the intra-State entities in the State including the distribution companies and other intra-State buyers, and shall be applicable at the inter-State boundary of the respective State.*

*(2) The under-injection / over-injection of electricity by a seller during a time-block shall not exceed 12% of the scheduled injection of such seller or 150 MW, whichever is lower when frequency is “49.70” Hz and above “*

*Provided that -*

*(i) no under injection of electricity by a seller shall be permissible when grid frequency is “below 49.70 Hz” and no over injection of electricity by a seller shall be permissible when grid frequency is “50.10 Hz and above”.*

*(ii) any infirm injection of power by a generating station prior to COD of a unit during testing and commissioning activities shall be exempted from the volume limit specified above for a period not exceeding 6 months or the extended time allowed by the Commission in accordance with the Connectivity Regulations.*

*(iii) any drawal of power by a generating station prior to COD of a unit for the startup activities shall be exempted from the*

volume limit specified above when grid frequency is “49.70” Hz and above”.

(3) In addition to Charges for Deviation as stipulated under Regulation 5 of these regulations, Additional Charge for Deviation shall be applicable for over-drawal as well as under-injection of electricity for each time block in excess of the volume limit specified in Clause (1) and (2) of this regulation when average grid frequency of the time block is “49.70” Hz and above” at the rates specified in the table A & B below in accordance with the methodology specified in clause (7) of this regulation:

**TABLE -A**

When 12% of Schedule is less than or equal to 150 MW		
(i)	For over drawal of electricity by any buyer in excess of 12% and up to 15% of the schedule in a time block	Equivalent to 20% of the Charge for Deviation corresponding to average grid frequency of the time block.
(ii)	For over drawal of electricity by any buyer in excess of 15 % and up to 20% of the schedule in a time block	Equivalent to 40% of the Charge for Deviation corresponding to average grid frequency of the time block.
(iii)	For over drawal of electricity by any buyer in excess of 20 % of the schedule in a time block	Equivalent to 100% of the Charge for Deviation corresponding to average grid frequency of the time block.
(iv)	For under injection of electricity by any seller in excess of 12% and up to 15% of the schedule in a time block	Equivalent to 20% of the Charge for Deviation corresponding to average grid frequency of the time block.
(v)	For under injection of electricity by any seller in excess of 15 % and up to 20% of the schedule in a time block	Equivalent to 40% of the Charge for Deviation corresponding to average grid frequency of the time block.
(vi)	For under injection of electricity by any seller in excess of 20 % of the schedule in a time block	Equivalent to 100% of the Charge for Deviation corresponding to average grid frequency of the time block.
B When 12% of Schedule is more than 150 MW		
(i)	For over drawal of electricity by any buyer is above 150 MW and up to 200 MW in a time block	Equivalent to 20% of the Charge for Deviation corresponding to average grid frequency of the time block.
(ii)	For over drawal of electricity by any buyer is above 200 MW and up to 250 MW in a time block	Equivalent to 40% of the Charge for Deviation corresponding to average grid frequency of the time block.
(iii)	For over drawal of electricity by any buyer is above 250 MW in a time block	Equivalent to 100% of the Charge for Deviation corresponding to average grid frequency of the time block.
(iv)	For under injection of electricity by any seller is above 150 MW and up to 200 MW in a time block	Equivalent to 20% of the Charge for Deviation corresponding to average grid frequency of the time block.
(v)	For under injection of electricity by any seller is above 200 MW and up to 250 MW in a time block	Equivalent to 40% of the Charge for Deviation corresponding to average grid frequency of the time block.
(vi)	For under injection of electricity by any seller is above 250 MW in a time block	Equivalent to 100% of the Charge for Deviation corresponding to average grid frequency of the time block.

TABLE -B

When 12% of Schedule is less than or equal to 150 MW		
(i)	For under injection of electricity by any seller in excess of 12% and up to 15% of the schedule	Equivalent to 20% of the Cap Rate for Deviations of 303.04 Paise /kWh or the Charge for Deviation corresponding to average grid frequency of the time block, whichever is less.
(ii)	For under injection of electricity by any seller in excess of 15 % and up to 20% of the schedule	Equivalent to 40% of the Cap Rate for Deviations of 303.04 Paise /kWh or the Charge for Deviation corresponding to average grid frequency of the time block, whichever is less.
(iii)	For under injection of electricity by any seller in excess of 20 % of the schedule	Equivalent to 100% of the Cap Rate for Deviations of 303.04 Paise /kWh or the Charge for Deviation corresponding to average grid frequency of the time block, whichever is less.
B When 12% of Schedule is more than 150 MW		
(i)	For under injection of electricity by any seller is above 150 MW and up to 200 MW in a time block	Equivalent to 20% of the Cap Rate for Deviations of 303.04 Paise /kWh or the Charge for Deviation corresponding to average grid frequency of the time block, whichever is less.
(ii)	For under injection of electricity by any seller is above 200 MW and up to 250 MW in a time block	Equivalent to 40% of the Cap Rate for Deviations of 303.04 Paise /kWh or the Charge for Deviation corresponding to average grid frequency of the time block, whichever is less.
(iii)	For under injection of electricity by any seller is above 250 MW in a time block	Equivalent to 100% of the Cap Rate for Deviations of 303.04 Paise /kWh or the Charge for Deviation corresponding to average grid frequency of the time block, whichever is less.

A copy of the Deviation a Settlement Regulations notified by the Central Commission is attached hereto and marked as **Annexure C**.

5. In addition to the above the Central Commission has issued the following, amongst others, regulations presently governing the Inter State Transmission of a Electricity:
  - i) Indian Electricity Grid Code
  - ii) The Short Term Open Access Regulations,
6. On, 10.04.2014 at the seventh Co-ordination meeting with the Petitioners held, the State Load Dispatch Centre, a statutory body exercising functions under section 32 of the Electricity Act, the matters regarding the Short Term Open Access (hereinafter referred to as "STOA") and approval and monitoring procedure, pending HT

connections and network development plan etc were deliberated. The following conclusions were drawn for adoption with immediate effect:

### **“3. Short Term Open Access**

*Short Term Open Access was discussed in length from procedures to the role of DISCOMs. GETCO has asked the feedback from all DISCOMs about the letter written to all DISCOMs from GETCO for short term open access and following feedback were given:*

- **MGVCL**

*a. One Consumer, AIMS, Savali was given notice for drawing less than 1 MW of load round the clock (RTC).*

*b. Two consumers namely JP cement and Ashahi Soungwu have violated the 12% criteria so the notice by MGVCL has been given.*

- **PGVCL**

*a. No consumers have violated the 12% criteria as well as 1 MW criteria.*

- **UGVCL**

*c. No analysis was done by UGVCL officials so it was asked to provide the data to GETCO by next Monday i.e. on April 14, 2014.*

- **DGVCL**

*a. STOA has been curtailed due to grid constraint in upstream network. However, DGVCL was requested to identify consumers from past data who were drawing less than 1 MW RTC or below 12% of NoC capacity in 12 blocks (3 hours).*

*Based on above through deliberation, following conclusions were drawn for adoption with immediate effect:*

- *NoC by DISCOM shall be issued by adding the loss percentage to OA quantum of power.*

- *NoC by DISCOM shall not be issued for those who been drawing less than 1 MW RTC or below 12% of NoC capacity in 12 blocks (3 hours) continuously.*

- *NoC shall not be given beyond CD quantum, both for 11KV and 66KV consumers.*

- *DISCOM to verify power drawl records of previous months and not to issue NoC, if consumer is constantly drawing more than CD quantum (like M/s. L&T in DGVCL). It is true for 11KV consumer also.*



- *STOA is given upto CD and all those who has OA drawl more than CD in actual shall be penalized. We are told, it is not being done correctly.*
- *All DISCOMs to scrutinize the list of consumers who have increased their CD above 1 MW in last year only for the purpose of OA. Their drawl records to be verified and if found that it is actually less than 1 MW RTC, then NoC shall not be issued.*
- *Any consumer demanding increase in CD above 1 MW must be verified at location of consumer before approval.”*

A copy of the Minutes of the Seventh Meeting held on 10.04.2014 and communicated vide letter dated 29.04.2014 is hereto annexed and marked as Annexure D.

7. Thereafter, by letter dated 14.05.2014 the Hon’ble Commission communicated to the Petitioners as under:

*“However, it has been brought to the notice of the Commission that while dealing with the applications for grant of Short Term Open Access, some of the distribution licensees and the SLDC are taking recourse to actions which are either not in line with the regulation or are not mandated by the Commission under any order or regulations. Some of such incidents observed by the Commission are as under:*

***(i) DISCOMs insistence on under drawal to be kept less than 12%***

*The distribution licensees are insisting that the under drawal of the open access customer must not be more than 12% in any time block. The licensee is threatening the customer that if during any time block the underdrawal is more than 12%, the consent granted for open access shall be withdrawn immediately. This condition is being imposed, presumably in view of the Deviation Settlement Regulations notified by the Central Commission.*

*In this regard it may be clarified that so far as the intra-state open access is concerned, the regulations of the Central Commission cannot be unilaterally applied by any licensee unless it has been explicitly adopted by the State Commission. The GERC has already introduced Intra-State ABT mechanism in the state and unless the Commission makes any amendment to it, such action of any licensee is without any authority and a clear violation of the Commission’s ABT order.*

***(ii) DISCOMs insisting on minimum 1 MW drawal at all times:***

*The distribution licensees are insisting that at any time block the drawal of power by the open access customer should not fall below 1 MW. In this regard it is observed by the Commission that it is not realistic to presume that the*



*consumption of any customer shall be constant throughout. Further, the drawal of the consumer may be affected due to breakdown of its plant and machinery. To address such issues, the Commission has provided for imbalance charges in regulation 32 of the Intra-State Open Access Regulations, 2011. The licensee should, therefore, refrain from putting such unrealistic conditions. In fact, the Commission in order to redress the genuine difficulties of the distribution licensees, agreed to their proposal regarding RTC scheduling of open access transactions in suo-motu petition no. 1226/2012. Further, in case of Petition No. 1325 of 2013 and allied matters, the Commission vide its order dated 18.10.2013 clarified that the minimum capacity of 1 MW for availing open access has been stipulated for scheduling and not for drawal at all times.*

.....”

A copy of the letter dated 14.05.2014 issued by the Hon'ble Commission is hereto annexed and marked as **Annexure E**.

On 19.05.2014, Gujarat Energy Transmission Corporation Limited (hereinafter referred to as "GETCO") replied to the letter dated 14.05.2014 providing the details and status of Short Term Open Access applications. A copy of the letter dated 19.05.2014 sent by GETCO is hereto annexed and marked as **Annexure F**.

8. The Petitioner on 21.05.2014 replied to the Hon'ble Commission's letter dated 14.05.2014 on the aspect of the under drawal to be kept less than 12% and the applicability of the regulations of the Central Commission as under:

*Discom's clarifications on the issues mentioned are as under:*

1. **Discoms Insistence on under drawl to kept less than 12%:**

*It is mentioned that Distribution Licensees are insisting that the under drawl of the Open Access customer must not be more that 12% in any time block and are threatening the customer that if during any time block the under drawl is more than 12%, the consent grated for open access shall be withdrawn immediately.*

*It has also been mentioned that the above requirement of 12% has been incorporated by the Distribution Licensees presumably based on the Deviation Settlement Regulations notified by the Central Commission but such Regulations of the Central Commission has no application to the Intra State Open Access. It has been further stated that unless the Hon'ble Commission provides for such 12% requirement in the Intra State ABT Mechanism notified by the Hon'ble Commission, it is no open to the Distribution Licensees to provide for any such condition.*

We respectfully submit our clarification and submissions as under:

- (a) *The Grid System of the State of Gujarat is integrated with the Inter State Grid System mainly operated and maintained by the Central Transmission Utility. The operation of the Intra State Grid System cannot be segregated from the Inter State Grid System. In this regard, the Electricity Act, 2003 specifically provides for the Grid Code having regard to the Grid Standard to be primarily notified by the Central Commission. This is stated so in section 79 (1) (h) read with the definition of the 'Grid Code' contained in section 2 (33) of the Electricity Act, 2003. Section 86 (1) (h) of the Electricity Act provides for the Hon'ble State Commission to specified the State Grid Code consistent with the Grid Code specified under section 79 (1) (h).*
- (b) *Further, section 28 of the Electricity Act provides for the functions of the Regional Load Dispatch Centre which includes optimum scheduling and dispatch of electricity within the region and monitoring of Grid Operation as well as exercising supervision and control over the Inter State Transmission System. Section 32 of the Electricity Act which deals with the functions of the State Load Dispatch Centre and Intra State Operation is subservient to the Inter State Grid Operation. In this regard section 33 of the Electricity Act provides that the State Load Dispatch Centre shall comply with the directions of the Regional Load Dispatch Centre.*
- (c) *In the circumstances mentioned above, the Deviation Settlement Regulations notified by the Central Commission will have an impact on the Intra State Grid Operation. If otherwise, there could be a serious mismatch in the operation of the Grid by the State Utilities and operation of the Grid by the Utilities which have implication on the Inter State Grid. Accordingly, it is respectfully submitted that the requirement of maintaining not more than 12% of under-drawl was considered to be applicable to Intra State Grid Operation also.*

*Without prejudice to the above, it is also relevant to mention that majority of the Open Access consumers are having collective transactions through Power Exchanges under short term arrangement. Hon'ble Commission had held a meeting on 24<sup>th</sup> November, 2011 to discuss various issues raised by the Utilities and Consumers regarding implementation of the Open Access Regulations, 2011 notified by Hon'ble Commission. During the meeting it was clarified by the Hon'ble Commission that Open Access transactions through Power Exchanges are to be treated as collective transactions and to be dealt with according to the Intra-State Open Access regulations of CERC. Meaning thereby, transactions through Power Exchanges are Inter-*

State Transaction and not intra-state and are governed by the regulations notified by Central Commission.

Hon'ble Central Commission has notified, Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014. Regulation 7 of the above notification provides as under:

QUOTE:

7. Limits on Deviation volume and consequences of crossing limits

(1) The Over-drawls / under drawals of electricity by any buyer during a time block shall not exceed 12% of its scheduled drawal or 150 MW, whichever is lower, when grid frequency is "49.70" Hz and above" Provided that no over drawal of electricity by any buyer shall be permissible when grid frequency is "below 49.70Hz"

UNQUOTE:

It is further provided at Regulation 5 (iii) that the charges for the Deviation for the under drawls by the buyer in a time block in excess of 12% o the Schedule or 150 MW, whichever is less, shall be zero and at regulation 7(4) that in addition to charges for deviation as stipulated under regulation 5 of these regulations, Additional Charge for deviation shall be applicable for over-injection / under drawl of electricity for each time block by a seller/ buyer as the case may be when grid frequency is "50.10 Hz and above" at the rates equivalent to charges for deviation corresponding to the grid frequency of "below 50.01 Hz but not below 50.0 Hz".

Gujarat is power surplus and well disciplined state, and has been adhering "Schedule" or to remain in the under-drawl state. Under drawl by the Open Access consumers by more than 12% results in payment liability of the GUVNL [in turn to DISCOMs] as a regional entity or reduces GUVNL's and in turn DISCOMs receivables, which in turn pass on to the General body of consumers.

It is further provided at Regulation 7(10) that in the event of sustained deviation from schedule in one direction (Positive or negative) by any regional entity, such regional entity (buyer or seller) shall have to make sign of their deviation from schedule change, at least once, after every 12 times blocks.

In view of the above, it is respectively submitted that Open Access consumers may not under draw more than 12% of its scheduled energy for consecutive 12 time blocks or more. Therefore, above stipulation is rightly insisted by the Distribution Companies from the Open Access consumers. It is to clarify that DISCOMs are insisting that under drawal should not be more than 12% for consecutive 12 time blocks OR more and not raising any issue for few isolated instances of under drawals.

**2. DISOMs Insisting on minimum 1 MW Drawl at all times:**

*It is mentioned that the distribution licensees are insisting that at any time block the drawl of power by an open access customer should not fall below 1 MW. In this regard it is observed by the Commission that it is not realistic to presume that the consumption of any customer shall be constant throughout. Further, the drawl of the consumer may be affected due to breakdown of its plant and machinery. To address such issues, the Commission has provided for imbalance charges in regulation 32 of the Intra-State Open Access Regulations, 2011. The licensee should, therefore, refrain from putting such unrealistic conditions. In fact, the Commission in order to redress the genuine difficulties of the distribution licensee, agreed to their proposal regarding RTC scheduling of open access transactions in Suo-motu Petition No. 1226/2012. Further, in case of Petition No. 1325 of 2013 and allied matters, the Commission vide its order dated 18.10.2013 clarified that the minimum capacity of 1 MW for availing open access has been stipulated for scheduling and not for drawal at all times.*

*In regard to the above, we wish to clarify the position as under:*

*The 5<sup>th</sup> proviso to section 42(2) of the Electricity Act, 2003 provides that "Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003 (57 of 2003) by regulations, provides such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.*

*Above proviso implies that consumer should establish through its drawl that its power requirement exceeds one megawatt atleast at some point of time. Actual drawal less than 1 MW on consistent basis is not permitted. Accordingly, it is insisted that open access consumer should establish through its drawl that its actual requirement of power is more than one megawatt by drawing more than one megawatt power at least during any one of the time block in a calendar month and to be eligible for availing power supply through open access in the ensuing month. It is so clarified that we are not taking any action for not drawing power of 1 megawatt in all the time block but we are insisting that consumer should establish that he is a consumer of one megawatt by drawing one megawatt power in any time block during the Open Access period.*

*It is respectfully submitted that there is a rationale for restricting the Open Access for consumers who avail at any point of time the quantum of electricity through Open Access of 1 MW. The intention is clear, namely, that there should be a drawal through Open Access of 1 MW at least for some time. The Open Access Regulations cannot be violated in an indirect manner in seeking Open Access for more than 1 MW but availing on a consistent basis less than 1 MW. The provisions of the Act and Regulations need to be interpreted in a manner consistent with the scheme and objective of the Act.*

..... ”  
 A copy of the letter dated 21.05.2014 is hereto annexed and marked as Annexure G.

9. On 26.05.2014, GETCO communicated to the Hon'ble Commission inter aliam as under:

“..... ”

*Point-1*

*“DISCOMs insistence on under drawal to be kept less than 12%”*

*In this regard, we request you to refer to the reply of PGVCL vide letter dated 21.05.2014 and we agree in toto.*

*Further to above we wish to add following:*

*Your contention that “regulation of Central Commission cannot be unilaterally applied by any licensee unless it has been explicitly adopted by the State Commission” requires to be clarified in line with GERC regulation No. 3 of 2010 and subsequent amendment of intra state ABT.*

*SLDC has to strictly adhere to CERC regulation of DSM w.e.f. 17.02.14 and grid is being operated accordingly. We have insisted on open access consumer to follow DSM mechanism after this date only. It is absolutely essential for all the stake holders to follow the mechanism; otherwise, SLDC would be issued notices for violating the mechanism. To support further, we wish to point out following regulation:-*

*Para 8 of Intra state ABT order 3 of 2010 provides for:*

*“The basic UI rate for intra-state entities in Gujarat shall be in line with the CERC notifications on the matter as amended from time to time.*

*And para 10 provides for:*

*“levy of additional UI charges at the rate stipulated in CERC from time to time.*

*It is essential to keep these rates also applicable to the entities of Intra State ABT in line with above to avoid mismatch in energy accounting of Regional Pool as well as State Pool.*

*On one side, when the energy accounting is done as per operation rules of the DSM, how can we provide exemption to any consumer in the grid when the entire open access is carried out through exchange in ISTS network. We also wish to draw the attention of Hon'ble Commission to clause 4 of DSM regulation which reads as follows:*

*“These regulations shall be applicable to sellers and buyers involved in the transactions facilitated through short-term open access or medium-term open access or long-term open access in inter-State transmission of electricity.”*

*It would be inappropriate of DISCOMs to face the under drawl / over drawl, violation of open access consumer without having their own deviation.*

*DISCOM has legitimately issued notices to consumers in light of above and therefore, there is not breach of regulations for the safe operation of the grid with the stipulated band of 12 % schedule or 150 MW whichever is less.*

*Point-2*

*“DISCOMs insisting on minimum 1 MW drawal at all times.”*

*In this regard, we request you to refer to the reply of PGVCL vide letter dated 21.04.2014 and we agree in toto.*

*Hon’ble GERC is recognizing imbalance charges in regulation 32 of intra state open access regulation. If it is true, then SLDC should not be reprimanded for 12% deviation as under point No. 1*

*Further, it is to state that RTC scheduling itself means adhering to drawl. Further, the Commission order No. 1226/2012 and 1325 of 2013 dated 18.10.2013 is not telling anything about drawl at all time. To put this matter of minimum 1 MW drawl to rest, we draw the attention of Commission to section 42 of Electricity Act, 2003 which reads as follow:*

*Fifth proviso:*

*“Provided also that the State Commission shall, not be later than five years from the date of commencement of the Electricity (Amendment) Act 2003, by regulations, provided such open access to all consumers who require as supply of electricity where the maximum power to be made available at any time exceeds one megawatt.”*

*The Act is supreme and binding on all. Therefore, we will have to adhere to limit of exceeding of 1 MW. DISCOMs have legitimately issued notices to consumers in light of above and therefore, there is no breach of regulations for the safe operation of the grid.*

*.....”*

A copy of the letter dated 26.05.2014 is hereto annexed and marked as Annexure H.

- 10. By communication dared 04.06.2014 the office of the Hon’ble Commission has stated as under:

*“Sub: Implementation of Intra-State Open Access*

*The Commission has received your letter No. PGVCL/Reg. Cell/T-4300 dated 21.05.2014 wherein you have sought to justify the actions taken by you with reference to the short-term open access consumers.*

*In this regard, it is to state that the Commission vide its letter dated 14.5.2014 has issued clear guidelines for implementation of intra-state open access which are required to be adhered to by the distribution companies. As mentioned in the above letter, in case you face any difficulty in giving effect to these guidelines you are at liberty to approach the Commission as provided in clause 15 of the Open Access Regulations. In the meantime, the guidelines issued under letter dated 14.5.2014 are required to be strictly followed until otherwise changed or modified by the Commission.*

.....”

A copy of the impugned decision dated 04.06.2014 is attached hereto and marked as **ANNEXURE I**.

11. Aggrieved by the letter dated 04.06.2014 the Petitioners filed an Appeal before the Hon’ble Appellate Tribunal for Electricity being No. 1777 of 2014. By order dated 21.8.2014 the Hon’ble Tribunal has decided the Appeal as under:

.....

We are not inclined to entertain this Appeal at this stage since the State Commission itself in the Letter date 04.6.2014 observed that the Appellant is at liberty to approach the State Commission as provided in Clause 45 of the Open Access Regulations if there is any difficulty in giving effect to the guidelines.

If he Applicant feels that the guidelines would not be applicable to him it would be appropriate to direct the Applicant to file an Application before the State Commission contending that these guidelines would not be applicable to him. Accordingly directed. The Applicant shall file such an Application within 10 days. In such an event, the State Commission may entertain such an Application and hear the parties concerned and pass an Order in accordance with Law through the reasoned Order as expeditiously possible.

..

12. In pursuance to the above the Petitioners are filing the present petition for appropriate directions from the Hon’ble Commission. The issues for consideration of the Hon’ble Commission is in regard to
- i) Direction to the Distribution Licensees to not follow the Deviation Settlement Regulations and other applicable



Regulations of the Central Commission in dealing with Short Term Open Access to be allowed.

- ii) View that the regulations of the Central Commission cannot be applied by the Petitioners for intra state open access when the operation of the Intra-State Grid System cannot be segregated from the Inter State Grid System and the entire grid system is integrated.

13. The Petitioners respectfully states that the requirements of 12% margin as specified in the Deviation Settlement Regulations of the Central Commission and similar conditions contained in the Regulations of the Central Commission need to be followed. The intra state transmission system can be subjected to Deviation and Settlement in a manner independent of the Inter State Transmission System when the operation of the Intra State Grid System cannot be segregated from the Inter State Grid System and both are integrated system and their respective operations having implications on each other.
14. The Petitioners further submits that in any event the transaction and short term open access involved were Inter State and not Intra State as the open access users were procuring power through power exchange which is by law deemed to be Inter State or through bilateral purchases from sources outside the a State of Gujarat which is again an Inter State transaction. Accordingly the short term open access needs to be regulated as per the applicable Regulations of the Central Commission including the Deviation Settlement Regulations and therefore the conditions of 12% margin need to be applied.
15. Section 32 of the Electricity Act which deals with the functions of the State Load Dispatch Centre and Intra-State Operation is subservient to the Inter State Grid Operation and directions of the Regional Load Dispatch Centre. In this regard section 33 of the Electricity Act specifically provides that the State Load Dispatch Centre shall comply with the directions of the Regional Load Dispatch Centre. Accordingly it is not open to the Appropriate State Commission not to follow the requirements under the Regulations of the Central Commission or direct the Petitioners to act in a manner contrary to the directions of the Regional Load a Dispatch Centre

even in regard to Intra State Short Term Open Access much less in the case of Inter State Open Access.

16. The Petitioners submit that the Deviation Settlement Regulations notified by the Central Commission will have an impact on the Intra State Grid Operation. If otherwise, there could be a serious mismatch in the operation of the Grid by the State Utilities which will have an implication on the Inter State Grid. In any event most of the Open Access Users are having collective transactions through Power Exchanges under short term arrangement and the same are inter State Transactions.
17. It is respectfully submitted that requirements specified in the letter dated 4.6.2014 is contrary to the decision taken by the Hon'ble Commission earlier when the Hon'ble Commission had clarified that the Open Access transactions through Power Exchanges are to be treated as collective transactions and to be dealt with according to the Inter-State Open Access regulations of Central Commission. The transactions through Power Exchanges being Inter-State Transaction and not intra-state the same are to be governed by the regulations notified by Central Commission.
18. It is also submitted that the utilities in Gujarat are required to remain within the scheduling and dispatch mechanism of the Central Commission to maintain Grid Security and avoid actions being taken by authorities dealing with the Integrated Grid. The Under drawl by the Open Access consumers by more than 12% besides exposure to actions by authorities results in payment liability to the Distribution Licensee as a regional entity with financial implications to consumers in the state. The scheme of the provisions of the Electricity Act 2003 is clear. Section 28 of the Electricity Act provides for the functions of the Regional Load Dispatch Centre which includes optimum scheduling and dispatch of electricity within the region and monitoring of Grid Operation as well as exercising supervision and control over the Inter State Transmission System. Section 32 of the Electricity Act which deals with the functions of the State Load Dispatch Centre and Intra State Operation is subservient to the Inter State Grid Operation. Section 33 of the Electricity Act provides that the State Load Dispatch Centre shall comply with the directions of the Regional Load Dispatch Centre. The requirement of 12% has been

specified by the Central Commission is on account of Grid Security and there is a mandate to follow the same. The Open Access Users cannot be allowed to indirectly violate the Open Access Regulations which restricts open access for 1 MW and above by taking such open access for 1 MW but availing on a consistent basis the actual access to less than 1 MW. The provisions of the Act and Regulations need to be interpreted in a manner consistent with the scheme and objective of the Act.

19. The Deviation Settlement Regulations notified by the Central Commission requires the Open Access consumers not to under draw more than 12% of its scheduled energy for consecutive 12 time blocks or more for maintaining Grid Security. Therefore, the above stipulation is being rightly insisted by the Distribution Companies from the Open Access consumers. The fifth proviso to section 42(2) of the Electricity Act, 2003 envisages that a consumer should establish through its drawl that its power requirement exceeds one megawatt atleast at some point of time. Actual drawal less than 1 MW on consistent basis is not permitted. Accordingly, the open access consumer should establish through its drawl that its actual requirement of power is more than one megawatt by drawing more than one megawatt power at least during any one of the time block in a calendar month to be eligible for availing power supply through open access in the ensuing month.
20. In the circumstances mentioned above it is submitted that the direction contained in the letter dated 4.6.2014 need to be considered by the Hon'ble Commission.
21. It is respectfully prayed that this Hon'ble Commission may be pleased to direct that the letter dated 4.6.2014 issued by the office of the Commission be withdrawn and pass such further orders as may be considered appropriate.

**PETITIONERS/AUTHORIZED OFFICER**

**DATE: 05 .09.2014**

**PLACE: Rajkot**

**:BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION**

**GANDHINAGAR**

**PETITION NO. .... OF 2014**

**IN THE MATTER OF:**

Guidelines dated 04.06.2014 issued by the Office of the Hon'ble Commission

**AND**

**IN THE MATTER OF:**

3. Paschim Gujarat Vij Company Limited  
Paschim Gujarat Vij Seva Sadan,  
Nana Mava Road, Laxminagar,  
Rajkot -360 004
4. Dakshin Gujarat Vij Company Limited,  
"Urja Sadan"  
Nana Varachha Road,  
Kapodara Char Rasta, Surat - 395 006
3. Madhya Gujarat Vij Company Limited  
Sardar Patel, Vidyut Bhavan Race Course,  
Vadodara - 390 007 Gujarat
4. Uttar Gujarat Vij Company Limited,  
UGVCL Regd. & Corporate Office,  
Visnagar Road, Mehsana - 384 001

**...Petitioners**

**AFFIDAVIT**

I, Jasmin Gandhi, S/o Shri Jayantilal Gandhi, aged about 47 years, resident Radhe Krushna, 1 Jasani Park, Rajkot, do hereby solemnly affirm and state as under:

1. I say that I am Superintending Engineer in the Petitioner No. 1, Paschim Gujarat Vij. Company Limited and am competent to swear the present affidavit. I say that I am authorized on behalf of all the Petitioners to file the present appeal.
2. I say that I have read the contents of the above Petition filed by the Petitioners relating to the letter dated 04.06.2014 issued by the office of the Hon'ble Commission and I have understood the contents of the same.

3. I say that the contents of the above Petition filed by the Petitioners are based on the information available with the Petitioners in the normal course of business and believed by me to be true.
4. I say that the Annexures to the Petition are the true and correct copies of their original.

**DEPONENT**

**VERIFICATION**

I, the deponent above-named, do hereby verify the contents of the above affidavit to be true to the best of my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at Rajkot on this 5<sup>th</sup> day of September , 2014.

**DEPONENT**