

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT  
GANDHINAGAR**

**I.A. No. 33 OF 2021**

**IN**

**PETITION No. 1973 OF 2021**

In the matter of:

Filing of Petition under Section 61, 62 read with 64 & 86 (1) (a) of the Electricity Act, 2003, invoking Regulations 58, 72, 80 and 83 of the Gujarat Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 seeking clarification/rectification and review of the Commission's order dated 31<sup>st</sup> March, 2021 in Case No. 1926 of 2021 for Truing up for FY 2019-20 and determination of tariff for FY 2021-22 for its Distribution Business of Ahmedabad Supply Area

Petitioner

Represented by

Torrent Power Limited  
Advocate Ms. Deepa Chawan,  
Advocate Ms. Reshmarani Nathani,  
Advocate Ms. Ruchi Patil, Shri Chetan Bundela,  
Shri Jignesh Langalia, Ms. Luna Pal, Shri Mihir Thakkar  
Ms. Ankita Dixit

**CORAM:**

**Shri Mehul M. Gandhi, Member**

**Shri S. R. Pandey, Member**

**14/02/2022**

**ORDER**

1. The matter has been heard on 05.01.2022 through virtual mode considering the COVID-19.
2. Learned Advocate Ms. Deepa Chawan, on behalf of the Petitioner reiterated that the present Interim Application is filed by the Petitioner

under Sub-section 2 of Section 94 of the Electricity Act, 2003 read with regulation 61 of the GERC (Conduct of Business) Regulations, 2004 for seeking interim relief on the issue of ceiling limit imposed on FPPPA erroneously, only on the Petitioner in the order dated 31.03.2021 in Petition No. 1926 of 2021 whereas other utilities have not been subjected to any such ceiling limit by the Commission. The Petitioner requested to allow the FPPPA without any ceiling, subject to subsequent prudent check and allow incremental limit of FPPPA as Rs. 0.10 / Unit on quarterly basis as permitted to other Distribution Licensees of the State.

3. She further submitted that this interim relief is sought in view of the fact that neither the Electricity Act, 2003 nor the Regulations framed by the Commission inter alia under Section 181 of the Act, the Policies framed under Section 3 of the Act any delegated legislation or statutory provision framed under the provisions of the Act, contemplate imposition of any such ceiling on levy of FPPPA. It is contrary to the provisions made in above statutory provisions which state that recovery of FPPPA is uncontrollable and its timely pass on is desirable. Therefore, the ceiling limit imposed in FPPPA in aforesaid order by the Commission is contrary to the Regulatory Mandate and Legal Framework.

4. She further argued that there is an error in imposing ceiling limit on FPPPA charges in the impugned tariff order dated 31.03.2021 wherein it is stated that ceiling limit of FPPPA for FY 2021-22 is of Rs. 2.11 per kWh is seems as an inadvertent error crept in the said Order. There is no such ceiling limit provided in FPPPA in case of other distribution licensee area. It is also against clause 8.2.7 of the tariff policy 2016 notified by the Government of India and also the Order passed by the Commission. Section 62 (4) of the Electricity Act also permits timely pass on fuel cost adjustment charges to the licensees to recover the cost incurred towards fuel cost variance in purchase of energy. The FPPPA is permitted to be revised in the financial year as decided by the Commission. Thus, the imposing of ceiling dilutes the essence of FPPPA. It is also contrary to the provisions of Act, the Regulations notified under the Act and the tariff policy.

5. Moreover, she submitted that the Ministry of Power, Government of India has recently issued an office circular dated 09.11.2021 specifying that auto recovery of fuel and power procurement cost adjustment charges, if any arise, should be passed through immediately, subject to verification of the relevant papers / calculation sheets and confirming such pass through for ensuring the viability of Distribution Company and availability of supply to meet the expected increase in demand. She further submitted that the Petitioner is adversely impacted due to higher fuel and power purchase cost

on account of unprecedented and unforeseen situations and the same is not being recovered due to the ceiling limit of Rs. 2.11/kWh being imposed vide the Tariff Order dated 31.03.2021.

6. She further submitted that in light of Section 94 (2) of the Electricity Act, 2003 read with Regulation 61 of the GERC (Conduct of Business) Regulations, 2004, there is no embargo on the Commission in passing the interim order as the Commission may consider appropriate. Further in support of the above, she relied on the judgment dated 29.03.2006 of the Hon'ble Tribunal in Original Petition No.1 of 2006, wherein it was held at para 13 that the Respondent No. 1, CERC, being a statutory Quasi-judicial authority should exercise its statutory powers and discharge its functions in the light of its own independent perspective and act within the four corners of the statute. She further submitted that Central Electricity Regulatory Commission in its Order dated 26.03.2020 at para 21 in IA No. 79 of 2019 in Petition No. 155/MP/2019, issued an interim direction to the Respondents in view of its relevant regulation of its Conduct of Business Regulations.
7. The contention of the Petitioner/applicant that the ceiling / cap provided on FPPPA charges affect the recovery of the incremental cost of fuel and power procurement by the licensee at the earliest and it is also against the

Circular issued by the Ministry of Power, Government of India dated 09.11.2021, we note that the FPPPA charges recovery is provided in the Act and Order of the Commission with a view that the same may be recovered by the licensee at appropriate time. Moreover, the variation if any, the recovery of FPPPA charges is reflected in the ARR/True-up of the distribution licensee. Hence, the recovery of FPPPA charges by the licensee reflected in the consumer bills as and when the same arise and approve by the Commission. Any such non recovery or pendency or delay in recovery will have to be given effect in future. The temporary removal of ceiling, provided in the Order dated 31.03.2021 will help the licensee/Petitioner/Applicant to recover the amount at the earliest as allowed in case of other licensees.

8. We have carefully considered the submission made by the Petitioner. We observe that the Commission vide its Order dated 29.10.2013 in Petition Nos. 1309 and 1313 of 2013 laid down following requirement:

“...

*For any increase in FPPPA, worked out on the basis of above formula, beyond ten (10) paise per kWh in a quarter, prior approval of the Commission shall be necessary. And only on approval of such*

*additional increase by the Commission, the FPPPA can be billed to the consumers.*

*This formula shall be applicable for the calculation of FPPPA w.e.f. Q3 FY 2013-14 and onwards for both GUVNL/Discoms and TPL...”*

We further note that the Commission vide Tariff Order dated 31.03.2021 in Petition No. 1926 of 2021 made the Petitioner’s quarterly FPPPA claims conditional then the prevailing FPPPA charge of Rs. 2.11 / kWh as the ceiling limit for FY 2021-22. We also take into consideration the fact that such ceiling limit with respect to quarterly FPPPA charges for FY 2021-22 has not been introduced for other electricity distribution licensees of the State by the Commission.

9. The Petitioner has also relied upon the Circular dated 09.11.2021 by the Ministry of Power, Government of India emphasizing an automatic pass through of the fuel and power procurement cost and thereby a timely recovery of cost in view of uninterrupted supply to meet the expected increase in demand, inter alia, lesser working capital requirements resulting into lower cost of power and overall viability of the power sector.
  
10. The Review Petition in the impugned Tariff Order is pending for hearing. The review consists of several other issues which may require hearing and

the disposal of review is likely to take time at present. We also note that the current Interim Application is filed in Petition No. 1973 of 2021. The Interim Application is also subject to final outcome of the pending Review Petition.

11. In view of the above discussion, we find it expedient to grant the temporary relief as prayed in this interim application at this juncture to the effect by amending the ceiling of Rs. 2.11 per unit in FPPPA Charges with effect from the present quarter to Rs. 2.21 per unit in FPPPA Charges subject to other conditions of approval of the Commission for beyond the increase of 10 paisa and prudence check till the hearing and disposal of IA and the Review Petition. The Petitioner is directed to supply copies of the IA to the objectors. The staff of the Commission is directed to keep the virtual hearing in Review Petition No. 1973 of 2021 at an early suitable date.
12. Therefore, the following order is passed.

### **Order**

13. Pending the hearing and final disposal of this IA and the Review Petition the FPPPA ceiling impose Order dated 31.03.2021 in Petition No. 1926 of 2021 is temporarily amended as above which shall be subject to the other

conditions as mention in the said order and prudent check and approval as is being done in case of other utilities.

14. We order accordingly.

Sd/-  
**[S. R. Pandey]**  
**Member**

Sd/-  
**[Mehul M. Gandhi]**  
**Member**

Place: Gandhinagar  
Date: 14/02/2022

