

PIN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 301 OF 2026
AND
APPEAL No. 317 OF 2026

Dated: 23rd OCTOBER, 2026

Present: Hon`ble Ms. Seema Gupta, Officiating Chairperson
Hon`ble Mr. Virender Bhat, Judicial Member

APPEAL NO. 301 OF 2026

In the matter of:

Gujarat State Electricity Corporation Limited,
Through its General Manager (Finance and Accounts)
Vidyut Bhavan,
Race Course,
Vadodara – 390007.

... Appellant(s)

VERSUS

1. Gujarat State Electricity Regulatory Commission
Through its Secretary,
6th Floor, GIFT ONE,
Road 5C, Zone 5, GIFT City,
Gandhinagar, Gujarat-382355.

2. Gujarat State Vikas Nigam Limited
Through its Managing Director,
Sardar Patel Vidyut Bhawan,
Race Course Circle,
Vadodara – 390007.

.... Respondent(s)

Counsel on record for the Appellant(s) : Ms. Poorva Saigal
Mr. Shubham Arya
Ms. Pallavi Saigal
Mr. Rishabh Saxena

Ms. Kaavya Madaan
Ms. Shirin Gupta
Ms. Shree Dwivedi
Ms. Harsha Parakh for App. 1

Counsel on record for the Respondent(s) : Ms. Suparna Srivastava for Res. 1

Ms. Ranjitha Ramachandran
Ms. Srishti Khindaria
Mr. Aneesh Bajaj for Res. 2

APPEAL NO.317 OF 2026

In the matter of:

Gujarat State Electricity Corporation Limited,
Through its General Manager (Finance and Accounts)
Vidyut Bhavan,
Race Course,
Vadodara – 390007.

... Appellant(s)

VERSUS

1. Gujarat State Electricity Regulatory Commission
Through its Secretary,
6th Floor, GIFT ONE,
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Through its Managing Director,
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Ms. Shirin Gupta
Ms. Shree Dwivedi
Ms. Harsha Parakh for App. 1

Counsel on record for the Respondent(s) : Ms. Suparna Srivastava for Res. 1

Ms. Ranjitha Ramachandran
Ms. Srishti Khindaria
Mr. Aneesh Bajaj for Res. 2

JUDGEMENT

PER HON'BLE MRS. SEEMA GUPTA, OFFICIATING CHAIRPERSON

1. The present batch of appeals, being **Appeal No. 301 of 2026** and **Appeal No. 317 of 2026**, have been filed by Gujarat State Electricity Corporation Limited (“**GSECL**”) against the orders dated 26.05.2026 (hereinafter referred as “**Impugned Order 1**”) and 17.06.2026 (hereinafter referred as “**Impugned Order 2**”), passed by the Gujarat Electricity Regulatory Commission in Petition No. 2459 of 2025 and Petition No. 2434 of 2024 respectively. These Petitions pertained to approval of Supplementary Power Purchase Agreements (“**SPPAs**”) executed between GSECL and Gujarat Urja Vikas Nigam Limited (“**GUVNL**”) for extension of the existing Power Purchase Agreements in respect of transferred generating stations of GSECL and Wanakbori Thermal Power Station, Unit-7 (“**WTPS-7**”) respectively. GSECL is aggrieved by the decision of the State Commission in the Impugned Orders restricting the Return on Equity (“**RoE**”) to 11% during the extended period of the SPPAs, instead of the normative RoE of 13% prescribed under Regulation 35.2 of the Gujarat Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2024, and by the consequential direction requiring GSECL to furnish an unconditional undertaking permanently foregoing the differential RoE.

Description of parties

2. Gujarat State Electricity Corporation Limited (“**GSECL**”), the Appellant in both the Appeals, is a generating company engaged in generation of electricity in

the State of Gujarat. GSECL is the successor generating company of the erstwhile Gujarat Electricity Board (**“GEB”**). It owns and operates various generating stations in the State of Gujarat.

3. Gujarat Electricity Regulatory Commission (**“GERC”/“State Commission”**), the Respondent No.1 in both Appeals, is the State Regulatory Commission for the State of Gujarat, constituted under Section 82(1) of the Electricity Act, 2003 and is vested with the statutory functions and powers under the said Act.

4. Gujarat Urja Vikas Nigam Limited (**“GUVNL”**), the Respondent No.2 in both the Appeals, is a Government of Gujarat undertaking engaged in procurement and bulk supply of electricity and functions as the holding/nodal company for the electricity distribution utilities in the State of Gujarat.

Factual matrix of the Case:

5. Appeal No. 301 of 2026 concerns transferred generating stations covered in the PPA dated 07.01.2010 executed between GSECL and GUVNL and was effective from 01.04.2010 for an original aggregate capacity of 3992 MW and was initially stipulated for a period of 15 years, with provision for extension by mutual agreement. Subsequently, certain generating units having an aggregate capacity of 1080 MW were retired, leaving 2912 MW of generating capacity in operation. Prior thereto, the State Commission, vide Tariff Order dated 31.03.2017 in Case No. 1619 of 2016, had approved capital expenditure towards R&M, efficiency improvement, environmental compliance and life-extension works for these generating stations. Similar expenditure and capitalization towards R&M, turbine and ESP retrofitting and life-extension works were subsequently considered and approved by the State Commission in its Tariff Order dated 31.03.2023 in Case No. 2162 of 2022.

6. On 20.01.2023, the Central Electricity Authority (“CEA”) issued a communication advising power utilities not to retire thermal generating units and to undertake R&M and life-extension measures so as to improve their flexibility and reliability, having regard to the expected demand scenario and availability of generating capacity.

7. In the context of continuation of the aforesaid transferred generating stations, GSECL submitted its request for extension of the PPA on 28.03.2024. Thereafter, GUVNL considered procurement of power from the transferred generating stations and its Board vide Resolution dated 29.10.2024, approved the proposal for purchase of power and for seeking approval of the State Commission. Pursuant thereto, GSECL and GUVNL executed the Supplementary PPA (SPPA) dated 18.02.2025 for extension of the PPA. On 20.02.2025, GUVNL filed Petition No. 2459 of 2025 before the State Commission under Sections 86(1)(b) and 62 of the Electricity Act, 2003, seeking approval of the SPPA and extension of the PPA for the transferred generating stations having an aggregate capacity of 2912 MW, up to 01.04.2030 or the useful life of the plants, whichever is earlier.

8. Appeal No. 317 of 2026, concerns a different generating station, namely Unit 7 of Wanakbori Thermal Power Station (WTPS-7), having capacity of 210 MW. In respect of WTPS-7, GSECL and the erstwhile Gujarat Electricity Board had executed a PPA dated 22.01.1997 for a period of 25 years, which contained a provision for extension by mutual consent. GSECL subsequently sought continuation of the arrangement and, on 28.03.2024, requested extension of the PPA for a further period.

9. Pursuant thereto, GSECL and GUVNL executed the SPPA dated 13.11.2024 for extension of the period of WTPS-7. Thereafter, on 11.12.2024,

GUVNL filed Petition No. 2434 of 2024 before the State Commission under Sections 86(1)(b) and 62 of the Electricity Act, 2003, seeking approval of the said SPPA and extension of the PPA dated 22.01.1997 for WTPS-7 up to 01.04.2030 or the actual useful life of the plant, whichever is earlier.

10. During the pendency of the aforesaid proceedings, the State Commission, on 31.03.2025, passed the Tariff Order in Case No. 2418 of 2024 for the MYT Control Period from FY 2025-26 to FY 2029-30, including the transferred generating stations, and WTPS 7, wherein RoE was considered at 13% in terms of the Gujarat Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2024 ("MYT Regulations, 2024").

11. The State Commission passed the Impugned Order 1 dated 26.05.2026 in Petition No. 2459 of 2025, whereby it approved the SPPA dated 18.02.2025 but directed that the RoE for the transferred generating stations totaling to 2912 MW (Ukai Units 3 to 5, Gandhinagar Unit 3 and 4, Wanakbori Unit 1 to 6, KLTPS Unit 3, Ukaio Hydro and kadana Hydro), during the extended period be restricted to 11%. The State Commission passed the Impugned Order 2 dated 17.06.2026 in Petition No. 2434 of 2024, and approved the SPPA for WTPS – 7 dated 13.11.2024, restricting the ROE to 11 % during the extended period. The State Commission further directed GSECL to furnish an unconditional undertaking stating that it would claim RoE at 11% instead of the normative RoE and that the differential RoE would be permanently foregone and would not be recouped at the stage of Mid-Term Review, truing-up or future tariff proceedings.

12. Aggrieved by the restriction of ROE to 11 % instead of base ROE of 13 % in terms in applicable Regulation for the generating projects, Appellant has filed Appeal No 301 of 2026 assailing the Order dated 26.05.2026 (**Impugned Order**

1) and Appeal No. 317 of 2026 assailing the order dated 17.06.2026 (**Impugned Order 2**).

SUBMISSIONS URGED ON BEHALF OF APPELLANT

13. Learned counsel for the Appellant submits that the State Commission in the Impugned Orders, has held that the “normative RoE is not an inflexible figure in every factual situation” and, at Para 10.7 of the Impugned Order 1, has concluded that the present case is an appropriate case for applying the lower RoE mechanism recognised under Regulation 35.2. It is submitted that Regulation 35.2 expressly provides that a base RoE of 13% per annum “shall be allowed” on the equity capital determined under the MYT Regulations and does not confer any power upon the State Commission to unilaterally prescribe a lower RoE in the absence of a voluntary claim by the generating company. Under Regulation 35.2, mechanism for allowing a lower RoE is triggered only upon a voluntary claim by the generator.

14. The Appellant further submits that the regulations framed by the State Commission in exercise of its statutory regulation-making power are binding and that the regulatory and adjudicatory functions must be exercised strictly in accordance therewith, as held by the Hon’ble Supreme Court in ***PTC India Ltd. v. CERC, (2010) 4 SCC 603***. Regulation 35.2 of the MYT Regulations, 2024, framed by the State Commission under Section 181 of the Electricity Act, categorically prescribes a Base RoE of 13% and does not create any separate category of generating stations operating under an extended PPA or permit a different Base RoE to be prescribed for TGS or old generating stations. The Appellant further submits that no relaxation whatsoever was provided under the MYT Regulations in respect of O&M norms or operating parameters such as Heat Rate, PAF, PLF and Auxiliary Consumption for TGS/old generating stations.

Inspite of that, GSECL Stations shown consistent improvements in performance parameters in last three years.

15. The Appellant contends that Respondent No.2 filed the petition under Section 86(1)(b) of the Act seeking approval of the SPPA dated 18.02.2025 in Appeal No. 301 of 2026 and dated 13.11.2024 in Appeal no. 317 of 2026 , which empowers the State Commission to regulate the electricity purchase and procurement process of distribution licensees, including the price at which electricity is procured through agreements for purchase of power, but does not empower it to rewrite mutually negotiated contractual terms. By directing the Appellant and Respondent No.2 to incorporate a modification in the SPPA to give effect to 11% RoE, the State Commission has travelled beyond the scope of approval of the SPPA and effectively rewritten its terms by introducing a tariff condition not sought by the parties. The State Commission itself recorded in the Impugned Orders that approval of the SPPA does not amount to automatic approval of all tariff components and that tariff determination would continue to be governed by the applicable Regulations and tariff orders; having so held, it could not simultaneously determine the RoE contrary to Regulation 35.2 of the MYT Regulations, 2024.

16. State Commission has erroneously held that the earlier MYT approval “cannot be construed as conferring an indefeasible right upon GSECL to claim base RoE at 13%”. By way of the Tariff Order dated 31.03.2025 in Case No. 2418 of 2024, the State Commission had determined the ARR of GSECL for the MYT Control Period FY 2025-26 to FY 2029-30, including TGS, and expressly allowed Base RoE of 13% in terms of Regulation 35.2. The said Order was neither reviewed nor challenged by any party and has attained finality; accordingly, the State Commission had become functus officio in respect of the RoE so determined and could not re-open or alter the same through the Impugned Order.

17. It is further submitted that, in Impugned Order 1 (Appeal No. 301 of 2026), the State Commission, at Para 10.3, recognised that Transferred Generating Stations (**TGS**) have system value and provide dispatchable and regulated capacity for meeting reliability requirements, peak and non-solar hour demand, grid security and renewable energy balancing, and at Para 7.14 recognizes that their continued availability is prudent; yet, despite recording at Para 10.3 that tariff continues to be regulated on normative principles and recovery of fixed cost remains linked to availability under the MYT framework, it altered the statutory tariff framework, with the conclusion at Para 10.7 contradicting its findings at Paras 7.8 to 7.29. Similarly, in Impugned Order 2 (Appeal No. 317 of 2026), the State Commission, at Para 7.2, recognized the system value and continued necessity of WTPS-7, but despite recording that tariff continues to be regulated on normative principles and fixed-cost recovery remains linked to availability, it altered the MYT framework, with the conclusion at Para 7.8 contradicting its findings at Paras 6.2 to 6.8.

18. The Appellant submits that the reduction of RoE from the normative level of 13% to 11% was never raised, pleaded or argued by any party during the proceedings, and no case was advanced for reducing the normative RoE prescribed under the applicable Regulations. It is a settled principle that a quasi-judicial body cannot grant relief on a case never pleaded or on an issue not arising from the pleadings, as held in **Bachhaj Nahar v. Neelima Mandal, (2008) 17 SCC 491 (Para 23)**. The Appellant further submits that the State Commission, while exercising jurisdiction under Section 86(1)(b), had, in respect of GMDC's lignite thermal power plant, by Order dated 06.07.2024 in Petition No. 2279 of 2023, approved the enhancement of RoE from 13% to 14% in view of the applicable MYT Regulations, 2016; whereas, in the present case, despite no agreement between the Appellant and Repondent No.2 for reduction of RoE and

Regulation 35.2 prescribing Base RoE at 13%, the State Commission has unilaterally imposed RoE of 11%, resulting in unequal treatment of similarly situated cases.

19. The Appellant submits that, in Appeal No. 301 of 2026, the State Commission has already approved total capital expenditure of Rs. 3,584 Crores for the transferred generating stations up to 31.03.2030 vide Tariff Order dated 31.03.2025 in Petition No. 2418 of 2024, out of which the Appellant has already incurred Rs. 518 Crores towards R&M activities; consequently, giving effect to the Impugned Order would deprive GSECL of recovery of RoE on the investment undertaken to operate and improve the efficiency of the transferred generating stations and is likely to result in a loss of approximately Rs. 240 Crores in fixed cost up to 31.03.2030. Similarly, in Appeal No. 317 of 2026, the State Commission has already approved Rs. 214.86 Crore as capital expenditure for WTPS-7 up to 31.03.2030 vide the same Tariff Order, out of which GSECL has already placed orders and undertaken R&M works of approximately Rs. 50 Crores for capacity upgradation, including old wagon tipplers, belt feeders and raw coal stacking system; giving effect to the Impugned Order would deprive the Appellant of recovery of RoE on such investment and is likely to result in a loss of approximately Rs. 25 Crores in fixed cost up to 31.03.2030.

SUBMISSIONS URGED ON BEHALF OF RESPONDENT NO.2

20. It is submitted that, in the Petitions, Respondent No.2 had set out detailed reasons and the basis for seeking extension, particularly the need to meet base-load requirements in view of the substantial renewable energy capacity and the CEA Guidelines dated 20.01.2023 regarding non-retirement of thermal power plants until 2030, besides highlighting the fixed charges of the generating stations and the R&M activities undertaken by the Appellant. The tariff of the Appellant's generating stations has from time to time been determined by the State

Commission under Section 62 of the Act, and the Supplemental PPAs provide that the other terms and conditions of the PPAs shall remain unchanged; accordingly, the tariff of the Appellant's generating stations would continue to be determined by the State Commission in accordance with the applicable regulatory framework.

21. It is submitted that the State Commission, vide Order dated 31.03.2025, had determined the tariff, including Return on Equity, for GSECL's various generating stations, including those covered under the present Appeals, for the period from 01.04.2025 to 31.03.2030, corresponding to the period of the Supplemental Power Purchase Agreement, and had also approved the Renovation and Modernization expenditure for such plants; it was further submitted that the State Commission, in the Impugned Orders, had recognised the need and prudence of continuing the Power Purchase Agreement with GSECL and accordingly approved procurement of power by GUVNL, on behalf of the State-owned distribution companies, from the Appellant.

ANALYSIS AND DISCUSSION

22. We have heard Ms. Poorva Saigal, the learned Counsel appearing for the Appellant, Ms. Ranjitha Ramachandran the learned Counsel appearing for the Respondent No.2 and have perused the written submissions, Impugned Orders and other documents and material placed on record in both the Appeals. Since both the Appeals raise a common issue relating to fixing the Return on Equity ("RoE") @ 11 % instead of base RoE of 13 % in terms of Regulation 35.2 of the MYT Regulations for the extended period of the respective SPPAs, they were heard together and are being considered by this common judgment. Appeal No. 301 of 2026 is treated as the lead matter, and the submissions and discussion in

the said Appeal shall, to the extent applicable, govern the connected Appeal No. 317 of 2026.

23. The Appellant and Respondent No 2 has signed supplementary PPA (SPPA) dated 18.02.2025 for generating stations in Appeal No. 301 of 2026 (Ukai Units 3 to 5, Gandhinagar Unit 3 and 4, Wanakbori Unit 1 to 6, KLTPS Unit 3, Ukaio Hydro and kadana Hydro), and SPPA dated 13.11.2024 for WTPS-7 generating station in Appeal no. 317 of 2026, extending the power procurement from these projects up to 01.04.2030 or actual useful life of projects, whichever is earlier and subject to the approval of GERC. Respondent No 2 thereafter filed petitions before the State Commission seeking approval of the respective SPPA, pursuant to which Impugned Order 1 & 2 came to be passed . State Commission in the Impugned Orders acknowledges the system value of these projects and retained the continued availability of these projects in the consumer interest, however it observes that tariff treatment during the extended period must also reflect their changed character and reduced risk profile and considers a reduced ROE of 11 % for the generating stations in both the Appeals. The relevant paragraph of Impugned Order 1, with regard to consideration of ROE at 11% is extracted hereunder, the reasoning given in Impugned Order 2 is also on similar lines and, therefore, to avoid repetition, the same is not extracted:

“10.6 In this context, the GERC MYT Regulations, 2024 provide the immediate tariff framework for the extended period from 01.04.2025 to 31.03.2030. Regulation 35 adopts a structure of Base RoE and Additional RoE linked to actual performance. Regulation 35.2 specifies Base RoE at 13% per annum. At the same time, the proviso to Regulation 35.2 expressly recognises that a generating company may claim RoE at a rate lower than the normative rate for a particular year, provided such claim is unconditional and the reduction is permanently foregone and not recouped at the stage of Mid-Term Review or true-up. The Regulations therefore themselves contemplate that normative RoE is not an inflexible figure in every factual situation and that a lower RoE may be adopted where the generating company agrees to such treatment.

10.7 The Commission considers that the present case is an appropriate case for applying the lower-RoE mechanism recognised under Regulation 35.2. The extension is being granted because the stations continue to have system value, not because they require the same investment incentive as a new project. Consumers have already borne regulated return on these assets over the original regulatory period and the original PPA term. During the extended period, consumer interest requires that the tariff reflect both the continued reliability value of these stations and their aged, lower-risk character. Therefore, as per our considered view, this is the proper case to consider eligibility for lower RoE. Reduction of RoE from 13% to 11% appropriately balances these considerations. It permits continued availability of dispatchable capacity while moderating the fixed cost burden for consumers.

10.8 The Commission also clarifies the relationship between the present Order and the MYT Order of GSECL, for FY 2025-26 to FY 2029-30. The MYT tariff for these stations was approved before the Supplemental PPA was approved in the present proceedings. At that stage, the tariff was considered on the basis of the then applicable MYT framework and before the Commission had occasion to examine the terms on which the PPA should be extended beyond 01.04.2025. The earlier MYT approval, therefore, cannot be construed as conferring an indefeasible right upon GSECL to claim Base RoE at 13% for the extended PPA period. Once the Supplemental PPA is approved subject to the specific condition of 11% RoE, tariff treatment during the extended period must be aligned with this Order.

10.9 Accordingly, the Commission approves the Supplemental PPA dated 18.02.2025 for extension of the PPA dated 07.01.2010 up to 01.04.2030 or actual useful life of the respective station/ unit, whichever is earlier, subject to the condition that Return on Equity for Ukai Units 3 to 5, Gandhinagar Units 3 and 4, Wanakbori Units 1 to 6, KLTPS Unit 3, Ukai Hydro and Kadana Hydro totalling to 2912 MW shall be restricted to 11% during the extended period. GSECL shall submit an unconditional undertaking to the Procurer, GUVNL, under intimation to the Commission, within 30 days from the date of this Order, stating that it shall claim RoE at 11% instead of the normative RoE for the transferred generating stations covered under the Supplemental PPA; that such claim shall be voluntary and unconditional; that the reduction from normative RoE shall be permanently foregone for the relevant period, and that the same shall not be recouped at the time of Mid-Term Review, truing-up or in any subsequent tariff proceeding. To give effect to this condition, GUVNL, and GSECL shall incorporate a suitable modification in the Supplemental PPA under intimation to the Commission.

10.10 While undertaking Mid-Term Review and / or truing-up for FY 2025-26 to FY 2029-30, Base RoE for the transferred generating stations covered under the Supplemental PPA shall be considered at 11% and not 13%. For FY 2024-25, RoE shall be considered in accordance with the earlier approved framework up to 17.02.2025 and at 11% from 18.02.2025, being the date of execution of the Supplemental PPA. The reduction from normative RoE shall be permanently foregone and shall not be recouped in any subsequent proceeding."

24. It is apposite to refer to the provision of application Regulations. Regulation 32 of GERC (Multi Year Tariff) Regulations 2024 (**"GERC Regulation 2024"**) provides for the consideration of Debt : Equity ratio for existing projects including those projects which have completed useful life on or after April 01,2025 and for new projects in which capital expenditure is capitalized on or after April 01, 2025. The Regulation 35 of the said Regulation considers the Return on equity and as per Regulation 35.2, a base rate of 13 % is provided for. Under Regulation 35.5, for existing projects, return on Equity to be reduced by 1% every year at the true up stage in case of some deficiencies as reported by SLDC. Relevant Regulations are extracted hereunder:-

"35.2 Base Return on Equity of 13.00% per annum in Indian Rupee terms shall be allowed on the equity capital determined in accordance with Regulation 32 of these Regulations for the assets put to use:

Provided that in case Generating Company or Transmission Licensee or SLDC or Distribution Licensee claims Return on Equity at a rate lower than the normative rate specified above for any particular year, then such claim for lower Return on Equity shall be unconditional:

Provided further that such claim for lower Return on Equity shall be allowed subject to the condition that the reduction in Return on Equity shall be foregone permanently for that year and shall not be allowed to be recouped at the time of Mid-Term Review or true-up as applicable.

.....

35.4 In case of a new generation and transmission project, the rate of Return on Equity shall be reduced by 1.00% for such period as may be decided by the Commission, if generating station or transmission system is

found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO) or Free Governor Mode Operation (FGMO), data telemetry, communication system up to load dispatch centre or protection system based on the report submitted by the SLDC.

35.5 In case of existing generating station, as and when any of the requirements under Regulation 35.4 of these Regulations are found lacking based on the report submitted by the SLDC, rate of Return on Equity shall be reduced by 1.00% per year at the time of true-up, for the period for which the deficiency continues.”

25. A plain reading of Regulation 35.2 makes it clear that the normative Base RoE of 13% is the prescribed rate. The first proviso to Regulation 35.2 operates only where the Generating Company, Transmission Licensee, SLDC or Distribution Licensee itself claims RoE at a rate lower than the normative rate. Such claim is required to be unconditional, and the consequence of such voluntary claim is that the reduction is permanently foregone. The provision, therefore, does not confer an independent discretion upon the State Commission to suo motu impose a lower RoE in the absence of a voluntary claim by the concerned generating company.

26. It is therefore manifest that the regulatory framework under the GERC Regulations, 2024, stipulates a uniform base rate of 13% for Return on Equity, subject to reduction by 1% only in cases of deficiencies reported by the SLDC. Our attention has not been drawn towards any other Regulation, which specifies a lower return of Equity for the projects, which have completed the useful life. In absence of such a stipulation, the Return on Equity for projects beyond useful life continues to be governed by the base rate of 13%, save and except the specific reduction contemplated under Regulation 35.5.

27. We also take note that in the Tariff Order dated 31.03.2025 (in case No 2418 of 2024), passed by State Commission, determining tariff for MYT Control period FY 2025-26 to FY 2029-30 for various generating stations, State Commission referring to GERC MYT Regulation 2024, considered the base Return on equity at 13 % for all the generating stations including the generating stations in both the Appeals. It is an admitted fact that said tariff order has not been challenged by any party and has, therefore, attained finality.

28. On a query, it has been fairly admitted by Respondents, that in the tariff order dated 31.03.2025, no relaxation has been provided for these projects in respect of O&M norms/ operating parameters such as Heat Rate, PLF and Auxiliary Consumption etc., and all the tariff parameters as specified in GERC MYT Regulations 2024 have been applied for these projects.

29. It is an admitted position that the State Commission, vide its order dated 31.03.2025, has duly approved a total capital expenditure of Rs 3,584 Crores in respect of the transferred generating stations (Appeal No. 301 of 2026) and Rs 214.86 Crores in respect of Wanakbori Unit-7 (Appeal No. 317 of 2026), for the control period ending on 31.03.2030. The approval of such Additional Capital Expenditure is explicitly evident from Table No. 5.34 of the said tariff order, the relevant portion whereof stands extracted hereinbelow. Once the State Commission has accorded approval to the proposed capital expenditure, the regulatory framework necessarily presumes a concomitant assurance of reasonable return on equity in terms of applicable Regulations. Any reduction in the normative rate of return on equity, therefore, would not only erode the assured return on the approved investment but would also severely prejudice the prospects of future capital infusion.

-Table 5.34: Approved capitalisation for MYT Control Period

S. No.	POWER STATIONS	FY 2025-26	FY 2026-27	FY 2027-28	FY 2028-29	FY 2029-30
1	UKAI (3-5)	412.75	497.41	33.67	22.30	28.06
2	GANDHINAGAR (3-4)	138.08	187.70	33.14	254.95	41.44
4	WANAKBORI 1-6 TPS	291.41	451.82	419.54	212.82	279.07
5	WANAKBORI 7*	18.60	66.26	10.00	60.00	60.00
7	KLTPS 3	6.87	10.95	13.70	9.07	11.42
16	UKAI HYDRO	4.68	2.03	0.35	0.23	0.29
17	KADANA HYDRO	0.25	0.40	0.49	0.33	218.41

30. The Electricity Act, 2003, confers upon the State Commission the power to frame Regulations under Section 181, which have the force of subordinate legislation. The Commission, while exercising its tariff-determining functions under Sections 61, 62 and 86 of the Act, is obliged to act within the four corners of its own Regulations. The State Commission, in its tariff order dated 31.03.2025 has correctly applied base ROE of 13 % for all the generating stations including those under Appeal No 301 of 2026 & 317 of 2026. However, State Commission, while approving the SPPA, has reduced the ROE to 11 % for the very same generating Stations for which under tariff order dated 31.03.2025, an ROE of 13 % was approved. The Regulations made under Section 181 of the Electricity Act are binding on the Commission and, as long as the Regulations remain in force, the Commission cannot exercise its regulatory power contrary to what is expressly stipulated therein. This position stands settled by the judgment of the Hon'ble Supreme Court in PTC India Ltd. v. CERC, (2010) 4 SCC 603. Relevant paragraph is extracted as under:

“56. Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central

Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178. However, if a regulation is made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulations under Section 178”.

31. The ratio decidendi of the ‘**PTC judgment**’ (**supra**) makes it clear that tariff orders cannot override or amend Regulations, and any departure from the Regulations would amount to impermissible legislation by way of an order. In the present context, Regulation 35.2 of the GERC MYT Regulations, 2024, prescribes a base rate of 13% for Return on Equity, while Regulation 35.5 provides for reduction of 1% at the truing up stage in case of deficiencies reported by SLDC. It is evident that first proviso to Regulation 35.2, operates only where the generating company itself claims RoE at a rate lower than the normative rate, while the second proviso stipulates the consequence of such voluntary claim, namely, permanent forfeiture of the reduction. No other provision contemplates a lower ROE for projects that have completed their useful life at the discretion of State Commission.

32. It is accordingly held that the State Commission, once having framed the GERC MYT Regulations, 2024 under Section 181 of the Electricity Act, 2003, is bound by the normative parameters therein. The Return on Equity of 13% prescribed under Regulation 35.2, subject only to grossing up for tax under Regulation 35.4 and reduction by 1% in case of deficiencies under Regulation 35.5, or willful reduction by licensee cannot be diluted or reduced by way of tariff orders or administrative directions. Any specification of a lower ROE for projects, including those that have completed their useful life, would amount to rewriting the Regulation, which is impermissible in law. The only lawful course for the State Commission, if it seeks to alter the normative ROE for old generating stations, is to amend the Regulations in accordance with Section 181 of the Act, following

the prescribed statutory procedure, including due process of consultation and notification.

33. In view of above deliberation, the Impugned Order 1 and 2 are set aside to the extent that it holds the ROE for the generating stations in Appeal No 301 of 2026 and Appeal 317 of 2026 to be capped at 11 % with SPPA to be modified accordingly and the unconditional undertaking directed to be given by Appellant. Appellant shall, accordingly, be entitled to ROE at the rate of 13 %, as already determined by GERC under tariff order dated 31.03.2025 in respect of the said generating stations. The Captioned Appeals are disposed of in the aforesaid terms, along with any pending IAs, if any.

PRONOUNCED IN THE OPEN COURT ON THIS 23rd DAY OF OCTOBER, 2026.

(Virender Bhat)
Judicial Member

(Seema Gupta)
Officiating Chairperson

REPORTABLE / NON-REPORTABLE

Pr/ag/ak