CGRF formed under the provision of IE Act 2003, sub clause 42(5) as well Notification No.2/2011 of GERC (CGRF & Ombudsman)

BEFORE THE CONSUMER GRIEVANCES REDRESSAL FORUM
MADHYA GUJARAT VIJ CO LIMITED
CORPORATE OFFICE, 5TH FLOOR SP VIDYUT BHAVAN,
RACECOURSE, VADODARA 390 007

Subject	Consumer Grievances Complaint No. MG-I-01-2021-22
Complainant	M/s. Radhika Orgo-Chem India Pvt Ltd., Plot No. C-1-B, 160/8, 9, 10/A-B, GIDC, Nandesari, Dist: Vadodara
Respondent	Shri J R Darji, Dy Engineer, Nandesari s/dn & Shri N A Shah, Executive Engineer, Baroda division of MGVCL.
Date of hearing	11.06.2021 at Corporate Office, MGVCL

QUORUM	NAME
Chairperson	Smt Mala Y Shah, Ahmedabad
Technical Member	Shri K B Dhebar, (RA&C) MGVCL Vadodara

The complaint dated 18.05.2021 regarding Temporary injunction in complain made to the forum against supplementary bill for merger issued by DE Nandesari s/dn MGVCL on deemed merger of LT connection No.51212/02663/2 & 51212/02686/1 under Regu No.2.59 of GERC (C G R F & Ombudsman) Regulations, 2019.

1.0 On 11.06.2021, the case of the Complainant Grievance was heard before Consumer Grievance Redressal Forum wherein Shri D S Doshi, appeared on behalf of complainant M/s. Radhika Orgo-Chem India Pvt Ltd., whereas Shri J R Darji, Dy Engineer, Nandesari s/dn & Shri N A Shah, Executive Engineer, Baroda division appeared as respondent on behalf of MGVCL before the Forum. Both the parties were heard

2.0 The brief history of the case is as under:

2.1 M/s. Radhika Orgo-Chem (I) Pvt. Ltd, Consumer No: 51212/02686/1, Nandesari GIDC Plot No: 160/8, 100 kW, the connection was released on 04/01/1997.

2.2 M/s. Yogi Chemical, Plot no: C1 160- 9-10 A&B connection was released on 27/01/1993 New Consumer no: 51212/02663/2, (Old Consumer no: 02418/02227/7) with load 100 KW.

2.3 M/s Yogi Chemical had applied for change of name & On Dt: 04.08.2015, an agreement done on the name Radhika Orgo- Chem (I) Pvt. Ltd.

2.4 Nandesari S/dn bifurcated from Koyali s/dn. from 09.05.2016 .

2.5 During the site visit on Dt: 24.08.2020, it was found that, both connections are adjacent to each other & having same name i.e. M/s Radhika Orgochem (i) Pvt. Ltd. i.e. Both connections are liable for merger

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as per supply code 2015 clause 4.28 hence notice was issued by Nandesari s/dn vide NDS/ Tech/2185 Dt: 04/09/2020.

2.6 No any reply was received by consumer against the notice issued.

2.7 Also the demand of M/s Radhika Orgo-Chem (I) Pvt. Ltd, Nandesari Consumer No: 51212/02663/2, 100kw Plot no: 160/8, was exceeds four times in financial year 2020-21 hence as per provision of supply code & circular 75 a notice to regularize the demand was issued by Nandesari s/dn vide letter No: NDS/EST/Tech/3160 Dt: 15.12.2020.

2.8 In response of the notice M/s Radhika Orgo -Chem (I) Pvt. Ltd, had applied for new HT connection 250KVA, Baroda (O & M) Circle on Dt: 23.02.2021. During survey it was found that, Both connections are liable for merger as per supply code 2015 clause 4.28 hence notice was issued by Baroda O&M Division vide BD/ Tech-1/4551 Dt: 20/03/2021.

2.9 Against the application of consumer for HT connection an estimate was issued by Circle Office of Amt: Rs.21,24,878 vide letter no: BC/T/DE-II/21/81/SR No: 6134103/2198 Dt: 10/03/2021. Which was paid by the consumer.

2.10 Further base on the approval from the competent authority the supplementary bill amounting Rs. 3465331.40 for deemed merger from the date of agreement of name transfer of 2nd connection i.e. 4.8.2015 was issued to consumer vide NDS/ESTT/Tech/119/DT: 05/05/2021 received by consumer on Dt: 11.05.2021.

2.11 Aggrieved by suppl bill issued from dated 4.8.2015 for deemed merger of both the connections consumer approached CGRF of MGVCL to intervene and give natural justice for considering effective date as date of first notice issued i.e. 04.09.2020.

3.0 The representative of the complainant contended that -

Sr„ No.	LT Connection No.	Contract Demand in KW	Date of Connection	Location	Name
1	51212/02663/2	100 (LTMD)	27-01.1993	Plot No.: 160/8, GIDC Nandesari	The connection was released in name of **M/s. Yogi Chemicals.** The name of connection was changed to **M/s. Radhika Orgo-Chem (India) Pvt Ltd** on **04.08.2015** in the record of **MGVCL.**
2	51212/02686/1	100 (LTMD)	04.01.1997	Plot No.: C1, 160 / 9 & 10/A & B, GIDC Nandesari	Radhika Orgo-Chem (India) Pvt Ltd

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The applicant would like to refer below stated facts and list of events for the kind consideration of the Forum.

3.1 The chronological events relevant to the case are as under:

Sr. No.	Date	DESCRIPTIONS
1	04-01-1997	LT connection Cons. No: 51212/02686/1 was released in **Plot No: C-1, 160 / 9 & 10/A & B,** GIDC Nandesari in the name of the Applicant, M/s. Radhika Orgo-Chem (India) Pvt Ltd
2	04-08-2015	LT connection Cons. No: 51212/02663/2 in **Plot No: 160 / 8,** GIDC Nandesari was name changed from Yogi Chemicals to M/s. Radhika Orgo-Chem (India) Pvt Ltd, The connection in the name of M/s. Yogi Chemicals was released on 27-01-1993,
3	07/03/2015	The LT Connection No.:51212/02686/1 was checked by MGVCL vide Checking Sheet No.: 682/07-03-2015. As per checking report, the installation is found in order. No notice / reference for merger.
4	24/09/2015	The LT Connection No.:51212/02686/1 was checked by MGVCL vide Checking Sheet No.: 456/24-09-2015. As per checking report, the installation was found in order. No notice / reference for merger.
5	10/11/2016	The LT Connection No.:51212/02686/1 was checked by MGVCL vide Checking Sheet No.: 118/10-11-2016.. As per checking report, the installation was found in order. No notice / reference for merger.
6	10/11/2016	The LT Connection No.:51212/02663/2 was checked by MGVCL vide Checking Sheet No.: 119/10-11-2016. As per checking report, the installation was found in order. No notice / reference for merger.
7	07/03/2017	The LT Connection No.:51212/02686/1 was checked by MGVCL vide Checking Sheet No.: 1049/07-03-2017 for meter replacement. As per checking report, the installation was found in order. No notice / reference for merger.
8	28/07/2017	The LT Connection No.:51212/02686/1 was checked by MGVCL vide Checking Sheet No.: 528/28-07-2017. As per checking report, the installation was found in order. No notice / reference for merger.

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9	28/07/2017	The LT Connection No.:51212/02663/2 was checked by MGVCL vide Checking Sheet No.: 529/28-07-2017. As per checking report, the installation was found in order. No notice / reference for merger.
10	08/10/2017 I	The LT Connection No.:51212/02663/2 was checked by MGVCL vide Checking Sheet No.: 680/08-10-2017. As per checking report, the installation was found in order. No notice / reference for merger.
11	05/10/2020	The LT Connection No.:51212/02686/1 was checked by MGVCL vide Checking Sheet No.: 1261/05-10-2020 for meter replacement, As per checking report, the installation was found in order. No notice / reference for merger
12	04-09-2020	Vide letter, MGVCL informed that plots of LT connections no 51212 / 02663 /2 & 51212 / 02686/1 are adjacent to each other and separated by a compound wall, Therefore both connections are liable for merging in the one connection as per provision of 4.28 of Supply Code-2015,
13	23-02-2021	Application made to SE (O&M), Baroda for 250 KVA HT connection for merging of both LT connections. SE (O&M), MGVCL vide even date letter has informed that they have advised EE (O&M), MGVCL for examining technical feasibility upon registration of application for HT connection of 250 KVA by M/s. Radhika for merging both the LT connections
14	10-03-2021	MGVCL has issued estimate amounting to Rs. 21.25 (acs for HT connection of 250 KVA by M/s. Radhika for merging both the LT connections
15	25-03-2021	Payment made towards estimate dated 10-03-2021 for HT connection.
16	16-04-2021	MGVCL intimated us for signing HT agreement, which is duly complied and signed,
17	05-05-2021	MGVCL has issued Supplementary bill of Rs, 34, 65, 331,40/- for merging of both LT connections with effect from 04-08-2015 to March 2021 by applying HT tariff. In the letter of Supplementary bill, it is stated that based on site inspection carried out by MGVCL for Connection No. 51212/02686/1 & 51212/02663/2 on **03-03-2021**, the both connections are required to be merged as per rules and supplementary bill is to be issued.

3.2 MGVCL has decided to merge both the LT connection No: 51212/ 02663/2 &51212/02686/1 and issued supplementary bills for the amount of Rs. 34,65,331.40 for deemed merging of both LT connections with effect from 04-08-2015 by applying HT tariff.

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The demand of supplementary bill by MGVCL for merging with effect from 04-08-2015 is in violation of GERC regulations and is also contrary to the settled position of law laid down by Hon'ble Ombudsman and Hon'ble High Court of Gujarat by a catena of Judgments.

3.3 Representation to MGVCL:

Upon receipt of Supplementary bill (merger bill) for deemed merger of both the LT connection No: 51212/02663/2 & 51212/02686/1 with effect from 04-082015, the applicant has made representation to MGVCL authorities that the Supplementary bill for merging issued by MGVCL for the period **prior to notice** is arbitrary, without any legal basis and therefore need to be withdrawn with immediate effect. The applicant submitted that as per the GERC Supply Code, at the most, MGVCL can initiate suo-motu action for physical merging of both connections in case consumer do not respond / take actions for merging of connections. However, MGVCL has no legal basis to demand supplementary bill for merging that too with retrospective effect from 04-08-2015 by applying HT tariff.

3.4 Facts of Case:

1. It is stated that the earlier LT Connection being connection No. 51212/02686/1 was released by erstwhile GEB on 04-01-1997 in the Plot No: C-1, 160 / 9 & 10/A & B, GIDC Nandesari.

2. The LT connection being Connection No. 51212/02663/2 (being referred to as Second Connection by MGVCL) was released on 27-01-1993 in the name of Ws. Yogi Chemicals and transferred in the name of Ws. Radhika Orgo-Chem (India) Pvt Ltd on 04-08-2015 as per the provisions of **GERC Supply Code, 2005,** The Connection No: 51212/02663/2 was transferred in name of Radhika Orgo-Chem (India) Pvt Ltd after following due process of law and after completion of all requisite procedures and formalities including site verification, verification of power boundary and verification of documents of premise & entity in whose name connection was transferred.

3. It is stated that since the time of release of Connections and even after change of name in connection no 51212/02663/2, the premise of both the LT Connections (i.e. connection No, 51212/ 02663/2 & 51212/02686/1) is completely separate, separated by compound wall and also having separate entry gates for Point of Supply. These connections are being fed power supply independently and the billing thereof is also being done separately namely connection wise. Being premise is completely separated, at no point of time, specifically at the time of change of name / transfer of LT Connection No. 51212/02663/2 in favour of the applicant from previous owner, MGVCL had pointed out that both connections are liable to be merged or the applicant is not entitled for the transfer of connection in his favour. On the contrary, MGVCL had legally

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and validly transferred the Connection No, 51212/02663/2 on 04-08-2015 in the name M/s. Radhika Orgo-Chem (India) Pvt Ltd without raising any issue of merging.

4. The Power Supply Agreement/ name transfer agreement in respect of these LT connections are also executed separately between applicant and erstwhile GEB /IVIGVCL. This factual legal position has been accepted and confirmed by MGVCL and at no point of time MGVCL had raised the issue of merging of connections being in the adjacent but separate premise.

5. It is further stated that since 04-08-2015 (i.e. after transfer of connection No.51212/02663/2 in favour of applicant), both connections had been checked by MGVCL officials on regular basis and many times both connections were checked on same day by same checking officers. However, no notice of merger was issued to the applicant.

6. It is further submitted that upon receipt of letter dated 04-09-2020 from MGVCL showing requirement for merging of two LT connections in the adjacent premises as per the provision of Supply Code- 2015, the applicant has acted swiftly and applied for HT connection in place of two LT connections. There was no mention as regard to supplementary bill for merging. Further, applicant has already paid the estimate issued by MGVCL for HT connection and also executed HT power supply agreement. When the applicant has already initiated actions as per the requirement of MGVCL vide letter dated 04.09.2020, there is no ground for MGVCL to demand supplementary bill for merging with effect from 04.08.2015.

7. It is respectfully submitted that MGVCL has all of sudden, without legal basis, has demanded supplementary bill of Rs. 34,65,331.40 on 05-05-2021 on deemed merger basis considering effective date of deemed merger of LT connections from 04-08-2015 (i.e. with effect from the date of transfer of second connection in the name of Applicant) by applying HT tariff. The supplementary bills are issued by MGVCL for the period prior to service of formal notice of merger to the applicant purportedly under the provisions of new Supply (GERC Supply Code 2015 which is effective from 24.09.2015) is without any merit and bad in law. Prior to the notification of GERC new Supply Code 2015 on 24.09.2015, previous Supply Code being Supply Code, 2005 was in effect. Under the Supply Code 2005, there was no bar to release second connection in the separate adjacent premise. Therefore, the issue of supplementary bills for merging do not arise at all.

(D) Provisions of Supply Code& order of GERC:

1. It is stated that the Connection No.51212/02663/2 (second connection) was transferred in the name of M/s. Radhika during the applicability of earlier GERC Supply Code 2005. The GERC Supply

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Code, 2005 remained effective for the period from **01/04/2005** to **23/09/2015** until new Supply Code came into effect from 24/09/2015.

(i) The applicable clause No.4.1.17 of Supply Code 2005 is reproduced below:

*"4.1.17 The Distribution Licensee will not provide more than one connection/meter, **for one premise**. The consumers opting for second meter will have to produce separate legal entity such as documents of separate income Tax No/Soles Tax No, ration card and rent or lease agreement."*

That, the above provision of the Supply Code 2005 makes it abundantly clear that the documents in relation to separate legal entity was required to be produced in case the consumer seek for second connection in same premise. However, there was no bar to provide connection in same name in the separate premises akin to the present case wherein the transfer of connection was allowed by MGVCL in year 2015 in the adjoining but separate premises in the same name, Since, in present case, the issue of second connection in the same premises was not involved, at relevant time, following the provisions of Supply Code 2005, MGVCL had allowed transfer of connection to the applicant without requiring documents to prove separate legal entity.

(ii) The new Supply Code referred to as Supply Code 2015, which became effective from date of 24/09/2015, the corresponding Clause 4.28 of the Supply Code 2015 is read as under.

"4.28 The Distribution Licensee will not provide more than one connection for one premise <u>or in adjoining/contiguous premises belonging to same owner if these are not separated by a public road or by private premise.</u> The consumers opting for second connection will have to produce separate legal entity documents such as separate Income Tax No / Sales Tax No., ration card.

Thus, it is only in GERC Supply Code, 2015 which provides that more than one connection will not be provided in adjoin premise.

It is difficult to appreciate the actions of MGVCL for recovery of merging bill from the consumer for the period prior to the effective date of physical merger, on deemed merger basis considering effective date of merging from 04-08-2015. The such action of MGVCL is not only contrary to settle position of law but also against the principle of nature justice, in view of the fact that the two LT connections were already having separate independent premises and connection was allowed in accordance with provisions Supply Code, 2005 effective at the relevant point of time.

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2. It is stated that as per the clause 4.1.17 of prevailing Supply Code, 2005 under which connection no 51212/02663/2 was allowed to be

transferred, there was no bar to release second connection in the same name in the separate but adjoining premise. It is new Supply Code, 2015 which provides that more than one connection shall not be allowed in adjoining premise belonging to same owner. The new Supply Code become effective from 24/09/2015 only and not from retrospective date. As such the clause 4.28 of new Supply Code, 2015 does not provide that more than one connection already released in adjacent premise prior to the effective date of new supply code shall be required to be merged into one connection. In fact, the clause 4.28 is applicable to new connection to be released in future but do not provide to merge already released connections.

3. Thus, as per the clause 4.28 of the new supply code, two connections in adjoining premises of same owner are not required to be merged but no such new connections be released.

4. The second connection of the applicant was transferred in favour of applicant on 04-08-2015 under the applicability of Supply Code, 2005. The connection was allowed without any objections and all of sudden MGVCL issued supplementary bills for merging for the retrospective period i.e. from 04-08-2015 and hence such action of MGVCL for demanding merger bill for the period prior to the date of formal notice of merger is arbitrary and without any legal basis.

5. The action of MGVCL for raising of supplementary bills on deemed merger basis with effect from 04-08-2015 is without proper consideration of the relevant facts and position of law settled by the judgments/orders of Hon'ble APTEL, Hon'ble Ombudsmen and Hon'ble High Court and therefore interference in this regard by the Forum is earnestly required in the interest of justice.

6. None of the provisions of Regulations of Hon'ble GERC, provisions of Electricity Act, 2003 entitles MGVCL to demand supplementary bill on deemed merger basis for the period prior to issue of formal notice of merger to consumer,

7. Tariff schedule decided by GERC is for single point of supply and not for more than one point of supply. Therefore, actions taken by MGVCL to issue supplementary bill on deemed merger basis prior to effective date of physical merger or prior to formal notice of merger, is in violation of GERC's rules / regulations / orders.

8. It is also relevant to mention that while demanding supplementary bill, MGVCL has failed to cite exact provisions of rule / regulation under which MGVCL has issued supplementary bill for merging that too effective from 0408-2015 as none of provisions of GERC Regulations / Order provides for billing on deemed merger basis for the period prior to servicing of formal notice of merger.

9. As such, on completion of formalities of merging of both the connections in to one connection, MGVCL will have to issue the letter giving effect of actual merger of two connections. Only after completion these formalities, MGVCL can commence billing

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towards merged demand and energy charges considering single connection.

10. Since, two LT connections in two different adjacent premises exist, MGVCL cannot in its own way and without any legal basis and lawful reasons ask the Applicant to merge the connection on the basis of provisions of regulation 4.28 of new Supply Code, 2005 and raise supplementary bills on deemed merger basis with effect from 04-08-2015 by retrospective applicability of new supply code.

(E) Legal Provisions:

Even assuming but not admitting that the existing two connections in the adjoining premises belonging to same owner which was legally and validly released as per the provisions of earlier Supply Code, 2005, is to be merged due to operation of new Supply Code, 2015, in that case what MGVCL entitled for is, at the most, to issue formal notice for merger and initiate actions for physical merging of two connections after following due procedures and formalities. However, MGVCL has no legal rights to recover charges on deemed merger basis that too with retrospective effect for the period prior to issue of formal notice of merger.

Therefore, the important issue involved in present matter is whether MGVCL is entitled to recover merger bill for the period prior to issuance of formal notice of merger.

In this regard, it is well settled position of laws that the recovery of supplementary bills for previous period i.e. retrospective period is without any legal ground and therefore not valid.

In this context, the Applicant would like to rely on the various judgment/orders of various authorities:

(i) <u>Hon'ble OMBUDSMAN order:</u>

Relying on the judgment of Hon/131e APTEL, in the similar matter of involving supplementary bill for merging of connections, Hon'ble Ombudsman for Electricity of Gujarat in numbers of cases, has directed DISCOMs to cancel supplementary bills for the previous period and allowed merging bill after issuance of formal notice for merger. The following judgments of Hon'ble Ombudsman are relevant for the present case.

a) Case No, 88 / 2017 of M/s. Shri Umiya Stone Quarry V/s DGVCL
b) Case No. 44 / 2018 of Ws. Destiny Developers V/s DGVCL
c) Case No. 54 / 2018 of M/s.Sutlej Textiles & Ind. LimitedV/s DGVCL
d) Case No. 112 / 2018 of M/s. Galaxy Mall Pvt. Ltd. V/s UGVCL
e) Case No. 99/2019 of Ws. Pyramid Technoplast Pvt Ltd V/s DGVCL
f) Case No. 34 & 35 /2018 Ws. Rahulraj Mall Co-op Service Society Ltd

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(ii) Hon'ble Gujarat High Court judgement dated 22/05/2020

Hon'ble High Court in case of DGVCL v/s Rahulraj Developers, in SCA No.18890 of 2018 and SCA No.1897 of 2019 vide judgment dated 22.05.2020 has dealt with the issue of supplementary bill involving claim for the past period in case of merger of connections. In the said judgment dated 22.5.2020, Hon'ble High court has confirmed the various decisions of Ombudsman that supplementary bill can be issued from the date of notice only and not for past period. The operative part of judgment dated 22.5.2020 is read as under:

Considering the fact that the connections were issued after 2005, notification no. 11/2005 was very much in existence, in spite of that the petitioner has granted two connections in the name of the same person taking into consideration the clause 4.1.17 of the Code2005. In such circumstances when the Code2015 has come into effect from 24th September, 2015 and notice for merger was issued on 19th September 2017, the petitioner cannot be permitted to issue supplementary bill from the date of connection.

The above judgment of Hon'ble High Court is squarely applicable to the case of the Applicant. Therefore, in terms of the above judgment of Hon'ble High Court, the supplementary bill issued by MGVCL on deemed merger basis effective from 04-08-2015 is arbitrary and without legal basis.

11. It is submitted that MGVCL has conveniently ignored the following important aspects while demanding supplementary bill for merging effective from 0408-2015:

a. MGVCL has ignored the facts that after 04-08-2015, the Connection No. 51212 / 02663 / 2 & 51212 /02686 /1 were checked multiple times by the officers of MGVCL and site inspection report (checking sheet) was also prepared. The copy of checking sheets was also handed over to the applicant. At no point of time, MGVCL had raised the issue of merging of connections.

b. As stated in the MGVCL letter dated 04-09-2020, the premises of LT Connection No. 51212 / 02663 / 2 and Connection No. 51212 /02686 /1 were independent and separate, separated by compound wall. No commonality between the premises is observed by MGVCL. The connections were allowed under the provisions of Supply Code-2005.1n the Supply Code-2005, there was no bar to allow second connection in the separate adjacent premise as the present case of applicant. Under the circumstances, when the connections were allowed as per the provisions of prevailing code/regulations and both the premise are totally separated and independent, the demand of

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c. MGVCL has conveniently ignored to mention the provisions of Regulations/ Code under which the merger bill effective from 04-082015 is issued. None of the provisions of governing Supply Code-2015 provides for demanding supplementary bill for merger for past period, Even in case of reclassification of tariff category, the Supply Code provides for of 30 days' notice before effecting reclassification of tariff category. This express provision of Supply Code is completely ignored by MGVCL.

d. MGVCL has conveniently ignored the facts that **the site inspection of both LT connections was carried out by MGVCL only on 03-03-2021**, pursuant to which merger bill is stated to be issued. However, no notice of merger is issued by MGVCL pursuant to site inspection of 03-03-2021. In terms of provisions of Supply Code, MGVCL has no legal right to issue merger bill for the period prior to servicing of notice. Thus, MGVCL has acted contrary to the express provisions of Supply Code.

e. MGVCL has also conveniently ignored that fact that the applicant has immediately initiated actions for merging of two LT connections in terms of MGVCL letter dated 04.09.2020 by applying for HT connection, made payment of estimate for HT connection and also executed power supply agreement. When the applicant has already taken actions as per the requirement of MGVCL vide letter dated 04.09,2020, the demand of supplementary bill for merging with effect from 04.08.2015 during the pendency of process for conversion of two LT connections in to one HT connection is unjust, un-warranted and shows deliberate attempt on part of MGVCL to extract money from the applicant.

12. Despite of above settled legal position and ignoring the above factual aspects, on 05.05,2021, MGVCL has issued supplementary bills on deemed merger basis effective from 04.08.2015. This indicates arbitrariness in the actions of MGVCL and abuse of monopolistic position entrusted to MGVCL being a Distribution Licensee of Area under the provisions of Electricity Act, 2003. This is least expected from the MGVCL being a Public Authority as per the Constitution of India. The action of MGVCL has caused unwarranted and unjustified financial liabilities upon the Appellant which too at the time when the Industries are passing through an unprecedented economical and financial crisis on account of Corona Pandemic and struggling for its survival. Under such scenario, it would be difficult for the industries to survive on account of arbitrary actions of MGVCL imposing huge liabilities of past period without any legal basis.

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(F) Supplementary bill for the period prior to April-2019 is barred by time.

13. Without prejudice to the stated hereinabove, it is stated that Supplementary bill for the period prior to April-2019 is barred by time in view of Section 56 (2) of the Electricity Act, 2003. MGVCL cannot recover any charges for the period prior to two years of raising the bill i.e. prior to April-2019 and therefore the demand of supplementary bill is in violation of Section 56 (2) of the Electricity Act, 2003 and need to be withdrawn.

The Section 56(2) of the Electricity Act, 2003, reads as under:

"Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

In this regard, it is also relevant to refer the decision of Hon'ble Electricity Ombudsman in case no. 62/2012.

"The Electricity Ombudsman order was challenged before The Hon'ble High Court of Gujarat in SCA No. 15289 of 2012. The Hon'ble High court vide order dated 07/11/2012 upheld the order passed by The Electricity Ombudsman,

The LPA No. 885 of 2013 filled by UGVCL was disposed of on 15/07/2013. UGVCL had submitted compliance report in Dec.2013 of implementing the order dated 09/08/2012 passed by The Electricity Ombudsman."

Again similar kind of order is issued by Hon'ble Ombudsman in case no. 119/2017. In view of above supplementary bill for the period prior to April19is barred by time.

(G) Submission with respect to Working of Maximum Demand and Demand Charges in Supplementary Bill:

14. Without prejudice to the submission of the Applicant hereinabove, the Applicant would like to state, in the merger bills, MGVCL has not given the details of month wise working of supplementary bill namely bifurcation board charges into demand charges and energy charges. It is understood that MGVCL has wrongly worked out Maximum Demand charges considering notional demand i.e. arithmetic summation of demand recorded in the individual connection. It is wrong to work out maximum demand considering arithmetic sum of maximum demand recorded at different period time in the individual meter of both connections, As per the GERC Supply Code, 2015, simultaneous demand recorded in the meters is to be considered

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for recovery of demand charges. The relevant provisions of supply code 2015 read as under:

'The Maximum demand refers to maximum demand in Kw or KVA as the case may be shall mean average KW/KVA supplied during consecutive 30/15 minutes (depending type of meter being used) period of maximum use where such meter with the features of reading the maximum demand in KW/KVA directly, has been provided'

As per the above definition of supply code, Demand supplied during the consecutive 30/15 minutes as recorded in the meter is to be considered as Maximum Demand. Since, Maximum Demand actually used and recorded in the individual meter of both connection would have not be occurred simultaneously, the arithmetic summation of non-coincidental maximum demand of individual connections will not representing the correct demand that would have been occurred in the single merged connection. Thus, MGVCL has charged for demand which have never been occurred / utilized by the applicant and recorded in the meter. Therefore, MGVCL has resorted to overcharge the Applicant for the maximum demand charge which never has been occurred and utilized by the applicant. The correct approach is to derive simultaneous Maximum Demand from meter 30/15 minute logged data (load survey data) of two meters of individual connection. However, MGVCL may not be allowed to take a plea that such meter logged (load survey data) is not available/not preserved. In case, MGVCL is not position to retrieve such meter logged data of two LT connections, the demand charge is need to be worked out based on 85% of merged contract demand and not based on the arithmetic sum of demand of both connections as it is settled position of law that one cannot be allowed to take the benefits of its own wrong/mistake. Accordingly, in case MGVCL is not in a position to derive the maximum demand maximum simultaneous utilized, MGVCL may be directed to work out demand charges considering 85% of merged Contract Demand.

15. It is respectfully submitted that in the similar matter of MGVCL's claim for supplementary bill for merging effective from date of release of second connection in case of Ws. Panoli Intermediates (I) Pvt Ltd V/s MGVCL, CGRF vide judgment dated 28.01.2021 has held that in case MGVCL is not in a position to retrieve the meter data of past period, in the supplementary bill, the demand charges is to be worked out as per 85% of merged contract demand.

The above principle is squarely applicable in the present case of the applicant also. Accordingly, the applicant requests the Forum to direct MGVCL to furnish retrieved meter data of both connections from 4-08-2015 for working of simultaneous maximum demand for levy of demand charges in the supplementary bill. in case, MGVCL is not in a position to retrieve metered data on 15/30 minute block basis, the demand charges need to be worked out based on 85% of merged contract demand i,e. working on demand charges based on

85% of merged contract demand, The copy of CGRF, MGVCL order dated 28,01,2021 is enclosed herewith.

(H) Other submission with respect to the provision of Electricity Act, 2003:

16. The Section 45 of the Electricity Act, 2003 read as under;

"45(1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence,

(2) The charges for electricity supplied by a distribution licensee shall be -

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission ;"

Tariff schedule decided by GERC is for single point of supply and not for more than one point of supply. As such MGVCL is authorized to charge for single point of supply only. To recover charges considering deemed merger of two separate connections is violation of Section 45 of the Electricity Act, 2003,

(I) Copy of following judgement / order is enclosed herewith and marked as Annexure-D (collectively)

a. Hon'ble Ombudsman judgment in Case No. 34 & 35 /2018 Ws. Rahulraj Mall Co-op Service Society Ltd which is upheld by Hon'ble High Court,

b. Hon'ble Gujarat High Court judgment dated 22/05/2020 in case of DGVCL v/s Rahulraj Developer A No.18890 of 2018 and SCA No.1897 of 2019.

c. CGRF, MGVCL Order dated 28/01/2021 in Case of M/s. Panoli Intermediate MGVCL

(J) **Prayer**:

(a) To direct MGVCL to withdraw supplementary bill for merging issued on deemed merging from 04-08-2015 to March -2023

(b) To direct MGVCL not to bill the Applicant on deemed merger basis till the physical merger of two LT connections into one HT connection is carried out. Till the period, MGVCL may be directed to carry out monthly billing separately i.e. individual connection wise.

(c) To direct MGVCL not to take any coercive steps against the Applicant and not insist for payment of merger bills during the pendency of this application before Hon'ble Forum.

(d) Passed any further order and directives as may be deemed proper by this Hon'ble Forum in the interest justice.

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4.0 The respondent contended that -

4.1 **MGVCL's argument:**

As Consumer has violated clause 4.28 of GERC Supply code 2015 which is as under.

" The Distribution Licensee will not provide more than one connection for one premise or in adjoining/contiguous premises belonging to same owner if these are not separated by a public road or by private premise. The consumers opting for second connection will have to produce separate legal entity documents such as separate Income Tax No/ Sales Tax No., ration card and rent or lease agreement."

4.2 It is further to re iterate here that, due to violation of supply code clause 4.28 and having 2 Lt connections consumer avoided to opt for HT connection which results MGVCL in financial loss in terms of billing, which was worked out and the supplementary bill of difference of HT connection and LTMD connection at normal tariff was issued to consumer. i.e. it is not a penalty in any form. Hence, above bill are liable for payment and MGVCL has all legal rights to recover dues.

5.0 The Forum Members present at the hearing considered contention of both the parties and perused the records and considering them in detail, findings are as under:

5.1 **Findings/conclusion of Chairperson, CGRF, MGVCL:**

- LT connection Cons. No: 51212/02686/1 was released on 04.01.1997 in Plot No: C-1, 160 / 9 & 10/A & B, GIDC Nandesari in the name of the Applicant, M/s. Radhika Orgo-Chem (India) Pvt Ltd and LT connection Cons. No: 51212/02663/2 in Plot No: 160 / 8, GIDC Nandesari was originally released on 27.01.1993 in name of Yogi Chemicals then after from 04.08.2015 the same was changed in the name of M/s. Radhika Orgo-Chem (India) Pvt Ltd.

- At the time of releasing both the connections, the Electricity Supply Code and related matters regulation notification 11 of 2005 was in existence and clause 4.1.17 of the code was followed at that time, and connections were released accordingly.

- As far as actions for merging is concerned, the same issue comes to the notice of MGVCL officers on 24.08.2020 at the time of site visit of both connections. both connections are adjacent to each other & having same name i.e. M/s Radhika Orgochem (i) Pvt. Ltd. i.e. Both connections are liable for merger as per supply code 2015 clause 4.28 hence notice was issued by Nandesari s/dn vide NDS/ Tech/2185 Dt: 04/09/2020.

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- Also the demand of M/s Radhika Orgo-Chem (I) Pvt. Ltd, Nandesari Consumer No: 51212/02663/2, 100kw Plot no: 160/8, was exceeds four times in financial year 2020-21 hence as per provision of supply code & circular 75 a notice to regularize the demand was issued by Nandesari s/dn vide letter No: NDS/EST/Tech/3160 Dt: 15.12.2020.

- In response of the notice M/s Radhika Orgo -Chem (I) Pvt. Ltd, had applied for new HT connection 250KVA, Baroda (O & M) Circle on Dt: 23.02.2021. During survey it was found that, Both connections are liable for merger as per supply code 2015 clause 4.28 hence notice was issued by Baroda O&M Division vide BD/Tech-1/4551 Dt: 20/03/2021.

- The consumer has shown his willingness for merging of the LT connections by applying for new HT connection of 250 KVA on 23.02.2021 considering increase in contract demand

GUVNL guideline dated 19.03.2020 for merger of connection:

➢ It is submitted that GUVNL vide letter dated 19.03.2020 has issued guideline to DisComs in relation to merger of connection and period to be considered for raising of supplementary bill for merger. Taking cognizance of order(s) of Hon'ble"The Electricity Ombudsman Gujarat State" Case No. 88/2017, 44/2018, 54/2018, 112/2018, 99/2019 and also taking into account the stands taken by other DisCom by settling the cases by issuing supplementary bills from the date of issuance of notice/merged the connection from the date of notice, GUVNL has issued guidelines to adopt the same practice as per the said orders of Ombudsman.

Hon'ble Gujarat High Court judgment dated 22/05/2020:

- In the R/SCA No. 19890 of 2018- DGVCL V/s M/s. Rahulraj J Mall Co OP Service Soc Ltd, has held as under:

Considering the fact that the connections were issued after 2005, notification no. 11/2005 was very much in existence, in spite of that the petitioner has granted two connections in the name of the same person taking into consideration the clause 4.1.17 of the Code2005. In such circumstances when the Code2015 has come into effect from 24th September, 2015 and notice for merger was issued on 19th September 2017, the petitioner cannot be permitted to issue supplementary bill from the date of connection.

The above judgment of Hon'ble High Court is squarely applicable to the case of the Applicant. Therefore, in terms of the above judgment of Hon'ble High Court, the supplementary bill issued by MGVCL on deemed merger basis from the date of connection is not legal and valid.

As during the site visit by Dy Engineer Nandesari s/dn on 24.08.2020 and noticed that both the LTMD connections are liable for merging and it was also conveyed to consumer, also enough time is given to consumer to give documentary evidence but consumer fails to submit the same, on the contrary applicant has registered application for new 250 KVA HT connection to merge both the LTMD connections.

Regarding calculation of HT bill considering deemed merger of both the LTMD connections.

As per the order dated 09.09.2019 of Petition filed by M/s. T.T Limited, Unit : Gopeshwar Spinning Mill, village Kadiyali, Tal: Rajula, against PGVCL vide No.1642 of 2017 before the GERC, Gandhinagar, it was ordered in point No.8.6.2.5 (Page No.37 of 38) that

> *"Now we deal with the approach adopted by the Respondent to levy additional 11.11% from the Petitioner. As narrated earlier, on merger of two connections, the arithmetic sum of contract demands became 4850 kVA (2450 kVA of Connection No. 43133 + 2400 kVA of Connection No. 43149). Prior to merger, both the connections with contract demand of 2450 kVA and 2400 kVA were entitled to draw power at 11 kV voltage level as per as per the provisions of the GERC (Electricity Supply Code and Related Matters) Regulations, 2005, it's amendment dated 25.09.2006 and 18.06.2012. With the merger of these two connections, the Petitioner would have received power supply at voltage higher than 11 kV as per the provisions of the GERC Supply Code and its amendments. In the present matter, the Respondent has charged the Petitioner with 11.11% additional charge on the arithmetic sum of billing quantities of both the connections. Since, the Petitioner is entitled to receive power supply at 11 kV voltage level up to contract demand of 4000 kVA as per the prevailing Regulations, the Commission does not agree with the approach of the Respondent to charge additional 11.11% on billing quantities of the entire contract demand of 4850 kVA but decides that contract demand above 4000 kVA should only be charged with additional 11.11%. Therefore, the Respondent is entitled to charge 11.11% proportionately for all the billing quantities on the contract demand in excess of 4000 kVA i.e. on 850 kVA. Accordingly, the Respondent shall revise the bills and refund the excess amount to the Petitioner".*

In this specific case, supply voltage changes from 440 Volts (LT) to 11 KV (HT), considering 100 kW + 100 KW (223 KVA) of total contract demand, respondent MGVCL should only be charge 9.55% additional charge on the arithmetic sum of billing quantities of both the connections on the contract demand in excess of 111 kVA i.e. on 112 kVA.

Decision:

1. Therefore, taking into consideration all facts and findings of this case, prayer of the consumer is allowed and MGVCL is directed to revise the supplementary bill considering 24.08.2020 as effective date of merging.

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2. Also, recalculate the bill considering 9.55% (as per TC No.75 of MGVCL) additional charge on the arithmetic sum of billing quantities of both the connections on the contract demand in excess of 111 kVA i.e. on 112 kVA

5.2 <u>Findings/conclusion of Technical Member:</u>

- The consumer has shown his readiness for merging of the both LTMD connections (con.No.13076 and Con.No.14107) by applying for single HT connection of 250 KVA on 23.02.2021.

- Now due to New supply code came in effect from 24/09/2015, earlier connections given by MGVCL is required to merge. However considering the reason for merging i.e. Change in clause of Supply code, effective date should be considered from effective date of new supply code instead.

  Section 56 does not prevent the raising of the invoices and recovery of such amounts.

- As in the present case, the end users of the premises were never different from date of change of name (i.e. from 04.08.2015) and were always the Applicant. Therefore the basis of the said decision is not applicable to the facts of the present case for consideration of effective date as date of notice.

- Also, in similar type of the case of M/s. Panoli Intermediate (India) Pvt. Ltd MGVCL has filed SCA vide No.6167 of 2021 dated 03.04.2021 against CGRF of MGVCL to reconsider effective date of merging, the same case is pending with Hon'ble High Court.

  I am not agree with the decision of Chairperson regarding effective date of merging as per reasons shown above **<u>but agree with bill calculation procedure as shown in point No.2 of decision taken by Chairperson.</u>**

<u>Note:</u>

In this specific case, only two members (i) Technical Member and (ii) Chairperson of the Forum were present and both the members does not agree with the conclusion/decision taken by other member (specifically for date of effect for merging. In that case, as per GERC Regulations (CGRF & Ombudsman) 2019, Notification No.2/2019 and clause No.2.26 & 2.27 For final decision Chairperson shall have a casting vote.

Clause No.2.26 & 2.27, is reproduced hereunder:

<u>2.26</u>
The quorum for any sitting of the Forum shall be two (2), out of which one (1) should be the Independent Member. Each member shall have one vote. If the matter is heard by two members only i.e. Chairperson and Independent Member or Technical Member, then Chairperson shall have a casting vote in case of tie. Where

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the matter is heard by the Independent Member and Technical Member, the Independent Member shall have a casting vote in case of tie.

2.27

All decisions of the Forum shall, as far as possible, be unanimous or be on the basis of decision by majority of the members present. If a member hearing the matter does not agree with the decision taken by other members, he may record his note of dissent with reasons but the decision taken by majority of members hearing the case will prevail.

ORDER

The Forum has come to the conclusion that the respondent Madhya Gujarat Vij Company Limited (MGVCL) is directed to revised the supplementary bill for merging considering effective date as 24.08.2020 and calculation of supplementary bill should be revised considering 9.55% additional charge on the arithmetic sum of billing quantities of both the connections on the contract demand in excess of 111 kVA i.e. on 112 kVA within 15 days to complainant M/s. M/s. Radhika Orgo-Chem India Pvt Ltd., Plot No. C-1-B, 160/8, 9, 10/A-B, GIDC, Nandesari, Dist: Vadodara.

Not agreed with decission

(K B Dhebar)
Technical Member

(Smt Mala Y Shah)
Chairperson

PS :
If the complainant is not satisfied with the order of this Forum, the complainant may approach Ombudsman only after payment of minimum 33% of the bill amount issued to the party in question. ***The Office address of the Ombudsman is*** *: The Staff Officer, Office of the Electricity Ombudsman, Gujarat Electricity Regulatory Commission, Barrack No.3, Polytechnic Compound, Ambawadi, Ahmedabad 380 015 in accordance with Clause No.3.19 (viii) of GERC Notification No.2 of 2019.*

Procedure to make representations before Ombudsman***

1. Representation should be in writing duly signed by the complainant with his name and address.
2. Representation should be supported with affidavit.
3. True copy of order of Forum and original complaint made before Forum should be attached. Enclosed documents should be certified copies of the original documents.
4. The representation before Ombudsman should be submitted within 30 days from the date of order of Forum.
5. Copy of representation should be submitted at the office of Ombudsman. Copy of representation should be submitted to all respondents.
6. If the complainant is required to pay any amount according to the order of Forum, one-third of such amount should be deposited by complainant and proofs should be attached along with the representation.

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7. The matter should not be pending before the competent Forum or any other court, tribunal, arbitrator or any other authority.
8. All representations should be with a sufficient cause, reasonable diligence causing the consumer prima facie loss and damages / inconvenience.
9. Representation may be submitted in English or Gujarati language

*** http://www.gercin.org/docs/Cosumer%20Grievances/Procedure/Procedure.pdf

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