BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/Petition No. 70 of 2025

Date of Hearing	**:**	**07.04.2026**
Date of Order	**:**	**14.05.2026**

In the Matter of

Petition under Section 86(1)(f) of the Electricity Act, 2003 read with the Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023 dated 24th April, 2023 for allowing connectivity and open access to electricity generated from green energy sources, read with Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for solar and wind generation) Regulations 2019, read with Haryana Electricity Regulatory Commission (Terms & Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 notified on 11.01.2012 with its 1st amendment on 03.12.2013, read with the procedure for grant of green energy open access approved by the Haryana Electricity Regulatory Commission vide its order dated 29.11.2023 in Petition No. 35 of 2023.

Petitioner (s)

1. M/s Humbolt Energies Pvt. Ltd. through its Director Dhruv Lathar
2. M/s S.S. Solar Energy through its Proprietor Satender Singh
3. M/s DES Renewables Pvt. Ltd. through its Director Nishant Shehrawat
4. M/s L&P Energy through Proprietor Tushar Mutreja

Respondent (s)

1. Haryana Vidyut Prasaran Nigam Ltd. (HVPNL) through its Managing Director
2. Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL) through its Managing Director
3. Haryana Power Purchase Centre, Panchkula (HPPC) through its Chief Engineer

Present on behalf of the Petitioner (s)

1. Mr. Akshay Gupta, Advocate
2. Mr. Sanjeev Chopra, Advisor

Present on behalf of the Respondent (s)

1. Ms. Poorva Saigal, Advocate for R-1 (HVPNL)
2. Ms. Shree Dwivedi, Advocate for R-1 (HVPNL)
3. Mr. Raheel Kohli, Advocate for R-2, (DHBVNL)
4. Ms. Aerika Singh, Advocate for R-3 (HPPC)
5. Mr. Lovepreet Singh, Advocate for R-3 (HPPC)
6. Mr. Ashok Mathuria, Xen, HVPNL
7. Mr. Gaurav Gupta, Xen, HPPC

Quorum

Shri Nand Lal Sharma	**Chairman**
Shri Mukesh Garg	**Member**
Shri Shiv Kumar	**Member**

ORDER

Brief background of the case

1. The present petition has been jointly filed by M/s Humbolt Energies Pvt. Ltd. (herein referred to as “Petitioner 1”), M/s S. S. Solar Energy (herein referred to as “Petitioner 2”), M/s DES Renewables Pvt. Ltd. (herein referred to as “Petitioner 3”) and M/s. L&P

Energy (herein referred to as “Petitioner 4”), collectively referred to as Petitioner (s), praying to direct the respondents to correct the COD in the LTOA agreement from 10.02.2025 to 10.08.2024 and make all the due payments to the respective petitioners considering the actual COD as 10.08.2024 along with due interest and penalty charges to petitioners as per the PPA

2. **The Petitioner (s) have submitted as under: -**

2.1. That the petitioners are group of Renewable Power Generators (RPG) who are participants in PM Kusum Component A and have installed the solar power plants of 0.85 MW capacity each in village Burak, Distt. Hisar, Haryana and are connected through a common 11 kV independent feeder for injecting power at 11 kV in to the distribution network of Respondent No. 2 at 33 kV substation Burak.

2.2. That the PM KUSUM scheme which has been introduced with a motive to secure the availability of power and to discourage the use of diesel by the peasantry. Salient features of the scheme are as under: -

“Pradhan Mantri Kisan Urja Suraksha evam Utthan Mahabhiyan (PM-KUSUM) Scheme for de-dieselisation of farm sector and enhancing the income of farmers. Under the Scheme, central government subsidy upto 30% or 50% of the total cost is given for the installation of standalone solar pumps and also for the solarization of existing grid-connected agricultural pumps. Further, farmers can also install grid-connected solar power plants up to 2MW under the Scheme on their barren/fallow land and sell electricity to local DISCOM at a tariff determined by state regulator. This scheme is being implemented by the designated departments of the State Government”.

COMPONENT - A

- *Small Solar or other Renewable Energy based Power Plants (REPP) of capacity upto 2MW can be set-up by individual farmers/ cooperatives / panchayats / Farmer Producer Organizations (FPO) on barren/ fallow/marshy/ pasture or cultivable lands.*
- *The plant can be installed by the farmer or he can provide his land on lease to a developer, who will install the plant*
- *The SIA will be eligible to get service charge of Rs. 0.25 Lakh per MW after commissioning of the projects.*
- *It has been estimated that farmers will earn up to Rs. 25,000 per acre per year if the plant is installed by a developer/ CPSU on the land leased by the farmer*
- *Up to Rs. 65,000 per acre per year if they install the plant themselves by taking loan from the banks.*
- *The RBI has included this Component under priority sector lending and therefore Banks will provide loan at competitive rates and on soft terms.*
- *The Solar or other Renewable Energy based Power Plants (REPP) will be preferably installed within five km radius of the notified sub-stations in order to avoid high cost of transmission lines and losses.*
- *The central Government will provide an incentive of 40 paise/kWh or Rs.6.60 lakhs/MW/year, whichever is lower to the DISCOMs, for buying the power produced under this Component for a period of five years from the Commercial Operation Date of the plant.*

2.3. That the intention behind bringing in and encouraging such a scheme is to promote the installation of solar power projects on farmers’ land and to enhance the income of the

farmers against a commission approved PPA on a levelized tariff of Rs.3.11/unit- for next 25 years in the state of Haryana.

2.4. That a “Procedure” has been approved by the Hon’ble Commission by the name “Procedure for Grant of Green Energy Open Access” defining therein the steps to be followed by the Green Energy Generators as well as by the state agencies i.e. State Transmission Utility, State Distribution Utility, State Load Dispatch Center (SLDC) and the Haryana Power Purchase Center (HPPC) for making an application in that regard and the successive stages of approval by the state agencies.

2.5. That the Petitioners have installed their respective solar power projects of 0.85 MW each in a village BURAK in the district of HISAR (Haryana) after following all the necessary regulations and procedures and synchronized / commissioned the projects at the approved connectivity point at 11 kV level by erecting a dedicated and independent 11 kV feeder from the project sites to 33 kV substation BURAK (Hisar) under Balsamand subdivision of respondent no. 2. These solar power plants and the 11-kV line got synchronized / commissioned on 10.08.2024 and the report to this effect was duly signed by the officers of the respondent nos. 1 and 2.

2.6. That the next step as per “Procedure” was for the Respondent No. 2 to formally send the complete case and the facts thereof to the Respondent No. 1 for entering upon Long Term Open Access (LTOA) Tripartite Agreement, which is a prerequisite for eligibility for the Open Access Consumer to get the payments from respondent no. 3 against the solar energy injected into the transmission/distribution system of respondents 1 and 2 respectively.

2.7. That the Respondent No. 2, despite all the formalities and technicalities having been completed on 10.08.2024, took 6 months to forward the case to Respondent No. 1.

2.8. That the Respondent No. 1, despite in full knowledge of the facts that there was no delay on the part of Petitioners after the projects had been commissioned and synchronized on 10.08.2024 and also that the injection of solar power in to the system had started w.e.f. 10.08.2024 not only granted Open Access only on 10.02.2025 i.e. after full 6 months of commissioning but also told the petitioners to sign the LTOA agreement w.e.f. 10.02.2025. As a result, the LTOA Agreement, which should have been signed on 10.08.2024 had to be signed w.e.f. 10.02.2025 causing thereby huge financial losses to the Petitioners.

2.9. That the Petitioners brought to the notice of Respondent No. 1 that because there was no fault or delay on their part, the LTOA agreement should be signed w.e.f. 10.08.2024 but the Respondent No. 1 issued notice that if the LTOA agreement is not signed w.e.f. 10.02.2025, the Grant of Connectivity and Open Access would stand cancelled.

2.10. That the delay of 6 months has been jointly caused by the Respondent nos. 1 and 2 because they did not follow the provisions as laid down in the “Procedure” and instead

of accepting their own faults and instead of bearing the expenses thereof have inflicted heavy financial losses upon the Petitioners, who have nothing in their hands to fight back except that they have to come before the Hon'ble Commission to pray for justice.

2.11. That Section 86(1) (F) of the Electricity Act 2003 provides for this Hon'ble Commission to adjudicate the dispute between licensees and generating company. Section 86(1)(F) empowers this Hon'ble Commission to discharge its functions in accordance with this Act. The relevant provisions read as follows: -

***"Section 86. Functions of State**:*

(1) The State Commission shall discharge the following functions, namely:

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

(k) discharge such other functions as may be assigned to it under this Act."

2.12. That as per Regulation 10, 11, 12, 13 and 14 of the Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023 for allowing connectivity and open access to electricity generated from Green Energy Sources provide Hon'ble commission the following powers to relax, Issue of orders or directions, power to amend, power to remove difficulties and Savings respectively. The relevant provisions are quoted below: -

***"10. Power to Relax**:*

The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected may suo moto relax any of the provisions of these regulations or on an application made before it by an interested person.

11. Issue of orders or directions:

Subject to the provisions of the Act and these regulations, the Commission may, from time to time, issue orders and procedural directions with regard to the implementation of these regulations and specify the procedure to be followed on various matters, which the Commission has been empowered by the regulations to direct and matters incidental thereto

12. Power to amend:

The Commission may, at any time, add, vary, modify or amend any of the provisions of these regulations.

13. Power to remove difficulties:

If any difficulty arises in giving effect to any of the provisions of these regulations, the Commission may, by general or special order, make such provisions, which in the opinion of the Commission are necessary or expedient to do so.

14. Savings:

Nothing in these Regulations shall limit the inherent power of the Commission to make such orders as may be necessary to meet the ends of justice or to prevent abuses of the process of law / statutes. Nothing in these Regulations shall bar the Commission from adopting, any other procedure, which may be at variance with any of the provisions of these Regulations, as long

as they are in conformity with the provisions of the Electricity Act, 2003 and the policies framed by the Central / State Government thereto"

2.13. That Regulation 18, 19 and 20 of the HERC (Deviation Settlement Mechanism and related matters) Regulations, 2019 provides Hon'ble commission the power to amend, power to remove difficulty and power to relax, respectively. The relevant provisions are quoted below: -

*"**18. Power to amend***

The Commission may, at any time, vary, alter, modify or amend any provisions of these Regulations.

19. Power to remove difficulties

If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by general or specific order, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.

20. Power to Relax:

The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected by grant of relaxation, may relax any of the provisions of these Regulations on its own motion or on an application made before it by an interested person."

2.14. That Regulation 57, 58, 59 of the Haryana Electricity Regulatory Commission (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 provides Hon'ble commission the power to amend, power to remove difficulty and power to relax, respectively. The relevant provisions are quoted below: -

*"**57. Power to amend. –***

The Commission, for reasons to be recorded in writing, may at any time vary, alter or modify any of the provision of these regulations by specific order.

58. Powers to remove difficulties. –

If any difficulty arises in giving effect to any of the provisions of these regulations, the Commission may, by a general or special order, not being inconsistent with the provisions of these regulations or the Act, do or undertake to do things or direct to do or undertake such things which appear to be necessary or expedient for the purpose of removing the difficulties.

59. Power of relaxation. –

The Commission may in public interest and for reasons to be recorded in writing, relax any of the provision of these regulations."

2.15. That Regulation 65, 66, 67 and 68 of the HERC (Conduct of Business) Regulations. 2019 provide this Hon'ble Commission with inherent powers and general power to amend. Relevant provisions are extracted below: -

"Saving of inherent power of the Commission

65. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.

66. Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act a procedure at variance with any of the provisions of these Regulations if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

67. Nothing in these Regulations shall, expressly or impliedly, bar the Commission to deal with any matter or exercise any power under the applicable legal framework for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

General power to amend

68. The Commission may, at any time and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any Proceedings before it, and all necessary amendments shall be made for the purpose of determining the real question or issue arising in the Proceedings."

2.16. That clause 36 of the "Procedure for grant of Green Energy Open Access" provides power to the Hon'ble Commission to hear the Appeal, as under: -

Appeals: *Appeals against an order of the State Nodal Agency, the power shall lie before the Commission, within a period of thirty days from the date of receipt of order. The Commission shall dispose the appeal within a period of three months and the order issued by it, shall be binding on the parties.*

2.17. That the Respondent No. 2 (DHBVNL) floated an "Expression of Interest" EOI vide EOI No. 01/SE/C/2022/PM/KUSUM/DHBVN dated 04.07.2022 with the heading "For Installation of Decentralized Ground/Stilt Mounted Grid Connected Solar Power Plants of Capacity up to 2 MW on barren/fallow/uncultivated/pasture/marshy land/Agriculture Land falling within a radius of 5 kms. From substations notified by DHBVN under Component-A of PM-KUSUM SCHEME".

2.18. That the salient features of the EOI are as under:-

i) On behalf of DHBVN, HPPC will sign the PPA with the successful applicants for purchase of power at the prefixed levelized tariff for a period of 25 years from the Commercial Operation Date (COD) of the plant.

ii) In case more than one bidder are awarded the projects that are to be connected to the same substation, they shall be permitted to coordinate with each other for setting up the common transmission line if they so desire. Approval of DHBVN would be required for such purpose.

iii) DHBVN shall be responsible for providing connectivity to the solar power plant at the 11 kV side of the nearest sub-station. SPG (Solar Power Generator) has to comply with the Grid Code and other related Regulations as applicable.

iv) Commercial Operation Date

The Commercial Operation Date (COD) shall be considered as the actual date of commissioning of the solar power plant as declared by the Commissioning Committee of DHBVN.

v) All applicable CERC / HERC / CEA regulations, codes, and applicable guidelines of MNRE /DHBVN or any other applicable entity shall have to be adhered by the SPG for the installation and operation of the solar power plant

vi) If there is any discrepancy between the provisions of this EOI document with PPA, then the provisions of PPA will prevail and shall have overriding effect

2.19. That the LOAs were issued to the Petitioners by DHBVN on 15.02.2023 after completing all the usual formalities of tendering.

2.20. That HPPC on behalf of DHBVN signed a Power Purchase Agreement (PPA) with the Petitioners on 21.08.2023 at the pre-fixed levelized tariff of Rs.3.11/kWh, as notified by Hon'ble Haryana Electricity Regulatory Commission, for purchase of power for a period of 25 years from the Commercial Operation Date (COD) of the Solar plant.

2.21. That the Petitioners applied to HAREDA for registration of their solar power plants, and they obtained the registration on 15.03.2024.

2.22. That the Petitioners applied to the Respondents for Connectivity, and it was granted by Respondent No. 1 on dated 02.07.2024.

2.23. That the Connection Agreement between the Petitioners, Respondent No. 1 and 2 was duly signed and submitted on 05.07.2024.

2.24. That the work of Solar Plant as well as the connecting 11 kV line was completed by the Petitioners on 05.08.2024 and its inspection was carried out by the office of Chief Electrical inspector (CEI) Haryana and its report submitted on dated 07.08.2024.

2.25. That the Petitioners submitted formal application for Grant of Long-Term Open Access (LTOA) with the Respondents on dated 05.07.2024. The queries raised by Respondent No. 1 vide his letter dated 07.08.2024 were duly replied and all documents submitted.

2.26. That the Charging Code was given on 10.8.2024 against which the solar power plants of the petitioners were commissioned and synchronized with the substation injection point.

2.27. That the complete system including ABT metering was duly tested by M&P teams of both the Respondents No. 1 and 2 and the solar project was synchronized / commissioned on 10.08.2024. Letter to this effect was issued by Respondent No. 2 confirming the commissioning and the Commercial Operation Date (COD) of the solar plants as 10.08.2024.

2.28. That the data verification of the ABT meters further prove that the solar power plants of the petitioners were synchronized with the grid and the injection of power started w.e.f. 10.08.2024

2.29. That the Respondent No. 2, despite having all the necessary documents in possession and despite having declared 10.08.2025 as the Commercial Operation Date, did not send the requisite papers to Respondent No. 1 for grant of LTOA.

2.30. That the petitioners kept on pursuing the matter with both the Respondent nos. 1 and 2 and kept running from pillar to post to get the LTOA granted but it was only after the matter was brought to the notice of the respective Managing Directors that the Respondent No. 1 granted LTOA on 10.02.2025.

2.31. That the respondent no. 1 sent the draft copy of LTOA agreement mentioning the COD as 10.02.2025 instead of 10.08.2024 to petitioner(s). The petitioners returned the copy of agreement back to the respondent no. 1 requesting them that the COD should be entered as 10.08.2024 instead of 10.02.2025. Moreover, the respondent didn't mention the COD word in the draft agreement.

2.32. That the respondent no. 1 returned the agreement without accepting the request and told the petitioners to resubmit the agreement after entering the COD as 10.02.2025 only and also warning therein that if it was not done, the LTOA granted would stand cancelled.

2.33. That left with no option and fearing that their entire expenditure would go waste and would further delay the process of payment, the Petitioners under duress re-submitted the LTOA agreement to respondent no. 1 after entering the COD as 10.02.2025 but simultaneously apprising them that a separate petition would be filed before the Hon'ble Commission to get the COD corrected to 10.08.2024.

2.34. That the consequence of all these mistakes on the part of respondents nos. 1 and 2 is that the respondent no. 3, with whom the PPA had been signed by the Petitioners and the one who is responsible for making payments to the petitioners has refused to accept the COD as 10.08.2024. Instead, he has accepted the COD as 10.02.2025 i.e. causing exactly a gap of 6 months from the date the solar power generation had got commissioned and synchronized with the respondents' system.

2.35. The petitioners, as a further consequence of the above, have been denied the payments by respondent no. 3 which otherwise would have become due from 10.08.2024.

2.36. The petitioners have represented to all the concerned authorities of respondent nos. 1, 2 and 3 for accepting the facts and to admit the COD as 10.08.2024 but all of them being in the position of authority have not budged from their stand and instead have been blaming each other for the mess which has got created.

2.37. That finding no solution in sight to the genuine grievance of the petitioners, the matter is placed before the Hon'ble Commission seeking directions to the respondents not to transfer their part of the onus on to the petitioners and also to direct them to honor their own record and admit their mistake and make the due payments from 10.08.2024.

After having placed all the facts of the case above, it is pertinent to mention below, for ready reference, the salient provisions of the "Procedure for Grant of Green Energy Open Access" which the respondents have failed to follow and appreciate the sanctity thereof

Clauses 19 and 21 of the "Procedure" are reproduced as under:

19 Processing of applications:

19.1 On receipt of an application, the State Nodal Agency shall check, whether the application is complete or not and fulfils the requisite mandatory requirement(s) for grant of STOA/MTOA/LTOA, as the case may be.

19.2 In case, necessary infrastructure required for ABT metering and time block accounting has not been installed, Superintending Engineer of concerned Operation/TS wing, as the case may be, shall supply feasibility report for installation of ABT metering system. After receipt of feasibility report from field office, the applicant is required to get ABT metering system installed as per HVPNL specification and supply the joint testing report, meter data to the nodal office for verification of the same.

19.3 In case of incomplete or defective application, within 2 days of receipt of application, STU shall communicate the deficiency or defect to the applicant by e-mail, or any other usually recognized mode of communication. The applicant shall rectify the deficiency within one week thereafter.

19.4 The application shall be considered as valid application only on the date on which the complete application has been received after fulfilling the mandatory conditions or after removing the deficiency or rectifying the defects or submission of requisite documents/information, as the case may be.

19.5 An incomplete application and/or an application not found to be in conformity with this procedure/guidelines or Regulations, shall liable to be rejected as per procedure mentioned hereunder.

19.6 If the applicant does not respond or fails to supply the complete application or requisite information within seven days of issue of letter by Nodal Agency, a notice shall be served to the applicant giving time period of 15 days, failing which the application shall be rejected and application fee shall be forfeited. The reasons for rejection shall be communicated to the applicant.

19.7 On receipt of complete application, within three days, the State Nodal Agency shall forward one set of application to the following office, seeking consent from the nodal office of the Distribution Licensee:

i) Superintending Engineer/ SO, UHBVN, Panchkula or as authorized by UHBVN (for Cases of UHBVN)

ii) Superintending Engineer/ SO, DHBVN, Hisar or as authorized by DHBVN (for Cases of DHBVN)

The distribution licensee shall be responsible for:

(ii) Verification of field data/information (in case of consumers of distribution licensee or non-consumers of distribution licensee who are connected to distribution network) and;

(iii) For grant of consent pertaining to use of standby/ start up power by the open access applicants as per provisions of Open Access Regulations.

(iv) Applicable Open Access Charges payable by the applicant to concerned DISCOM as the case may be. Any change in the charges at later stage or any addition or removal of the charges shall be communicated by respective DISCOM (O/o SE/Commercial UHBVNL or DHBVNL or any other office authorised by DISCOM) to the Nodal agency as and when required.

Respective Superintending Engineer/ SO shall communicate any deficiency or defect in the application or refusal or consent within 15 days, to Nodal Agency.

Note: - In case the distribution licensee (UHBVNL & DHBVNL) has not communicated any deficiency or defect in the application or refusal or consent within the time period specified for grant of consent, consent shall be deemed to have been granted.

19.8 The nodal agency shall carry out requisite study (if any in accordance with the provisions of the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 and IEGC/ Haryana Grid Code), whether any augmentation is required on existing intra-State transmission system or distribution system for allowing LTOA to the applicant.

19.9 Priority of processing of applications shall be given to long term in the existing system if spare capacity is available and further, open access for non-fossil fuel sources shall be given priority over the open access from the fossil fuel by CTU/STU as the case may be.

19.10 After receipt of consent from State DISCOMs and thereafter subsequent to the decision by the nodal agency (STU), within 10 days, the approval for grant of the STOA/MTOA/LTOA shall be conveyed by the nodal agency to the Applicant/ Customer with a copy to SLDC and concerned field office of distribution /transmission licensee.

Clause 20 Application Processing Time for STOA / MTOA / LTOA

Sr. no.	Description of Activity	Time Frame
1	Submission of Application Time	0-2 days
2	Communication of deficiency or defect in the application	1st – 2nd Day (within 2 days)
3	After completion of Application, forwarding the case to concerned DISCOMs for consent (complete in all respects, after removing deficiency/defect or submission of requisite documents)	3rd - 5th Day (within 3 days)
4	Supply of consent by DISCOM to nodal agency	6th - 20th Day (within 15 days)
5	Accept/Reject the application by nodal agency	21st – 30th Day (within 10 days)
6	Acceptance or Clarification/Change by the applicant	Within 10 Days
7	Submission of LTOA agreement	Within 90 Days

2.38. That from the facts of the case placed above, from the chronological sequence of events that took place and from the detailed procedure and time lines stipulated therein, it can be seen that during the processing of application for grant of connectivity and Long-Term Open Access, the petitioners did not default even on one occasion whereas there has been a series of lapses on the part of both the respondent nos. 1 and 2.

2.39. That the petitioners cannot be put to hardships and the financial loss for the fault / delays on the part of respondents. Once the procedure has been laid and the time lines

have been specified for each event, the respondents cannot take any advantage of their being on the riding seat and being placed in authoritative position to harm the petitioners in any manner.

2.40. That all the papers / documents, most of which are respondents' own record and letters prove beyond doubt that the solar plants had been commissioned / synchronized on 10.08.2024, the injection of power had started from 10.08.2024 and the payment against sale of power to respondent no. 3 had become due w.e.f. 10.08.2024.The petitioners are well within their right to demand release of their due payments from 10.08.2024 and also to demand the correction of CoD in the LTOA agreement from 10.02.2025 to 10.08.2024.

2.41. That the following prayers have been made: -

a. Admit the present petition; and

b. Exercise its powers to direct the respondents to correct the COD in the LTOA agreement from 10.02.2025 to 10.08.2024 and make all the due payments to the respective petitioners considering the actual COD as 10.08.2024 along with due interest and penalty charges to petitioners as per the PPA

c. To allow any other relief as deemed fit by the Hon'ble Commission

3. **The reply filed by Respondent No. 3 (HPPC) under affidavit dated 08.10.2025: -**

3.1. That Regulation 6(13) of the Haryana Electricity Regulatory Commission (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 ("**OA Regulations, 2012**"), provides that grant of connectivity prior to the grant of the LTOA, cannot permit the petitioner to interchange any *firm* power with the State Grid. Therefore, once the injection of power into the Grid was contrary to the Regulations in vogue, as such, no payment whatsoever with respect to the injection of such *infirm* power can be remitted in the favour of the Petitioners.

3.2. That any power injected into the gird prior to the grant of the LTOA cannot be considered as *"firm power".* Further, as per Regulation 6(14) of the OA Regulations, 2021 infirm power cannot be injected beyond a period of 3 months. Regulation 6(14) is reproduced below for ready reference: -

"(14) ***A generating station****, including a captive generating plant, which has been granted connectivity to the intra-State grid,* ***shall be allowed to inject infirm power into the grid*** *during testing including full load testing* ***before commencing its commercial operation for a period not exceeding three months*** *after obtaining prior permission of the State Load Despatch Centre.*

Provided that the State Load Despatch Centre while granting such permission shall keep the grid security in view and ensure that injection of such infirm power is only for the purpose of testing, prior to commencing of commercial operation of the generating station or a unit thereof."

3.3. That the Petitioners have not obtained prior approval from the Answering Respondent and/or Haryana Vidyut Prasaran Nigam Limited ("HVPNL") regarding the continuous injection of power into the grid. HPPC has further submitted that injection of power into the Grid prior to grant of LTOA was at Petitioner's own peril. Article 5 of the PPA provides as under:-

*"**Article 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION:***

5.1 Synchronization, Commissioning And Commercial Operation

5.1.1 ***The RPG shall give the DISCOM at least thirty (30) days' advanced preliminary written notice and at least fifteen (15) days' advanced final written notice of the date of which it intends to synchronize the Power Project to the Grid System****.*

5.1.2 ***Subject to Article 5.1.1, the Power Project may be synchronized by the RPG to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System****.*

5.1.3 The synchronization equipment and all necessary arrangements/ equipment including RTU for scheduling of power generated from the Project and transmission of data to the connected authority as per applicable regulation shall be installed by the RPG at its generating facility of the Power Project at its own cost. The RPG shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation/ and checking/ verification is made by the concerned authorities of the DISCOM.

5.1.4 The RPG shall immediately after each synchronization/ tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code. In addition, the RPG will inject in-firm power to grid time to time to carry out operational/ functional test prior to commercial operation. ***For avoidance of doubt, it is clarified that Synchronization/ Connectivity of the Project with the grid shall not be considered as Commissioning of the Project.***

… … …

ARTICLE 6: DISPATCH AND SCHEDULING:

6.1.1 ***The RPG shall be required to schedule it power as per the applicable regulations of SERC /SLDC or any other competent agency and the same being recognized by the SLDC or any other competent authority/ agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC from time to time.*** *Any deviation from the Schedule will attract the provisions or applicable regulation / guidelines/ directions and any financial implication on account of this shall be on the account of RPG.*

6.1.2 The RPO shall be responsible for directly coordinating and dealing with the DISCOM, State Load Dispatch Centers, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations.

6.1.3 The RPG shall be responsible for any deviation for scheduling and for any resultant liabilities on account of charges for deviation as per applicable regulations. UI charges on this account shall be directly paid by the RPG."

(Emphasis Supplied)

The relevant clauses of the PPA clearly establishes that multiple pre-conditions were required to be fulfilled by the Petitioners prior to injecting power into the grid for onward sale to the Answering Respondent. The Petitioners cannot selectively enforce certain contractual provisions, such as those relating to payment, without complying with the PPA in its entirety. PPA must be read as a whole, and compliance with all its terms, particularly those governing synchronization, commissioning, and commercial operation is a *sine qua non* for any right to claim payment.

The Answering Respondent was never intimated of such injection, in violation of express provisions of the PPA. Hence, any such injection was unauthorized and solely at the risk of the Petitioners. The liability towards of such un-authorized injection cannot shifted to the consumer of the State.

3.4. That the Answering Respondent vide letter dated 07.11.2024, after being informed that the commissioning has been accorded to the Petitioner retrospectively, sought a copy of LTOA from the HVPNL. In response thereto, HVPNL vide letter dated 12.11.2024 intimated that no LTOA has been granted as yet while clearly stating that the grant of connectivity shall not entitle the applicant to interchange any firm power with the State grid unless it obtains long-term open access as per HERC Regulations, 2012. Further, HPPC, vide its letter dated 19.11.2024, had categorically intimated the Petitioner and the other Respondents that in view of the clauses of the PPA and the OA Regulations, the firm power cannot be said to have been injected into the grid without the approval of the LTOA and the generators ought not to inject power prior into the grid prior to the same. It was further intimated that no payment can be made for such power.

3.5. That the bills corresponding to the period during which power was being injected into the grid were not submitted on a monthly basis, as is mandatorily required under Clause 10.2 of the PPA.

3.6. That the Memo issued by Respondent No.2-DHBVNL to the Answering Respondent-HPPC, forwarding the meter reading of the month of August 2024 to December 2024 specifically records that – *"2. Since as per M&P report, check meters at solar power projects have not been installed. 3. No LTOA agreement has been received in this office."* However, as per Clause 7.1.3 of the PPA, the Petitioners were under an obligation to install Check meters at the delivery points.

3.7. That the invoices against the energy bill for the month from August 2024 to January 2025 and February 2025 were raised for the very first time on 11.02.2025 & 11.03.2025 respectively. The same was not acceptable and returned in original as clause no. 6

(13) of HERC open Access regulation 2012 allows an applicant to interchange any firm power with the state grid unless it obtains LTOA/MTOA in accordance with the provisions of HERC regulation. It was further requested to raise fresh invoice for the energy injected into the grid after the approval of LTOA by HVPNL for the period of 10.02.2025 onwards.

3.8. That the petitioners submitted their invoices duly supported by JMR issued by DHBVNL on 02.04.2025 for the energy injected into the grid after 10.02.2025 (date of LTOA approval by HVPNL). Accordingly, HPPC made the payment for the same.

3.9. That attention of the Hon'ble Commission is also brought towards Clause 2.1 of the Connection Agreement entered between the Petitioners and the Respondent No. 1 and 2, reproduced below: -

"2.1 Agreement to pay monthly Transmissions Charges/ Wheeling Charges:

The applicant shall pay the monthly transmission and wheeling including SLDC charges, income tax or other taxes i.e. GST etc. *for use of intra-state Transmission/ Distribution System,* ***as and when Long Term Open Access is availed*** *by the Applicant, in accordance with the relevant Regulations of HERC in this regard. The levy of Electricity Duty & other taxes, of any, shall be as per prevailing Regulations.*

The distribution losses of DISCOMs and transmission losses of STU/HVPN shall be applicable to the applicant as per Regulations/orders/guidelines of HERC, HVPN & DISCOMs."

(Emphasis Supplied)

The Petitioners cannot be permitted to seek compensation/ payment of the power injected without the payment of the requisite charges which become due *"as and when Long Term Open Access is availed."*

3.10. That, even otherwise, the Answering Respondent cannot be made liable to compensate the Petitioner for the entire quantum of power injected into the grid prior to the grant of LTOA/ compliance of mandatory provisions of the PPA/ Connectivity Agreement, view of the settled law. Reliance in this regard is placed on ratio of the following judgments: -

In ***Kamachi Sponge & Power Corporation Ltd. v. Tamil Nadu Generation and Distribution Corporation Ltd.*** [Appeal No. 120 of 2016 and IA No. 272 of 2016. D/d. 8.5.2017; Law Finder Doc Id # 955191], the Hon'ble APTEL held as under:

"iv. The Respondent No. 1 had also quoted two more judgments of this Tribunal in appeal nos. 267 of 2014 and appeal No. 68 of 2014. In the judgment dated 15.4.2015 in appeal No. 267 of 2014 this Tribunal has held that the Appellant (M/s. Cauvery Power Generation Pvt. Ltd.) is not entitled to claim payment of infirm power injected into the grid without the approval from the Respondent (TANGEDCO) for specific duration as mentioned in the judgment till TANGEDCO conveyed its consent to purchase infirm power. In the judgment dated 30.5.2016 in appeal No. 68 of 2014 this Tribunal has disallowed the payment by Respondent (TANGEDCO) towards injection of power from COD of the Appellant (M/s. OPG Power Generation Pvt. Ltd.) till approval of third party sales by TANTRANSCO as the energy was injected to the grid without

the consent/knowledge of the distribution licensee and SLDC. ***The crux of these two judgments is also that a generator cannot pump electricity into the grid without having consent/contractual agreement with the distribution licensee and without the approval/scheduling of the power by the SLDC. Injection of such energy by a generator is not entitled for any payments."***

Similarly, in ***M/s Cauvery Power Generation Chennai Pvt. Ltd. v. Tamil Nadu Electricity Regulatory Commission*** [Appeal No. 267 of 2014. D/d. 15.4.2015; Law Finder Doc Id # 957734], the Hon'ble APTEL held as under:

"7. Regarding the 3rd issue about the payment for infirm power injected into the grid from 17.10.2012 to 25.10.2012, we find that the State Commission has observed that the Appellant vide letter dated 25.10.2012 had informed in its first communication with TANGEDCO about the synchronization of the plant. TANGEDCO conveyed its consent to purchase the infirm power from 00 hours 26.10.2012 till CoD of the plant as per the tariff to be determined by the Commission. ***The State Commission held that mere request on the part of the Petitioner to sell the infirm power generated during the period of testing and commissioning to the Respondents will not create an obligation on the part of the Respondent to pay and the liability to pay would arise only in respect of power injected w.e.f. 26.10.2012****.*

8. ***We agreed with the findings of the State Commission that the Appellant is not entitled to claim payment for infirm power injected into the grid from 17.10.2012 to 25.10.2012 without getting express approval from the TANGEDCO****. We also find that TANTRANSCO in its communication to the Appellant while allowing the Appellant to synchronize their unit with the grid requested the Appellant to contact CE/PPP, TANGEDCO for any infirm power injection into the grid before CoD. Thereafter, communication was sent by the Appellant to TANGEDCO only on 25.10.2012 intimating about synchronization of the power plant on 17.10.2012. TANGEDCO communicated its acceptance to purchase the infirm power from 26.10.2012 vide its letter dated 30.10.2012. Accordingly, this issue is decided against the Appellant."*

(Emphasis Added)

As such, no relief is liable to be granted to the Petitioners on the sole ground that no prior approval was sought by the Petitioners from the Answering Respondent and/or the HVPNL regarding continuous injection of electricity prior to the grant of LTOA.

3.11. That even otherwise, the relief being sought by the Petitioner is contrary to the intent and purport of Section 61 (b) & (c) of the EA, 2003, reproduced below:-

"61. Tariff Regulations. – ***The Appropriate Commission*** *shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so,* ***shall be guided by the following****, namely: -*

(b) ***the generation****, transmission, distribution and supply of electricity* ***are conducted on commercial principles****;*

(c) ***the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments****;"*

That granting relief solely on the ground of alleged financial hardship would be inconsistent with the mandate under the EA, 2003 mandating the Appropriate Commission to uphold commercial principles. If such relief is granted, it may open the floodgates to similar claims from other generators, seeking unjustified benefits solely on assertions of financial distress—thereby undermining the objectives enshrined in Section 61(b) and (c) of the EA, 2003.

3.12. That, throughout the petition allegations with respect to "duress" have been raised by the Petitioners. However, no cogent reason, supported by documentary evidence have been placed on record by the Petitioners. It is the case of the Answering Respondent that the submissions w.r.t. any "duress" cannot be taken into account without adequate proof the same. Reliance in this regard is placed on the following judgments:-

The Hon'ble Delhi High Court in the case of ***M/s Unikol Bottlers Ltd. Vs. M/s Dhillon Kool Drinks and another*** [1995 AIR Delhi 25], with respect to 'duress' on the contracts between the parties, held as under:

*"33. "**Duress" which is the term used in English law in this connection should be the result of the acts and conduct of the defendant and not the result of plaintiff's own necessities**. From the material on record it is difficult to say that PFL exercised any duress on the plaintiff.*

34. In some of the English cases it has been held that some amount of pressure in commercial transactions is always there. Kerr J. observed in Occidental Worldwide Investment Corpn. v. Skibs A/S Avanti, (1976) 1 Lloyd's Rep 293 at 336, in a contractual situation commercial pressure is not enough. Legitimate pressure alone will be permitted and any illegitimate pressure will vitiate the consent. Was their illegitimate pressure on the plaintiff in the present case which compelled it to enter into the Supplemental Agreement? It appears that it was more out of plaintiff's own commercial necessities that the plaintiff entered into the Supplemental Agreement and the Supplemental Agreement was not the result of any legitimate pressure exercised on the plaintiff by PFL. If that was not so, the plaintiff should have challenged the threatened termination of the contract by PFL, if necessary, by going to Court. There was nothing which prevented the plaintiff from going to Court and seek its remedies against the threatened termination of the parent agreement at that stage. Therefore, it is difficult to say that the Will of the plaintiff was dominated by PFL on account of duress or unequal bargaining power. The plaintiff took a conscious decision in March, 1992 when it entered into the Supplemental Agreement. It was a conscious decision because the Supplemental Agreement was admittedly discussed and the plaintiff made its comments on the draft agreement. The Supplemental Agreement was negotiated in the background of threatened termination of the parent agreement. The notices of termination served by PFL on the plaintiff were pending. Thirdly, the language of the Supplemental Agreement does not suggest any kind of pressure on any of the parties. On the contrary its language suggests absolute free will of both the parties indicating that it was a voluntary act of the parties. The agreement was arrived at in a spirit of amicable resolution of the pending issues between both the parties.

35. Williston in its Treatise on the Law of Contracts 1970 Vol. 13 has summarised the position in para 1603 as under:--

"Probably the most significant development affecting the doctrine of duress is the great expansion in the concept of economic or business duress during the twentieth century. A growing majority of jurisdictions subscribes to the doctrine that there are circumstances under which economic pressure may invalidate an otherwise enforceable contract. The Supreme Court of the United States has recognised and given its judicial benediction to this extension of duress.

Referring to "the modern doctrine of economic duress," it has been aptly said: "This doctrine is constantly being extended and expanded and bears slight resemblance to common-law duress."

Recognising this trend towards expansion of economic duress or "business compulsion," the Court summarised the requirements:

"The law of duress has broadened somewhat during recent years making it virtually impossible to arrive at any clear-cut definition, and the Courts have stated that its application must of necessity depend upon the circumstances of each individual case. An examination of the cases, however, makes it clear that three elements are common to all situations where duress has been found to exist. These are; (1) that one side involuntarily accepted the terms of another; (2) that circumstances permitted no other alternative; and (3) that said circumstances were the result of coercive acts of the opposite party. ***In order to substantiate the allegation of economic duress or business compulsion, the plaintiff must go beyond the mere showing of a reluctance to accept and of financial embarrassment. There must be a showing of acts on the part of the defendant which produced these two factors. The assertion of duress must be proven to have been the result of the defendant's conduct and not by the plaintiff's necessities."***

36. The Contracts are meant to be performed and not to be avoided. Justice requires that men who have negotiated at arm's length, be held to their bargains unless it can be shown that their consent was vitiated by fraud, mistake or duress. The real test is to first establish that the means pursued were illegitimate in the sense of amounting to or threatening a crime, tort or a breach of contract (though possible not plausible breach of contract will suffice). Secondly, one must establish that the illegitimate means were a reason, though not necessarily the predominate reason for the victim's submission. Applying these tests to the facts of the present case, I am unable to persuade my self to hold that the consent of the plaintiff to enter into the Supplemental Agreement was not free or was vitiated on any of the grounds urged before me and discussed hereinbefore."

3.13. That the Hon'ble Punjab and Haryana High Court in the case of ***M.R.B. Engineers v. Modern Diaries Ltd.*** [2013(1) RCR(Civil) 794] held that the onus to establish coercion or duress, lies upon the person, who alleges such a fact. In the instant matter, the Petitioners have failed to discharge such burden. It is most respectfully submitted that the inordinate delay between the date of grant of LTOA and the institution of the present petition unequivocally demonstrates that the plea of duress is a belated

afterthought. It is an admitted position that the Petitioners have been injecting power into the grid since the grant of connectivity, which was undertaken at their own financial risk and volition. If the Petitioners were genuinely acting under duress, the appropriate stage to raise such a grievance would have been at the inception of such injection. However, the Petitioners remained acquiescent for a considerable period, fully cognizant of the legal infirmity in injecting power without the requisite LTOA. The belated invocation of duress, therefore, lacks bona fides and is a clear attempt to circumvent the consequences of their own conduct. Such a conduct of the Petitioners is liable to be depreciated and the plea of duress, being an afterthought, is liable to be summarily rejected.

3.14. That attention of the Hon'ble Commission is also brought towards the decision in the case of ***Sidharth Co-Operative House Building Society Ltd. v. State of Haryana*** [2024 NCPHHC 21237] wherein the Division Bench of Hon'ble Punjab and Haryana High Court held that- *"The argument that the agreement dated 24.09.2012 had been executed by the petitioner- Society under **duress** cannot be raised in writ jurisdiction as the same **would have to be proved by leading evidence**."*

3.15. That, at present, the Answering Respondent has signed PPAs aggregating to approximately 100 MW for the PM-KUSUM Projects. PM-KUSUM Projects, though relatively small in individual capacity, cumulatively form a significant portion of the RE generation in the state. In case the present petition is allowed the same may set a precedent for all similarly placed PM-KUSUM developers to inject energy into the grid without the grant of LTOA. This could result in a large number of such generators operating outside the ambit of OA Regulations, which in turn would adversely affect the real-time balancing of supply and demand on the grid. Granting such exemptions, therefore, would not only undermine the regulatory framework governing grid discipline but would also pose a substantial threat to the stability and reliability of the state and regional power grids. Accordingly, the relief sought by the Petitioners is neither sustainable in law nor in the interest of maintaining grid security, stability and discipline.

3.16. That the present petition has been filed by the Petitioners only after the grant of the LTOAs and execution of the PPAs by the Answering Respondents with the Petitioners. The Answering Respondents submit that if the Petitioners had any grievance regarding the applicability of the relevant Regulations, they ought not to have participated in the tender, thereby signifying their acceptance of the prevailing Regulations. Such a petition cannot be entertained belatedly. The Petitioners by way of the present petition are, in essence, seeking amendment to the terms of the PPA which is sacrosanct in nature, binding and enforceable by law. Petitioners had/has signed the PPA with eyes open and had not made any reservations to this effect. The present petition has been filed once the PPA has been executed between the parties. Such an act on the part of

the Petitioners i.e. to approach the Hon'ble Commission belatedly i.e. once the PPA already stands signed is liable to be viewed strictly.

3.17. That without prejudice to foregoing, no liability, whether financial or otherwise, can be fastened upon the Answering Respondent for any delay or omission, if any, not attributable to the Answering Respondent. Especially when the Answering Respondent has no control or supervisory authority in the grant of LTOA. The contractual and statutory obligations of the Answering Respondent are restricted. It would be wholly unjustified to saddle the Answering Respondent with any form of liability, without any direct/ indirect action/ in-action on the part of the Answering Respondent. Such attribution of liability would amount to penalizing the Answering Respondent for contingencies beyond its domain, which is impermissible in law.

3.18. That, even otherwise, the Petitioners cannot be permitted to bypass the express provisions of law that too for their financial benefit. In case the present petition is allowed, the same would result in similar petitions on behalf of similarly placed generators claiming parity. As such, the present petition is liable to be dismissed outrightly as the Petitioners are seeking grant of special treatment and exemption from compliance of the applicable Regulations.

4. **The reply filed by Respondent No. 2 (DHBVNL) under affidavit dated 05.01.2026:-**

4.1. That the projects were synchronized after all approvals were granted and inspection reports completed at the field level on 10.08.2024. Thereafter, the matter was referred to HVPNL, being the nodal agency for open access, where approval of LTOA was accorded on 10.02.2025, and subsequent agreements were executed accordingly. All procedural actions undertaken by DHBVNL were in accordance with the Commission-approved "Procedure for Grant of Green Energy Open Access" notified by HVPNL, consistent with the HERC Green Energy Open Access Regulations, 2023.

4.2. That the present reply is confined only to the issue of alleged delay on the part of DHBVN, as averred by the petitioners, in forwarding the case of the Petitioners to the other Respondents. In this regard, the attention of this Hon'ble Commission is respectfully drawn to the following facts, which occurred post-commissioning of the solar power plant:

i) In September 2025, Respondent No. 1 sought DHBVN's consent for grant of Long-Term Open Access. Pursuant thereto, the matter was deliberated upon by the DHBVN management. Upon examination of the applicable guidelines, regulations, and the nature of the project, it was observed that the procedure for grant of Long-Term Open Access as prescribed under the HERC Open Access Regulations, 2012 is not applicable to solar power projects established under the PM-KUSUM scheme. Furthermore, Long-Term Open Access (LTOA) is not

required, as the power generated is injected directly into the distribution system without involvement of the transmission network. These aspects were duly communicated to Respondent Nos. 1 and 3 and were also deliberated upon during various meetings. Vide letter dated 03.12.2024, Respondent Nos. 1 and 3 were requested to re-visit the LTOA requirements and revoke the same for the SPGs supplying the RE Power under PM-KUSUM and connected to the distribution system. It is added that all the 04 No. SPGs were injecting the power to the 33 KV S/Stn. Burak through common 11 KV line. As such, it was decided by the Nigam's Management that "F*or a group of SPGs using the common independent feeder for power injection into system, billing for the SPGs will adhere to clause no. 4.8.2(iii) of the HERC Duty to Supply Regulations, 2016 based on joint meter reading and weighted average power generation. The SPGs will nominate a representative as Single Point of Contact (SPO) for communication and maintenance. All SPGs will be jointly responsible for system integrity, including metering*." Accordingly, office of SE/SO, vide office memorandum dated 10.12.2024, requested the SE/OP and SE/M&P, DHBVN, Hisar to ask the Petitioners to nominate a Single Point of Contact (SPOC). Pursuant thereto, the Petitioners submitted the undertaking on 24.12.2024 regarding the SPOC.

ii) That on 20.12.2024, the Open access Coordination Committee reconsidered the requirement of LTOA through a meeting held on 20.12.2024 under the chairmanship of Chief Engineer/SO & Commercial, HVPNL, Panchkula and ask for submission of LTOA consent through a communication dated 22.01.2025 and in compliance, on dated 22.01.2025 the LTOA consent was accorded by the Respondent No. 1.

4.3. That the HERC-approved regulatory framework guides the determination of COD and commencement of power procurement and contractual terms in the Power Purchase Agreement (PPA). The issuance of LTOA approval is an inter-agency matter involving HVPNL as nodal agency and HPPC as power procurer on behalf of DHBVNL and DHBVNL had already transmitted all relevant documents to HVPNL after synchronization.

4.4. That DHBVN acted within a reasonable time and in accordance with the applicable procedure. The record clearly demonstrates that DHBVN neither withheld nor delayed any approval, and that there was no delay attributable to DHBVN. Accordingly, the allegation of delay raised by the Petitioner is misconceived and is hereby denied.

4.5. That the captioned petition seeks the Commission's intervention to direct respondents to rectify the effective date of the LTOA agreements from 10.02.2025 to 10.08.2024, citing that the solar projects were commissioned and synchronized on 10.08.2024 at the 11 KV level as certified by DHBVN's commissioning committee. The grievance

primarily concerns the financial Implications caused by administrative transmission delays in the issuance of LTOA approvals by HVPNL.

4.6. That this matter is similar in context to the petition decided by this Hon'ble Commission in "M/s Sunphotonics Pvt. Ltd. &Anr. vs HVPNL &Ors." (Order dated 20.08.2025 in Case No. HERC/P. No. 43 of 2025), wherein the Hon'ble Commission examined the issues surrounding applicability and timing of connectivity and open access for PM-KUSUM projects.

4.7. That the Hon'ble Commission had occasion to review similar contentions raised by solar generators under PM-KUSUM, pertaining to the necessity of LTOA agreements and applicability of procedural corrections under the Green Energy Open Access framework. The Commission, after considering all stakeholder submissions including those from DHBVNL, and HVPNL-look a holistic view, reserving the matter for comprehensive regulatory interpretation. In light of this, DHBVNL humbly submits that this matter may also be adjudicated on the same lines, taking guidance from the principles and findings laid down in the Sunphotonics case.

4.8. That DHBVNL submits that it remains committed to supporting the timely integration of renewable energy under PM-KUSUM and ensuring compliance with statutory and procedural requirements as laid down by the Commission. It shall abide by any direction or clarification issued by the Hon'ble Commission regarding the effective date of LTOA or corresponding payment obligations arising therefrom.

5. **The reply filed by Respondent No. 1 (HVPNL) under affidavit dated 12.02.2026:-**

5.1. That on 11.01.2012, Commission notified the Haryana Electricity Regulatory Commission (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 (“HERC Open Access Regulations,2012”). The relevant extracts of the HERC Connectivity Regulations, 2012 read as under:

3. Definitions. –In these regulations, unless the context otherwise requires-

(17) “long-term open access” means the right to use the intra-State transmission and or distribution system for a period exceeding 12 years but not exceeding 25 years;

(21) “open access” means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with these regulations;

(22) “open access consumer” means any licensee or consumer or buyer or a person engaged in generation who has been granted open access in accordance with these regulations;

6. Procedure for grant of connectivity. - (1) Nodal agency for grant of connectivity shall be the STU and application for grant of connectivity shall be submitted to the nodal agency in the form and manner prescribed in the detailed procedure.

(13) The grant of connectivity shall not entitle an applicant to interchange any firm power with the State grid unless it obtains long-term open access, medium-term open access or short-term open access in accordance with the provisions of these regulations.

(14) A generating station, including a captive generating plant, which has been granted connectivity to the intra-State grid, shall be allowed to inject infirm power into the grid during testing including full load testing before commencing its commercial operation for a period not exceeding three months after obtaining prior permission of the State Load Despatch Centre.

Provided that the State Load Despatch Centre while granting such permission shall keep the grid security in view and ensure that injection of such infirm power is only for the purpose of testing, prior to commencing of commercial operation of the generating station or a unit thereof.

8. Eligibility and other conditions for open access. – (1) Any licensee, generating company, captive generating plant and consumer/person other than consumer of the distribution licensee, having a demand of 1 MW and above and connected at 11 KV or above, shall be eligible for availing open access to the intra-State transmission of STU and or transmission licensee other than STU and or distribution system of the distribution licensee on payment of various charges as per chapter VI of these regulations.

13. Procedure for grant of long-term open access involving intra-State transmission system and distribution system. – *(1) The application for grant of long-term open access shall contain details such as name of the entity or entities from whom power is proposed to be procured along with the quantum of power, point of injection into the grid and point of drawl from the grid and such other details as may be laid down by the STU in the detailed procedure: Provided that in cases where there is any material change in location of the applicant or change by more than 10 percent in the quantum of power to be interchanged using the intra-State transmission system or distribution system, a fresh application shall be made, which shall be considered in accordance with the provisions of these regulations.*

(2) The applicant shall submit any other information sought by the nodal agency including the basis for assessment of power to be interchanged using the intra-State transmission system or distribution system and power to be transmitted to or from various entities or regions to enable the nodal agency to plan the intra-State transmission system and distribution system in a comprehensive manner.

(3) The application shall be accompanied by a bank guarantee of 2,00,000/- besides the specified application fee. The bank guarantee shall be in favour of the nodal agency on the format as per detailed procedure.

(4) The bank guarantee shall be kept valid and subsisting till the execution of the long-term open access agreement, when augmentation of transmission system or distribution system is required, and till start of long-term open access, when augmentation of transmission system or distribution system is not required.

(5) The bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term open access rights are relinquished prior to the start of such rights when augmentation of transmission system or distribution system is not required.

(6) The bank guarantee shall stand discharged with the submission of another bank guarantee required to be given by the applicant to the STU during construction phase when augmentation of transmission system or distribution system is required, in accordance with the provisions in the detailed procedure.

(7) On receipt of the application, the nodal agency shall, in consultation and through coordination with other agencies involved in intra-State transmission system or distribution system to be used, process the application and carry out the necessary system studies as expeditiously as possible so as to ensure that the decision to grant long-term open access is arrived at within the timeframe as specified.

(8) Based on the system studies, the nodal agency shall specify the intra- State transmission system or distribution system that would be required to provide long-term open access. In case augmentation to the existing intra-State transmission system or distribution system is required, the same shall be intimated to the applicant.

(9) While granting long-term open access, the nodal agency shall communicate to the applicant, the date from which long-term open access shall be granted and an estimate of the charges including additional charges, if any, for works pertaining to augmentation of transmission system or distribution system likely to be payable based on the prevailing costs, prices and methodology of sharing of charges specified by the Commission from time to time."

5.2. That on 29.04.2019, this Hon'ble Commission notified the Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019 ("HERC Deviation Settlement Regulations, 2019").

5.3. On 22.07.2019, the Ministry of New and Renewable Energy ("MNRE") issued the Guidelines for Implementation of Pradhan Mantri Kisan Urja Suraksha evem Utthan Mahabhiyan Scheme ("PM-Kusum Scheme").

5.4. On 08.03.2021, this Hon'ble Commission vide an order in Petition No. HERC/PRO 42 of 2020 approved the Procedure for Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation ("Procedure for Deviation Settlement") in terms of the HERC Deviation Settlement Regulations, 2019. The relevant extracts of the Procedure for Deviation Settlement read as under:

"12. Forecasting & Scheduling Procedures:

xxii) Intra-State Open Access transactions by RE generators shall be governed as per the provisions of HERC (Terms & Conditions for grant of connectivity and open access for Intra-State Transmission and Distribution System) Regulations, 2012, as amended from time to

time. Similarly, Inter-State Open Access transactions by generators shall be governed as per the provisions of CERC (Open Access in Inter- State Transmission) Regulations, 2008, as amended from time to time and any other regulation of HERC wherever applicable."

5.5. On 04.07.2022, Dakshin Haryana Bijli Vitran Nigam Limited ("DHBVNL) issued an Expression of Interest for installation of decentralized Ground/ Stilt Mounted Grid Connected Solar Power Plants of capacity up to 2 MW on barren/fallow/uncultivated/pasture / marshy land/ Agriculture Land falling within a radius of 5 kms. from substations notified by DHBVN under Component- A of PM-Kusum Scheme.

5.6. On 24.04.2023, this Hon'ble Commission notified the Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023 ("HERC Green Open Access Regulations, 2023"). The relevant extracts of the HERC Green Open Access Regulations, 2023 read as under: -

That on 21.08.202*1. Short title, commencement, extent of application and interpretation:*

Provided that other conditions of grant of connectivity and open access in respect of green energy generation, purchase and consumption, to which no express provision has been made in these regulations, shall be in accordance with the provisions of HERC Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation Regulations, 2019, Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 and Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021, as amended from time to time.

4. Eligibility criteria for Green Energy Open Access:

The consumers who have contracted demand or sanctioned load of hundred kW and above shall be eligible to take power through Green Energy Open Access and there shall be no limit of supply of power for the captive consumers taking power under Green Energy Open Access:

Provided that such open access shall be for a minimum twelve-time blocks of 15 minutes time interval during a day, for which the consumer shall not change the quantum of power consumed through open access:

Provided further that all applications for open access of green energy shall be allowed by the State Nodal Agency within a period of thirty days:

Provided further that such consumer of a distribution licensee shall be entitled for seeking open access provided he is connected through an independent feeder emanating from a grid sub-station. In case of more than one such consumer on such independent feeder, the following condition shall apply: -

6. *Procedure for grant of Green Energy Open Access:*

(1) The detailed procedure for grant of connectivity and Green Energy Open Access including the application format and applicable Bank Guarantees/Fee/Charges etc., shall be prepared by the State Nodal agency, within a period of 30 days from the date of notification of these

regulations and filed in this Commission for approval. The STU may be guided by the procedure prepared by POSOCO (The Grid Controller of India Ltd.) for grant of green energy open access.

(2) All the applications for the Green Energy Open Access complete in all respects, shall be submitted on the portal setup by the Central Nodal Agency and these applications shall get routed to the State nodal agency as specified by the Commission under these Regulations for grant of green energy open access.

(3) The State Nodal Agency shall, by an order in writing, approve the applications for the Green Energy Open Access within a period of thirty days from the date of receipt of complete application for connectivity/open access, failing which it shall be deemed to have been approved subject to the fulfillment of the technical requirements as specified by the Commission:

Provided that the order of processing of such applications for Green Energy Open Access shall be first in first out."

5.7. Power Purchase Agreement ("PPA") was executed between the Petitioners and Haryana Power Purchase Centre ("HPPC") for procurement of 0.85 MW solar Power from each of the Petitioner on Long term basis.

5.8. On 29.11.2023, this Hon'ble Commission vide an order in Petition No. 35 of 2023 approved the Procedure for Grant of Connectivity & Green Energy Open Access ("Procedure for Green Energy Open Access").

5.9. On 15.03.2024, the Petitioners applied to HAREDA for registration of the solar power plants, which was obtained on the same day.

5.10. That on 03.06.2024, DHBVNL forwarded the approved technical feasibility memorandum to HVPNL for grant of grid connectivity to the Petitioners for their four 0.85 MW solar projects (total 3.4 MW) under PM KUSUM (Component-A) at 33 kV Sub-Station Burak at 11 kV level.

5.11. On 02.07.2024, granted connectivity of 0.85 MW to each of the Petitioners for their Solar Power Plants under the PM KUSUM Scheme from the 33 kV Sub-Station, Burak (Hisar) at 11 kV voltage level, on a single common 11 kV independent line—which already caters to three other solar generators subject to the appointment of a QCA and telemetry-based data exchange with SLDC, Haryana in accordance with the applicable HERC Deviation Settlement Regulations, 2019.

5.12. On 05.07.2024, Connectivity Agreement was executed between the Petitioners, HVPNL and DHBVNL.

"WHEREAS:

(A) The applicant applied to HVPNL vide letter dated February 13, 2024 for providing connectivity for evacuation of Power to be injected by the Applicant from their project and use of the Transmission/Distribution System of HVPNL/DISCOMs to transmit/wheel electricity from the project as per HERC (Terms and conditions for grant of connectivity and Open Access for intra-State transmission and distribution system) Regulations 2012, Haryana Electricity

Regulatory Commission(Green Energy Open Access)Regulations,2023 and HERC (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 as amended from time to time.

Detail of which is as under:

a	*Quantum of Power to be transmitted*	*0.85 MW*
b	*Point of Injection of Power*	*33 KV Sub-station Burak, DHBVN, Hissar at 11 KV Level*
c	*Point of drawl of Power*	*HPPC on behalf of DHBVN (as per PPA with HPPC)*

1.2 General Condition for Connectivity

(b) Parties shall be abide by HERC (Terms and conditions for grant of connectivity and Open Access for intra-State transmission and distribution system) Regulations, 2012, Haryana Electricity Regulatory Commission (Green Energy open Access) Regulations, 2023 and HERC (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 as amended from time to time."

5.13. That on 02.08.2024, the Petitioners submitted an application to HVPNL seeking grant of LTOA.

5.14. On 07.08.2024, HVPN intimated the discrepancies to the Petitioners pursuant to the Application submitted by the Petitioners for the grant of Long-Term Open Access.

5.15. That on 22.08.2024, 27.08.2024 and 02.09.2024, the Petitioners furnished documents in response to the discrepancies intimated by HVPNL.

5.16. Therefore, it was only as on 02.09.2024, that a valid application for grant of LTOA was made by the Petitioner. Accordingly, the time period for processing the application, i.e, 120 days as per Regulation 11(2) of the HERC Open Access Regulations, 2012 shall commence only with effect from 02.09.2024.

5.17. On 10.09.2024, HVPNL sought consent from DHBVNL pursuant to the grant of LTOA in terms of the HERC Open Access Regulations,2012.

5.18. That the petitioner, on 05.11.2024, DHBVNL issued a COD report by commissioning committee to the Petitioners stating the commissioning and COD of the solar plants as 10.08.2024.

5.19. On 12.11.2024, HVPNL wrote to HPPC informing it that DHBVNL had not yet granted its consent for the approval of LTOA.

5.20. On 28.01.2025, DHBVNL intimated it consent to HVPNL for the supply of LTOA. The relevant extracts from the letter read as under:

"7. The above consent given to M/s Humbolt Energies Pvt. Ltd. is subject to the following conditions:

(i) Applicant/SPGs (solar Power Generators) will abide by all applicable regulations, rules, instructions, terms & conditions of following HERC regulations/orders and their further amendments from time to time, if any:

a) HERC Regulation No. HERC/25/2012 dated 11.01.2012 and its amendment dated 03.12.2013.

b) *HERC Regulation No. HERC/53/2021 dated 30.04.2021.*
c) *Orders dated 29.11.2024 issued by Hon'ble HERC against petition no. 35 of 2023.*

(ii) Firm will abide by all applicable terms and conditions of connected LOA/PPA/EOI.

(iii) As per HVPNL Guidelines: -

a) *The levy of any applicable taxes either central or State will be paid by the firms.*
b) *The metering system shall be got tested by Generating plant from "National Accreditation Board for Testing and Calibration Laboratories (NABL)" accredited mobile laboratory, at the site which shall be witnessed by the representative from concerned DISCOM/ TS Circle of HVPNL.*

(iv) Firm will abide by all applicable Instructions and Sales Circulars of DHBVN and its amendments if any.

(v) The SPGs using the common independent feeder for power injection into the system, the billing for the SPGs will adhere to Clause 4.8.2 (iii) of HERC Duty to Supply Regulations, 2016, based on joint meter readings and weighted average power generation.

(vi) The SPGs will nominate a representative as a single Point of Contact (SPOC) for communication & maintenance. All SPGs will be jointly responsible for system integrity, including metering.

Before according permission, an undertaking may be taken from M/s Humbolt Energies Pvt. Ltd. that all the conditions mentioned above are acceptable to the firm."

5.21. That on 10.02.2025, HVPNL granted the LTOA to the Petitioners.

5.22. That on 21.03.2025, HPPC wrote to the Petitioner No. 3 stating that the invoices for the period from 10.08.2024 to 09.02.2025 are not acceptable and returned due to pending decision regarding injection of power prior to the LTOA approval by HVPNL (i.e 10.02.2025).

5.23. That on 15.05.2025, HVPNL wrote to the Petitioners requesting the submission of the duly signed LTOA as per Clause 20.5 of the Procedure for Green Energy Open Access.

5.24. On 29.05.2025, the Petitioner No. 3 wrote a letter to HVPNL resubmitting the LTOA after entering the COD as 10.02.2025.

5.25. At the outset, it is submitted that Regulation 6(13) of the HERC Open Access Regulations,2012, categorically provides that grant of connectivity does not entitle an applicant to interchange firm power unless it obtains long term open access:

"(13) The grant of connectivity shall not entitle an applicant to interchange any firm power with the State grid unless _ it obtains long-term open access, medium-term open access or short-term open access in accordance with the provisions of these regulations."

5.26. That reference in this regard be made to the Memo dated 02.07.2024 issued by HVPN to the Petitioners wherein it has been specially stated that-

"vi. The grant of connectivity shall not entitle an applicant to interchange any power with the grid unless it obtains Long Term Open Access or Medium-Term Open Access or Short-Term Open Access."

Similar provisions are also stated in the "Procedure for application for grant of connectivity in Transmission/Distribution System" duly approved by this Hon'ble Commission.

5.27. That, it is further submitted that any power injected into the grid prior to the grant of the LTOA cannot be considered as "firm power'. Further, as per Regulation 6(14) of the HERC Open Access Regulations,2012, infirm power cannot be injected beyond a period of 3 months. Regulation 6(14) is reproduced below for ready reference:-

"(14) A generating station, including a captive generating plant, which has been granted connectivity to the intra-State grid, shall be allowed to inject infirm power into the grid during testing including full load testing before commencing its commercial operation for a period not exceeding three months after obtaining prior permission of the State Load Despatch Centre.

Provided that the State Load Despatch Centre while granting such permission shall keep the grid security in view and ensure that injection of such infirm power is only for the purpose of testing, prior to commencing of commercial operation of the generating station or a unit thereof."

5.28. That a bare perusal of the petition shows that no document whatsoever has been placed on record by the Petitioners evincing any prior approval taken from the HVPNL or HPPC regarding the continuous injection of power into the grid. It is submitted that injection of power into the Grid prior to grant of LTOA was at Petitioner's own peril. Reference in this regard may be made to Article 5 of the PPA reproduced below:

*"**Article 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION:***

5.1 Synchronization, Commissioning And Commercial Operation

5.1.1 The RPG shall give the DISCOM at least thirty (30) days' advanced preliminary written notice and at least fifteen (15) days' advanced final written notice of the date of which it intends to synchronize the Power Project to the Grid System.

5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the RPG to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.

5.1.3 The synchronization equipment and all necessary arrangements/ equipment including RTU for scheduling of power generated from the Project and transmission of data to the connected authority as per applicable regulation shall be installed by the RPG at its generating facility of the Power Project at its own cost. The RPG shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation/ and checking/ verification is made by the concerned authorities of the DISCOM.

5.1.4 The RPG shall immediately after each synchronization/ tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code. In addition, the RPG will inject in-firm power to grid time to time to carry out operational functional test prior to commercial operation. For avoidance of doubt, it is clarified that Synchronization/ Connectivity of the Project with the grid shall not be considered as Commissioning of the Project.

… … …

ARTICLE 6: DISPATCH AND SCHEDULING:

6.1.1 The RPG shall be required to schedule it power as per the applicable regulations of SERC /SLDC or any other competent agency and the same being recognized by the SLDC or any other competent authority/ agency as per applicable regulatory law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC from time to time. Any deviation from the Schedule will attract the provisions or applicable regulation / guidelines/ directions and any financial implication on account of this Shall be on the account of RPG.

6.1.2 The RPO shall be responsible for directly coordinating and dealing with the DISCOM, State Load Dispatch Centers, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations.

6.1.3. The RPG shall be responsible for any deviation for scheduling and for any resultant liabilities on account of charges for deviation as per applicable regulations. UI charges on this account shall be directly paid by the RPG."

5.29. That the relevant clauses of the PPA clearly establishes that multiple pre-conditions were required to be fulfilled by the Petitioners prior to injecting power into the grid for onward sale to HPPC. The Petitioners cannot selectively enforce certain contractual provisions, such as those relating to payment, without complying with the PPA in its entirety. It is humbly submitted that the PPA must be read as a whole, and compliance with all its terms, particularly those governing synchronization, commissioning, and commercial operation is a sine qua non for any right to claim payment.

5.30. That, HVPNL was never intimated of such injection, in violation of express provisions of the PPA. Hence, any such injection was unauthorized and solely at the risk of the Petitioners. The liability towards such un-authorized injection cannot be shifted to the consumer of the State.

5.31. That HPPC vide letter dated 07.11.2024, after being informed that the commissioning has been accorded to the Petitioner, sought a copy of LTOA from the HVPNL. In response thereto, HVPNL vide letter dated 12.11.2024 intimated that no LTOA has been granted as yet while clearly stating that the grant of connectivity shall not entitle the applicant to interchange any firm power with the State grid unless it obtains long-term open access as per HERC Regulations, 2012. Further, vide letter dated 19.11.2024, HPPC had categorically intimated the Petitioner and the other Respondents that in view of the clauses of the PPA and the HERC Open Access Regulations,2012, the firm power cannot be said to have been injected into the grid without the approval of the LTOA and the generators ought not to inject power prior into the grid prior to the same. It was further intimated that no payment can be made for such power.

5.32. That, further, the bills corresponding to the period during which power was being injected into the grid were not submitted on a monthly basis, as is mandatorily required under Clause 10.2 of the PPA.

5.33. Furthermore, the Memo issued by Respondent No.2 DHBVNL to HPPC, forwarding the meter reading of the month of August 2024 to December 2024 (Annexure P 13 at page 112) specifically records that –

> "2*. Since as per M&P report, check meters at solar power projects have not been installed.*
>
> *3. No LTOA agreement has been received in this office."*

However, as per Clause 7.1.3 of the PPA (Annexure P 3 at page 56), the Petitioners were under an obligation to install Check meters at the delivery points.

As such, apart from the absence of the LTOA Agreement, the Petitioners have failed to comply with several other provisions of the PPA. The invoices against the energy bill for the month from August 2024 to January 2025 and February 2025 were raised for the very first time on 11.02.2025 & 11.03.2025 respectively. The same was not acceptable and were returned by HPPC as per Clause 6(13) of HERC Open Access Regulations, 2012, which does not allow an applicant to interchange any firm power with the state grid unless it obtains LTOA/MTOA in accordance with the regulations. It was further requested to raise fresh invoice for the energy injected into the grid after the approval of LTOA by HVPNL for the period of 10.02.2025 onwards (Ref. Annexure P-12 being Memo dated 21.03.2025).

5.34. That the Petitioners submitted their invoices duly supported by JMR issued by DHBVNL on 02.04.2025 for the energy injected into the grid after 10.02.2025 (date of LTOA approval by HVPNL). Accordingly, HPPC made the payment for the same.

5.35. Reference in this regard may also be made to Clause 2.1 of the Connection Agreement entered between the Petitioners and the Respondent No. 1 and 2, reproduced below:-

> *"2.1 Agreement to pay monthly Transmissions Charges/ Wheeling Charges:*
>
> *The applicant shall pay the monthly transmission and wheeling including SLDC charges, income tax or other taxes i.e. GST etc. for use of intra-state Transmission/ Distribution System, as and when Long Term Open Access is availed by the Applicant, in accordance with the relevant Regulations of HERC in this regard. The levy of Electricity Duty & other taxes, of any, shall be as per prevailing Regulations.*
>
> *The distribution losses of DISCOMs and transmission losses of STU/HVPNL shall be applicable to the applicant as per Regulations/orders/guidelines of HERC, HVPN & DISCOMs."*

5.36. That the Petitioners cannot be permitted to seek compensation/ payment of the power injected without the payment of the requisite charges which become due "as and when Long Term Open Access is availed"

5.37. That HVPNL cannot be made liable to compensate the Petitioner for the entire quantum of power injected into the grid prior to the grant of LTOA/ compliance of

mandatory provisions of the PPA/ Connectivity Agreement, in view of the settled law. Reliance in this regard is placed on ratio of the following judgments: -

In Kamachi Sponge & Power Corporation Ltd. v. Tamil Nadu Generation and Distribution Corporation Ltd. [Appeal No. 120 of 2016 and IA No. 272 of 2016. D/d. 8.5.2017; Law Finder Doc Id # 955191], the Hon'ble APTEL held as under:-

"iv. The Respondent No. 1 had also quoted two more judgments of this Tribunal in appeal nos. 267 of 2014 and appeal no. 68 of 2014. In the judgment dated 15.4.2015 in appeal No. 267 of 2014 this Tribunal has held that the Appellant (M/s. Cauvery Power Generation Pvt. Ltd.) is not entitled to claim payment of infirm power injected into the grid without the approval from the Respondent (TANGEDCO) for specific duration as mentioned in the judgment till TANGEDCO conveyed its consent to purchase infirm power. In the judgment dated 30.5.2016 in appeal No. 68 of 2014 this Tribunal has disallowed the payment by Respondent (TANGEDCO) towards injection of power from COD of the Appellant (M/s. OPG Power Generation Pvt. Ltd.) till approval of third party sales by TANTRANSCO as the energy was injected to the grid without the consent/knowledge of the distribution licensee and SLDC. The crux of these two judgments is also that a generator cannot pump electricity into the grid without having consent/contractual agreement with the distribution licensee and without the approval/scheduling of the power by the SLDC. Injection of such energy by a generator is not entitled for any payments."

Similarly, in M/s Cauvery Power Generation Chennai Pvt. Ltd v. Tamil nadu Electricity Regulatory Commission [Appeal No. 267 of 2014], the Hon'ble Appellate Tribunal held as under:-

"7. Regarding the 3rd issue about the payment for infirm power injected into the grid from 17.10.2012 to 25.10.2012, we find that the State Commission has observed that the Appellant vide letter dated 25.10.2012 had informed in its first communication with TANGEDCO about the synchronization of the plant. TANGEDCO conveyed its consent to purchase the infirm power from 00 hours 26.10.2012 till CoD of the pant as per the tariff to be determined by the Commission. The State Commission held that mere request on the part of the Petitioner to sell the infirm power generated during the period of testing and commissioning to the Respondents will not create an obligation on the part of the Respondent to pay and the liability to pay would arise only in respect of power injected w.e.f. 26.10.2012.

8. We agreed with the findings of the State Commission that the Appellant is not entitled to claim payment for infirm power injected into the grid from 17.10.2012 to 25.10.2012 without getting express approval from the TANGEDCO. We also find that TANTRANSCO in its communication to the Appellant while allowing the Appellant to synchronize their unit with the grid requested the Appellant to contact CE/PPP, TANGEDCO for any infirm power injection into the grid before CoD. Thereafter, communication was sent by the Appellant to TANGEDCO only on 25.10.2012 intimating about synchronization of the power plant on 17.10.2012. TANGEDCO communicated its acceptance to purchase the infirm power from

26.10.2012 vide its letter dated 30.10.2012. Accordingly, this issue is decided against the Appellant"

As such, no relief is liable to be granted to the Petitioners on the sole ground that no prior approval was sought by the Petitioners from HVPNL or HPPC regarding continuous injection of electricity prior to the grant of LTOA.

5.38. That even otherwise, the relief being sought by the Petitioner is contrary to the intent and purport of Section 61 (b) & (c) of the EA, 2003, reproduced below: -

"61. Tariff Regulations. - The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely: -

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles; (c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;"

5.39. That granting relief solely on the ground of alleged financial hardship would be inconsistent with the mandate under the EA, 2003 mandating the Appropriate Commission to uphold commercial principles. If such relief is granted, it may open the floodgates to similar claims from other generators, seeking unjustified benefits solely on assertions of financial distress—thereby undermining the objectives enshrined in Section 61(b) and (c) of the Electricity Act, 2003.

5.40. That the Petitioners' claim seeking payment for power injected into the grid prior to grant of Long-Term Open Access ("LTOA") is wholly misconceived and contrary to settled law. Injection of power into the grid without valid open access permission and without compliance with statutory preconditions amounts to unauthorised injection and grid indiscipline, for which no commercial entitlement can arise.

5.41. That the Petitioners did not possess valid LTOA during the period prior to 10.02.2025. In absence of LTOA, the injected power could neither be scheduled nor accounted for by the State Load Despatch Centre, nor could the same be lawfully adjusted or settled. Mere physical capability of injection or alleged utilization of power by the system does not create a legal right to payment in the absence of statutory permission.

5.42. It is a settled principle that open access is a substantive statutory authorization and not a procedural formality. In absence thereof, any injection of power into the grid is unauthorised and entirely at the risk and cost of the generator. The Petitioners' attempt to shift the commercial consequences of their unilateral action onto HVPNL is impermissible in law.

5.43. That the Hon'ble Appellate Tribunal for Electricity ("**Appellate Tribunal**") has consistently held that injection of power without consent of SLDC or without a valid agreement/open access permission constitutes grid indiscipline and does not entitle

the generator to any payment, irrespective of the source of generation. HVPNL places reliance on the following judgements in this regard: -

i) Judgement dated 04.07.2025 passed by this Hon'ble Tribunal in the matter of Power Company of Karnataka Limited v. Athani Sugars Limited - Appeal No. 192 of 2020: -

"53. We are in agreement with the observations of the state Commission under Issue no 1 and Issue No 2 of the impugned order, that Athani Sugar could not have injected power into the grid without any commercial agreement……

…..

58. While dealing with Issue No. 4, the State Commission, although observed that Petitioner could have injected energy into the Grid only with the Consent of ESCOMs, however held that since the State Commission has approved PPA format on 23.12.2016, ESCOMs could have entered into PPAs with Cogen Plant owners; and since Athani Sugars vide letter dated 02.01.2017 sought permission to execute PPA, Athani Sugars is entitled for the payment of energy injected post 02.01.2017. We find that there is contradiction in the observation made by the State Commission. On the one hand, State Commission held that Athani Sugar could have injected into the grid only with the consent of ESCOMs and on the other hand directed Karnataka ESCOMs to make payment for the energy injected from the date it made request for signing of PPA i.e. 02.01.2017, up to the date of signing of PPA, without Athani Sugars establishing that such an injection was with the consent of ESCOMs.

59. The learned counsel for Athani Sugars has placed reliance on the judgement of this Tribunal in "Greenko Maha Wind Energy Pvt. Ltd. vs. MERC and Ors", Appeal No. 103 of 2021; order dated 22.10.2024 , which has been affirmed by the Supreme Court, vide its order dated 31.01.2025 in Civil Appeal No. 920 of 2025 "Maharashtra Energy Development Agency vs. Greenko Maha Wind Energy Pvt. Ltd. and Ors." and Judgement of this Tribunal in "U.P.Ceramics & Potteries Ltd. vs. Rajasthan Electricity Regulatory Commission and Ors"., dated 26.02.2020 in Appeal No. 83 of 2017, and contended that they are entitled to receive payment for the energy injected into the grid since 01.11.2016. ***We, however, observe that the facts in the referred cases are different from the facts in the present case, as in Greenko judgement, wind power had 'Must Run' status and energy was supposed to be injected with the consent of distribution company since credit notes were issued by the Distribution Company. The case in UP Ceramics was also with regard to renewable energy and payment was for the energy injected in the intervening period between expiry of one PPA and signing of subsequent PPA, which included this intervening period and during which period joint meter reading as per earlier PPA continued.*** *Hence, both the referred judgements are not applicable to the facts of the present case.*

60. Regarding the contention of Athani sugars with regard to joint meter reading establishing the consumption of energy by ESCOMs, as pointed out by learned Senior Counsel for Karnataka ESCOMs that annexures to the invoices raised by Athani Sugars make reference to a "Reading as per 'B' Form", however no such Form 'B' or joint meter reading was placed on record by Athani Sugars. We find merit in the submissions of learned Senior counsel for Karnataka ESCOMs that when Athani Sugars was effecting third-party sales of power through open access, and was injecting power without obtaining the requisite approvals from the Discoms, it was not possible to establish whether injection of such power, for which joint meter reading has been referred to, is indeed for the Karnataka ESCOMs, or somebody else like open access consumer, a third-party purchaser, or an interstate consumer. ***As such, Karnataka ESCOMs have denied providing any consent to Athani Sugars for injecting power into the Grid for consumption by them and Athani Sugar has not placed any documentary evidence showing the consent of ESCOMs for injecting energy into the Grid and joint meter reading is in connection with that consent.*** *We, in fact, note that Athani Sugars have requested SLDC to grant NoC to sell power on open access for the period from 15.11.2017 to 30.11.2017 and for the month of December 2017 and January 2018 from their co-generation plant; however, vide letter dated 30.1.2018, Athani Sugars requested SLDC to cancel the NoC since PPA was executed*

with ESCOMs on 18.01.2018,which indicate their intention to sell power in open Access to third party till PPA is signed with Karnataka ESCOMs.

61. We note that Athani Sugar vide its letter dated 13.04.2017 has raised an invoice on Karnataka ESCOMs for payment of energy injected by them for the period from 01.11.2016 to 28.02.2017, post passing of final Order dated 11.04.2017 by State Commission, it does not have any reference to any PPA or consent of Karnataka ESCOM for receiving this power. *Moreover, in subsequent letters dated 03.05.2017, 19.05.2017 and 13.06.2017 addressed to Karnataka ESCOMs, though Athani Sugar referenced its letter dated 13.04.2017, but only requested to sign the PPA without mentioning about clearing of their dues or informing that they have been injecting power in the Grid. Athani Sugar has been approaching the State Commission for determination of Tariff for their project and for signing of PPA since 2016, but has failed to demonstrate before this Tribunal, that they had informed the State Commission even once regarding their injecting power into the grid since 01.11.2016 for the Karnataka ESCOMs without the PPA, for which they are entitled to receive the payment.*

…….

*63. The Karnataka ESCOMs have submitted that the PPA has been signed willingly, without protest or allegation of coercion or duress, and as such no evidence to the contrary has been provided by the Athani Sugar with regard to signing of PPA . The issue of entitlement of payment for the energy injected into the grid in the absence of consent by the Distribution licensee has been dealt with in the Judgements of this Tribunal in "**Indo Rama Synthetics (I) Ltd. v. MERC & Ors.,"** dated 16.05.2011 in Appeal No. 123 of 2010 , "**Cauvery Power Generation Chennai Pvt. Ltd. v. TNERC & Ors.",** dated 15.04.2015 in Appeal No. 267 of 2014, **"OPG Power Generation Pvt. Ltd. v. TNEB",** dated 30.05.2016 in Appeal No. 68 of 2014 and **"Kamachi Sponge & Power Corporation Ltd. v. TNGDCL & Anr.,"** dated 08.05.2017 in Appeal No. 120 of 2016; and as such Athani Sugar has agreed in the terms of the PPA dated 18.01.2018, that Karnataka ESCOMs shall pay for the delivered energy after the execution of the said PPA. We accordingly hold that Athani Sugars are not entitled to receive payment for the energy injected into the Grid since 01.11.2016 without the consent of Respondent ESCOMs.*

64. In view of above deliberations, Appeal No. 623 of 2023 instituted by Athani Sugars for payment for the energy injected into the Grid, since 01.11.2016 till 02.01.2017, is dismissed as being devoid of merit and the Impugned Order dated 20.08.2019 of the State Commission is upheld to that extent. The Impugned Order directing payment for the energy injected into the grid by Athani Sugars from 02.01.2017 till signing of PPA by Karnataka ESCOMs is hereby set aside. Appeal No. 192 of 2020, filed by Karnataka ESCOMs is hereby allowed. Associated IAs, if any, in both the Appeals, shall also stand disposed of."

ii) Judgment dated 08.02.2019 in Appeal No. 37 of 2016 in the case of Lalpur Wind Energy Pvt Limited v Karnataka Power Transmission Corporation Limited:

"7.6 We have considered the submissions made by learned counsel for the Appellant and learned counsel for the Respondents and also took note of various judgments relied upon by the parties in their submissions. It is not in dispute that the Appellant after commissioning of its wind generators started injecting the power into the Grid without WBA being in place. The WBA could be executed only after about 3 ½ months for which both the parties blamed each other for the said delay. As a result of non-execution of WBA, the Appellant was denied the banking facilities, carry forward of the banked energy, payment of agreed tariff etc.. While the Appellant claims that it has lawfully generated and injected power into the grid and also repeatedly followed up by with the Respondents for execution of the WBA but Respondents delayed the signing of WBA considerably causing financial injury to it. Learned counsel for the Appellant vehemently contended that the Respondents enjoyed the benefit of the electricity generated by the project with full recovery of revenue from the consumers but deprived the Appellant from its legitimate claim which is in utter violation of Section 70 of the Indian Contract Act, 1872. On the other hand, learned counsel for the Respondents has submitted that the Appellant on its own started injecting power into the gird without a valid WBA and the Respondents have acted in close adherence to the provisions of the WBA as well as the applicable KERC Regulations. Having regard to the contentions

of both the parties and facts and circumstances of the case in hand, we find that the provisional inter connection approval issued by Respondent No.1 to Appellant dated 26.11.2013 clearly stated that in the absence of necessary approvals/permissions for banking of energy by the developer, Respondent No.1 will not be responsible for any pumping of power without contractual agreement. It is the contentions of the Respondents that the Appellant was well aware of the fact since beginning that the energy being injected into the grid without WBA or any other contractual agreement would be unscheduled energy against which no claim whatsoever would be admissible. As such, the claim of the Appellant under Contract Act is not relevant. In a catena of judgments, this Tribunal has held that injection of energy without any contractual agreement could lead to damaging consequences and, therefore, the same should be discouraged. In its judgment in Indo Rama Synthesis (I) Ltd. v. MERC [(2011) APTEL 77], the Tribunal clearly held as under:

'8. …. The generators and the licensees are expected to follow the schedule given by SLDC in the interest of grid security and economic operation. If a generator connected to the grid injects power into the grid without a schedule, the same will be consumed in the grid even without the knowledge or consent of distribution licensees. However, such injection of power is to be discouraged in the interest of secure and economic operation of the grid.'

(emphasis supplied)

Even, Hon'ble Supreme Court in the case of State of West Bengal vs B.K. Mondal and Sons held that when services are imposed on, the Section 70 of the Contract Act is not applicable and based on decisions of various judgments, the State Commission also recorded same view in the impugned order. In the light of these facts, we are of the considered opinion that the State Commission has passed the impugned order in accordance with law considering various decisions of the apex court as well as this Tribunal and has assigned cogent reasoning. We do not notice any infirmity or perversity in the order of the State Commission and thus, any interference of this Tribunal is not called for.

……

8.1 We have carefully gone through the submission of the learned counsel for the Appellant and Respondents and also took note of various judgments and relevant material on record. Learned counsel for the Appellant submitted that despite commissioning of its project in all respects by 27.11.2013, the WBA could only be executed on 17.03.2014 causing a delay of more than 3 & ½ months. As a result of such delay, the Appellant has been denied the claim of banked energy of around 12.79 MUs, carry forward of such banked power and realisation of its full revenue for the energy injected into the grid. Learned counsel for the Appellant contended that the State Commission did not hold the Respondents responsible for the entire inaction causing such a delay in execution of WBA and instead, penalised the Appellant with the mere compensation with payment of APPC of 15 days in respect of Groups A, C, D and E of the Projects and only 5 days in Group B projects whereas, the actual period of injection of power, between the date of commissioning of the power plant and the date of execution of WBA is over 3 ½ months. Learned counsel further submitted that the Respondents have delayed the execution of WBA on one or the other reason solely attributable to them and have enjoyed the benefit of electricity generated by the project without compensating the Appellant for the same.

8.2 Per contra, learned counsel for the answering Respondents refuted the allegations of the learned counsel for the Appellant and cited the various clauses of the WBA which clearly indicated that injection of power into the grid without a valid contractual arrangement will be at the risk and cost of the Appellant and the Respondents are not responsible for any claim for loss to that account. It was further indicated by the learned counsel for Respondents that the delay in execution of WBA was entirely on account of the Appellant and the Respondents have taken proper action in time in accordance with the Regulations of KERC in this regard. Further, for the genuine delay which were attributable to the Respondents, the Appellant has been compensated by the State Commission. Regarding the allegations of the Appellant, for discrimination in adopting different yardsticks, as compared to other wind generators, learned counsel for the Respondents pointed out that the facts in the referred cases were entirely different and hence the question of any alleged discrimination does not arise.

Findings: -

8.3 We have carefully considered the submissions of both the parties and also took note of other cases for which learned counsel for the Appellant has questioned the matching parity and alleged discrimination. The reliance placed by the learned counsel for the Appellant on decisions in Fortune Five Hydel Projects v. KPTCL & Ors. and Green Infra Wind Power Generation v. SLDC & Ors. is uncalled for as the application for wheeling and banking of energy in these cases was made prior to the commissioning of the respective projects and admittedly, there was a delay in executing the WBA, which is not the case herein. Additionally, learned counsel for the Respondents pointed out that the reliance of the Appellant on other judgments of this Tribunal is totally irrelevant as the same were passed in different facts and circumstances having no matching similarity with the case in hand. After critical analysis of the facts in cited cases and the case in hand, it is relevant to note that there is no force in the arguments of the learned counsel for the Appellant regarding discrimination whatsoever. Consequentially, we opine that the State Commission has carefully analyzed the records and material placed before it and has passed the impugned order in a judicious manner without being prejudice to any developer and without any discrimination to the Appellant. Thus, any interference from this Tribunal on this ground is not required."

iii) Renew Wind Renew Wind Energy (AP) Pvt. Ltd. v. Karnataka Electricity Regulatory Commission, 2017 SCC Online APTEL 59:

"From the combined reading of the above provisions and decision of the State Commission, it is clear that the Appellant was not supposed to inject power into the grid without commercial agreement and without prior consent of SLDC. Injection of power without permission from of SLDC tantamount to grid indiscipline due to which grid security may be compromised. Although in present case the quantum of power injected is low but it is a matter of grid discipline if violated by the many generators at a time may result in insecure grid operation. Grid indiscipline cannot be allowed whether it is renewable power or conventional power. SLDC was supposed to communicate to the Appellant about the outcome of its LTOA application within 30 days from its receipt. The same was not done by SLDC. However, the State Commission has accepted the reasons for delay in processing the LTOA application of the Appellant based on submissions made by KPTCL. The State Commission has also compensated the Appellant for power injected by it beyond 8.8.2013 and the Respondent Nos.3 & 4 have paid the requisite amount."

iv) Kamachi Sponge & Power Corporation Ltd. v. Tamil Nadu Generation and Distribution Corporation Ltd., 2017 SCC OnLine APTEL 3:

"*17. From the combined reading of all the above provisions and the communications exchanged between the Appellant and the Respondent No.1 it is clearly established that the Appellant has pumped the energy on its own without entering into any contract with Respondent No.1 and without the knowledge/schedule from SLDC. The energy pumped into the grid during the period under dispute by the Appellant is unauthorised and does not call for any payment by the Respondent No.1."*

v) Meels Hotels Private Limited. v. Rajasthan ERC, 2025 SCC OnLine APTEL 40:

***30.** On behalf of the Appellants, reliance was placed upon the two judgement of this Tribunal i.e. Appeal No. 213 of 2023 TGV SRAAC Ltd. v. Andhra Pradesh Electricity Regulatory Commission decided on 26th February, 2024 and Appeal No. 103 of 2021, (Greenko Maha Wind Energy Pvt. Ltd. v. MERC, decided on 22nd January, 2024 to content that power injected into the grid from the generating units without any objection or demur on the part of Respondent Distribution Licensees, even though in the absence of formal LTOA agreement, cannot be said to be infirm and the Distribution Licensees cannot be permitted to evade payment of such power in these circumstances. We find that the reliance placed on behalf of the Appellants on these two judgements of this Tribunal is totally misplaced as they were rendered any absolutely distinct facts and circumstances. In the TGV SRAAC case, this Tribunal referred to Section 70 of the Contract Act as explained by the Hon'ble Supreme Court in B.K. Mondol judgement and held as under:—*

"20. When we apply the concept of Quasi Contract as well as the doctrine of unjust enrichment envisaged under Section 70 of the Contract Act, as explained by the Hon'ble Supreme Court in the above noted judgement of B.K. Mondal, to the facts of the instance case, we find that the Appellant is entitled to the payment of power injected into the grid from its wind generation units during the period as noted hereinabove. ***This is not a case where the appellant had been injecting power into the Grid in the absence of any agreement at all. The facts of the case clearly indicate that initially the Appellant was evacuating power into the grid under valid wheeling agreements which expired on 26th March, 2016 and 27th March, 2017. The facts would further indicate that the Appellant continued the injection of power into the grid even after the expiry of these wheeling agreements in the hope that fresh LTOA would be executed between the respondents for which it had started communicating with them.*** *Ultimately, fresh Short Term Open Access agreements were executed between the parties between 7th June, 2019.* ***Meanwhile, power continued to be injected into the grid from the wind power generating units of the Appellant without any objection or demur on the respondents and the respondents even utilized the same by selling it to the consumers thereby deriving financial benefit from it.*** *The Appellant had vide letter dated 18th March, 2016 (i.e. before the expiry of the agreement dated 26th March, 2016) requested the respondents for permission for "Carrying" power from the points of generating stations to the destination point and for entering into fresh wheeling agreements. The respondents advised the Appellant for change of CTPT and metering equipment at both ends for renewal of wheeling agreements which was duly done by the Appellant under the supervision of officials of 2nd and 3rd Respondents. The Appellant also filed prescribed application in this regard accompanied by requisite fee for the renewal of the wheeling agreements, even though belatedly. It is, therefore, evident that injection of power into the grid by the Appellant from 26th March, 2016 was under bonafide belief that the wheeling agreements would be renewed sooner or later and with the legitimate expectation of the appellant that it would be compensated for such power. Certainly, it was not a gratuitous act on the part of the Appellant. At no point of time was any objection raised by the officials of 2nd & 3rd Respondent and they even continued to avail benefit of such power by selling it to consumers. Therefore, all the ingredients of Quasi Contract envisaged under Section 70 of the Contract Act, as explained by the Hon'ble Supreme Court in B.K. Mondol judgement, are fulfilled in the present case.*

21. We do not feel impressed by the arguments raised on behalf of the respondents that such injection of power into the grid by the Appellant in the absence of contract or authorization creates grid indiscipline and, therefore, cannot be accounted for. We feel that the 2 nd and 3rd Respondents also were responsible for so called grid indiscipline, if any, in this case. ***They were aware about the fact that initial agreements executed with the Appellant have expired and the Appellant continues to inject power into the grid. It was for them, to avoid grid indiscipline, to object to such evacuation of power into the grid by the Appellant and to stop the same or at least to notify the appellant to desist from doing so.*** *They did neither. To the contrary, they continued accepting power from Appellant's wind generating power units stoically and even utilized the same. Thus, they too were contributing towards grid indiscipline. It also needs to be borne in mind that the power units involved herein are wind power generating units which are considered as 'Must Run Unit'. As these units are connected to the grid, power must be injected into the grid unless stopped at the point of connection to the grid by the respondents, which they did not do. In view of such conduct of the respondents in accepting the power from the wind power generating units of the Appellant even after expiry of the initial wheeling agreement and utilizing the same by selling it to the consumers, it does not lie in their mouth to say that they are not liable to account for the same towards the Appellant."*

31. *Thus in the said case, this Tribunal found that initially the Appellant was evacuating power into the grid under the valid wheeling agreements which expired on 26th March, 2016 and 27th March, 2017 but the Appellant continued injection of power into the grid even after expiry of these wheeling agreements in the hope that fresh LTOA would be executed between it and the respondents for which it had started corresponding with them. Ultimately, fresh STOA agreement was executed between the parties on 7th June, 2019. In these circumstances, this Tribunal came to the conclusion that it was*

not a case where the Appellant had been injecting power into the grid in the absence of any agreement at all. Further, the respondents were also aware that the initial agreements had expired and the Appellant continues to inject power into the grid despite the expiry of the agreements. That is not the case herein. In the instant case, the Appellants started injecting power into the grid on the date of commissioning of the power plants without waiting for formal execution of LTOA agreements which was mandatory in view of Clause 5(A) of the WBA as well as the solar Policy, 2014. Further, in the TGV SRAAC case, there was no evidence that the Appellant intended to supply power gratuitously to the respondent discoms whereas in the instance case, the Appellants by way of undertaking dated 30th March, 2017 had specifically undertaken to supply free power generated from their power plants to the Jodhpur Discom till execution of LTOA agreement.

34. *It is evident that in the said case this Tribunal found that the wind power had been injecting into the grid by the Appellant with the consent of the Discom as credit notes were also issued by the discom to the Appellant for some period. In the instant case, there does not appear to be any consent on behalf of the Rajasthan Discoms for injection of power into the grid by the Appellants from their captive power plants. Further, the submission of the undertaking dated 30th March, 2017 by the Appellants in the instant case makes it totally distinct from the facts of the above noted case, signifying the intention of the Appellants to supply power gratuitously to the Discoms till the execution of the LTOA agreements."*

5.44. That the consistent judicial position emerging from the above decisions is that there is no concept of "deemed entitlement" to payment merely because energy has flowed into the grid. Grid discipline, system security and statutory compliance override all equitable or commercial considerations. This principle applies with equal force to renewable generators, including projects under the PM-KUSUM Scheme.

5.45. That the Petitioners had injected power into the grid prior to grant and operationalization of valid Long-Term Open Access ("LTOA") and without fulfillment of mandatory statutory prerequisites, including scheduling, ABT-compliant metering and authorization by the State Load Despatch Centre ("SLDC"). Such injection was undertaken unilaterally, without any prior coordination, consent or approval of SLDC or the concerned utilities.

5.46. Electrical energy injected into the grid without authorisation cannot be stored and is instantaneously dissipated across the network, either flowing through various feeders or being absorbed as technical losses. In the absence of valid LTOA and approved scheduling, such energy cannot be specifically identified, attributed, scheduled or accounted for at the utility level. Consequently, the utilities had neither the option nor the opportunity to accept, reject or regulate such injection.

5.47. It is therefore denied that any voluntary commercial benefit accrued to the utilities on account of the Petitioners' unauthorized injection. The energy, if any, was effectively thrust upon the grid without notice or consent and cannot be construed as energy consciously procured, utilized or accepted by the utilities.

5.48. That the Petitioners' projects are connected to the grid through common feeders and substations catering to multiple generating stations. In such a configuration, and in the absence of ABT-compliant metering and valid open access, it is neither technically nor

commercially feasible for the utilities to contemporaneously segregate, identify or attribute the quantum of energy allegedly injected by an individual generator. Any assertion that the utilities derived benefit from such injection is therefore speculative and unfounded.

5.49. That the Petitioners did not raise any contemporaneous invoices or claims during the period of alleged unauthorized injection. No intimation was provided to HVPNL, SLDC or the concerned distribution licensee during the relevant period asserting any right to payment or adjustment. It was only after grant of LTOA that the Petitioners sought, retrospectively, to regularize and monetise the prior unauthorized injection. Such post facto claims cannot confer legality upon an act which was impermissible at inception.

5.50. That, it is further submitted that throughout the petition allegations with respect to "duress" have been raised by the Petitioners. However, no cogent reason, supported by documentary evidence have been placed on record by the Petitioners. It is the case of HVPNL that the submissions w.r.t. any "duress" cannot be taken into account without adequate proof of the same. No particulars of coercion have been given as required in law. Further, the Petitioner did not allege coercion immediately or at any time until the filing of the Petition. It is well settled that the plea of coercion cannot be entertained in such circumstances. [Transmission Corporation of AP Limited v Sai Renewable Power Pvt Limited and Ors (2011) 11 SCC 34 (Para 89); Bishundeo Narain and Anr v Seogeni Rai and Anr. AIR 1951 SC 280 (Para 22); Shanti Budgiya Vesta Patel and Orsv Nirmala Jayprakash Tiwari (2010) 5 SCC 104 (Paras 29-34); and Gujarat Urja Vikas Nigam and Ors. v Renew Wind Energy (Rajkot) Private Limited (2023) SCC Online SC 411 (Para 70-73)].

5.51. That it is further brought to the notice of this Hon'ble Commission that, at present, HPPC has signed PPAs aggregating to approximately 100 MW for the PM-KUSUM Projects. It is pertinent to highlight that these PM-KUSUM Projects, though relatively small in individual capacity, cumulatively form a significant portion of the RE generation in the state. In case the present petition is allowed the same may set a precedent for all similarly placed PM-KUSUM developers to inject a\ energy into the grid without the grant of LTOA. This could result in a large number of such generators operating outside the ambit of HERC Open Access Regulations,2012, which in turn would adversely affect the real-time balancing of supply and demand on the grid. Granting such exemptions, therefore, would not only undermine the regulatory framework governing grid discipline but would also pose a substantial threat to the stability and reliability of the state and regional power grids. Accordingly, the relief sought by the Petitioners is neither sustainable in law nor in the interest of maintaining grid security, stability and discipline.

5.52. That the present petition has been filed by the Petitioners only after the grant of the LTOAs and execution of the PPAs with the Petitioners. HVPNL submit that if the Petitioners had any grievance regarding the applicability of the relevant Regulations, they ought not to have participated in the tender, thereby signifying their acceptance of the prevailing Regulations. Such a petition cannot be entertained belatedly.

> *"17.11 Compliance with Law*
>
> *Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made there under, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time."*

5.53. That the Petitioners by way of the present petition are, in essence, seeking amendment to the terms of the PPA which is sacrosanct in nature, binding and enforceable by law. It is submitted that the Petitioners had/has signed the PPA with eyes open and had not made any reservations to this effect. The present petition has been filed once the PPA has been executed between the parties. Such an act on the part of the Petitioners i.e. to approach the Hon'ble Commission belatedly i.e. once the PPA already stands signed is liable to be viewed strictly.

5.54. That the grant of LTOA is a statutory process involving multiple authorities, including the SLDC, and HVPNL does not exercise unilateral control or supervisory authority over the grant or operationalization of LTOA. The statutory and contractual obligations of HVPNL are limited and clearly defined, and in the absence of any act or omission on its part, it would be wholly unjustified and impermissible in law to saddle HVPNL with any liability for events beyond its domain. Any such attribution would amount to penalising HVPNL for circumstances over which it has no control, which is contrary to settled principles of law.

5.55. That the Petitioners cannot be permitted to bypass the express provisions of law that too for their financial benefit. As such, the present petition is liable to be dismissed outrightly as the Petitioners are seeking grant of special treatment and exemption from compliance of the applicable Regulations. Thus, the present petition is liable to be dismissed being non-maintainable and also being devoid of merit.

5.56. That the present Petition, which is stated to be preferred under Section 86(1)(f) of the Electricity Act, 2003, is not maintainable because the Petitioners have failed to comply with the mandatory dispute-resolution provisions contained in the Connectivity Agreement and the PPA, and therefore this Hon'ble Commission ought not to exercise any power to amend, relax or remove difficulties in a manner that bypasses those contractual pre-conditions. The Connectivity Agreement expressly provides:

> *"9. Settlement of Dispute and Arbitration*

All differences and/or disputes between the parties arising out of or in connection with these presents shall at first instance be settled through amicable settlement at the level of Coordination Committee of HVPNL/DISCOM within a period of 30 days from the date of receipt of application from the concerned party. Any party not satisfied by the decision of Coordination Committee may approach HERC."

5.57. Similarly, Clause 16.2.1 of the PPA between the Petitioners and HPPC, approved by this Hon'ble Commission, mandates an amicable settlement process prior to invoking adjudication. It provides that either party may raise a dispute by issuing a written Dispute Notice setting out the nature and grounds of the dispute, where after both parties are required to meet within thirty (30) days to attempt an amicable resolution. Only upon failure of such efforts can the matter be referred for adjudication under Article 16.3 of the PPA.

5.58. That no Dispute Notice has been issued by the Petitioners under the PPA, nor has any representation been made before the Coordination Committee as mandated by Clause 9 of the Connectivity Agreement. The Petitioners have thus bypassed both the contractual and procedural safeguards consciously incorporated in the agreements. These dispute-resolution provisions are mandatory pre-requisites that form an integral part of the contractual arrangement between the parties. The Petitioners' failure to comply with these clauses renders the Petition premature.

5.59. That the Petitioners have failed to adhere to the express terms and conditions of both the Connectivity Agreement and the PPA which mandates that any dispute arising between the parties must first be subjected to an amicable settlement process under Clause 9 of the Connectivity Agreement, before the Coordination Committee of HVPNL/DISCOM, and under Clause 16.2.1 of the PPA, through a written Dispute Notice followed by a 30-day consultation period. The Petitioners have not complied with these mandatory pre-conditions and have directly invoked the jurisdiction of this Hon'ble Commission without exhausting the agreed dispute-resolution mechanism. The Petitioners' failure to observe and fulfil the procedural obligations under these agreements renders the present Petition premature and non-maintainable.

5.60. Accordingly, the present Petition is premature, misconceived, and not maintainable. The Petitioners ought to be relegated to the contractually mandated remedy by first issuing a Dispute Notice, invoking the Coordination Committee process under Clause 9 of the Connectivity Agreement and Clause 16.2.1 of the PPA, and only thereafter, upon failure of such amicable settlement, seeking adjudication by this Hon'ble Commission. All the contentions to the contrary are wrong and denied.

5.61. Without prejudice to the above submissions, it is stated that despite being in a position to commission and inject power with effect 10.08.2024, the Petitioner only applied for LTOA on 02.08.2024 date, knowing fully well that the processing time for a valid application in terms of the HERC Open Access Regulations,2012 can go upto a 120

days. Further, at no instance during the period from August till 10.02.2025 when the LTOA was granted to the Petitioner, did the Petitioner raised any objection or reservation regarding exemption or relaxation from the provisions of the HERC Open Access Regulations, 2012 and other applicable provisions. It is only on 30.06.2025 that the Petitioner for the first time sought for such a relaxation. Accordingly, without prejudice to the submissions of HVPNL herein above, any relief to be granted to the Petitioner can only be prospective in nature.

6. **Rejoinder filed by the Petitioners (M/s Humbolt Energies Private Limited and ors.) under affidavit dated 17.03.2026, to the replies filed by Respondent No.1, 2 and 3: -**

6.1. That the Petitioners most respectfully submit this detailed rejoinder to the replies filed by Respondent Nos. 1, 2 & 3. The dispute in the present case emanates from the unwarranted and prolonged delay by the Respondents in granting Long Term Open Access (LTOA) despite the Petitioners' solar power projects having been successfully commissioned and synchronized with the grid on 10.08.2024 under the PM-KUSUM Component-A Scheme.

6.2. That the Petitioners duly completed all procedural formalities and technical verifications, including obtaining CEI certificates, executing PPAs, and achieving successful synchronization in the presence of the duly constituted Commissioning Committee of DHBVNL. However, despite full compliance, the Respondents withheld the LTOA approval for more than six months, unjustly depriving the Petitioners of payment for energy lawfully injected into the grid. The Petitioners humbly seek relief from this Hon'ble Commission, contending that the power injected post-COD was firm power, and that the imposition of LTOA and QCA requirements is contrary to both law and the judgment of this Hon'ble Commission in Sun Photonics Pvt. Ltd. v. HPPC & Ors. (HERC/P-43 of 2025), wherein identical issues were conclusively settled.

6.3. That the plea of non-maintainability raised by the Respondent on the ground of non-invocation of amicable settlement clause is misconceived. The Hon'ble Appellate Tribunal for Electricity (APTEL) in Haryana Power Generation Corporation Ltd. v. HERC & Anr. (Appeal No. 317 of 2013) held that failure to attempt amicable settlement does not oust the Commission's jurisdiction under Section 86(1)(f). The clause is directory and cannot override a statutory right of adjudication.

6.4. That the Hon'ble Supreme Court in MSEDCL v. JSW Energy Ltd. (2017) 11 SCC 449 further clarified that State Commissions are the primary adjudicatory fora for all disputes between generating companies and licensees. Hence, this Petition is maintainable.

6.5. That the instant matter is not merely a contractual dispute but involves a regulatory lapse, where delay and misinterpretation of statutory procedures by the Respondents have resulted in severe financial prejudice to the Petitioners. Such matters are well within this Commission's jurisdiction.

6.6. That the Respondent's claim that the power injected between 10.08.2024 and 09.02.2025 was "infirm" is factually and legally unsustainable. The Petitioners' projects were duly commissioned, synchronized, and commenced commercial operations under the supervision of DHBVNL officials.

Infect the respondent failed to differentiate between the infirm power and firm power, the infirm power refers to electricity generated by a power plant during its trial, testing, or commissioning phase, prior to its official Commercial Operation Date (CoD).

6.7. Article 5.1.5 of the executed Power Purchase Agreement (PPA) provides: *"Declaration of COD shall only be done upon the successful visit by the Commissioning Committee."*

Further, Article 1 of the PPA defines "Commercial Operation Date (COD)" as: *"The date on which the commissioning certificate is issued upon successful commissioning (as per provisions of this Agreement) of the project."*

6.8. Therefore, upon successful commissioning and issuance of the certificate by the duly constituted Commissioning Committee, the COD is final, binding, and conclusive. The Petitioners achieved COD on 10.08.2024 as per the Commissioning Committee's report. Any power injected post this date constitutes firm commercial supply under the PPA.

6.9. That the petitioner is respectfully submitted that the Superintending Engineer (Commercial), DHBVN, vide Office Order No. Ch-11/SE/C/498/PM-KUSUM/Vol-I/L-8 dated 24.09.2024, constituted a Committee, under the chairmanship of the Superintending Engineer (Commercial), for inspection of the power plant installed by the Solar Power Generator (SPG).

6.10. Pursuant thereto, the Committee carried out inspection of the plant and submitted its Joint Verification Report dated 27.09.2024, wherein it has categorically recorded that *"the plant has been successfully commissioned on 10.08.2024 and the DHBVN Commissioning Committee has designated 10.08.2024 as the Commercial Operation Date (CoD) for the project."*

6.11. That the Hon'ble Supreme Court in *Pawan Alloys & Casting Pvt. Ltd. v. U.P. State Electricity Board* (1997) 7 SCC 251 held that where a contract provides for certification by an authorized body, such certification is binding and conclusive unless proven fraudulent. Hence, CoD declared by the Commissioning Committee cannot be disregarded.

6.12. That the Hon'ble APTEL in *GUVNL v. Solar Semiconductor Power Co. (India) Pvt. Ltd.* (Appeal No. 211 of 2013) held: *"When energy is injected into the grid after commissioning with the knowledge and consent of the licensee, such energy cannot*

be treated as infirm. The licensee is bound to pay for such energy at the tariff agreed under the PPA."

6.13. That the Punjab State Electricity Regulatory Commission in *Azure Power India Pvt. Ltd. v. PSPCL* (PSERC Petition No. 23 of 2021) ruled that once a project is commissioned, any energy injected thereafter is firm energy payable under the PPA, irrespective of administrative delays in connectivity or approval.

6.14. Accordingly, all energy injected by the Petitioners post 10.08.2024 constitutes firm power under the PPA, and HPPC's refusal to pay for the same is contrary to law, equity, and the terms of contract.

6.15. That the Petitioners' projects are implemented under the PM-KUSUM Component-A Scheme, wherein power is supplied directly to DHBVNL under PPAs executed with HPPC. These projects do not involve wheeling or third-party sale and thus fall outside the ambit of Long-Term Open Access (LTOA) under the HERC Open Access Regulations, 2012.

6.16. That Dakshin Haryana Bijli Vitran Nigam Limited (DHBVN), vide Memo No. Ch-19/SE/C/498/PM-KUSUM/Vol-II/L-13 dated 03.12.2024, issued by the Superintending Engineer (Commercial), with reference to (i) Office Memos dated 07.11.2024 and 19.11.2024 issued by CE/HPPC, Panchkula, and (ii) Office Memo dated 12.11.2024 issued by CE/SO & Commercial, HVPNL, Panchkula, categorically examined the requirement of Long-Term Open Access (LTOA) for the Petitioners' solar power projects established under PM-KUSUM Component-A.

6.17. Upon placing the matter before the Nigam Management, and after detailed examination of the applicable guidelines, regulations, and the nature of PM-KUSUM Component-A projects, DHBVN recorded a clear and unequivocal finding that Clause 6 of the Procedure for Grant of Connectivity under Chapter-IV of the HERC Open Access Regulations, 2013 is not applicable to solar power projects under PM-KUSUM Component-A. It was further observed that Open Access provisions apply only to consumers having contract demand of 1 MVA/MW or above, whereas the Petitioners are generators with installed capacity of 0.85 MW, and not consumers.

6.18. That DHBVN further recorded that Long-Term Open Access agreements are not mandatory for PM-KUSUM Component-A Solar Power Generators, as the power generated is injected directly into the distribution network without involvement of the transmission network, and that the Power Purchase Agreements (PPAs) executed under the PM-KUSUM Scheme comprehensively govern the supply of energy, thereby eliminating the requirement of LTOA altogether.

6.19. Accordingly, DHBVN, with the approval of the Worthy Managing Director, decided that: *(i)* where multiple SPGs are connected through a common independent feeder, billing shall be carried out strictly in accordance with Clause 4.8.2(iii) of the HERC Duty to

Supply Regulations, 2016, based on joint meter readings and weighted average generation;

(ii) the SPGs shall nominate a Single Point of Contact (SPOC); and

(iii) CE/HPPC and CE/SO & Commercial, HVPNL were requested to revisit and revoke the requirement of LTOA for SPGs supplying renewable energy under PM-KUSUM Component-A and connected to the distribution network.

6.20. That the aforesaid position is expressly admitted and reiterated by DHBVN in its reply filed before this Hon'ble Commission, wherein DHBVN has categorically stated that upon deliberation by its management, it was found that the procedure for grant of Long-Term Open Access under the HERC Open Access Regulations, 2012 is not applicable to PM-KUSUM projects, and that LTOA is not required, since power is injected directly into the distribution system without involvement of the transmission network. DHBVN further admitted that these aspects were duly communicated to Respondent Nos. 1 and 3 and deliberated upon in multiple meetings.

Pursuant thereto, DHBVN itself implemented the said decision by directing the Petitioners to nominate a SPOC vide Office Memorandum dated 10.12.2024, and the Petitioners duly complied by submitting the requisite undertaking on 24.12.2024. The said documents are already placed on record as Annexures-R2 and R3 in the reply submitted by respondent DHBVN.

In view of the aforesaid admitted facts, it is submitted that the insistence on LTOA by Respondent Nos. 1 and 3, despite DHBVN's categorical determination and approval of the Nigam's Managing Director, is arbitrary, self-contradictory, and unsustainable in law, and cannot be used as a ground to deny payment for energy lawfully injected by the Petitioners post commissioning.

6.21. That the Hon'ble Commission in *Sun Photonics Pvt. Ltd. & Anr. v. HPPC, HVPNL & DHBVNL* (HERC/P-43 of 2025, Order dated 20.08.2025) (Supra) held: "*The requirement of LTOA under the HERC OA Regulations, 2012, is applicable only to those projects involving transmission or wheeling of electricity to third parties. In PM-KUSUM Component-A projects, the generator supplies power directly to the DISCOM under PPA without any third-party use of network. Hence, LTOA is not applicable."*

6.22. That the Hon'ble Commission further observed: *"These projects are decentralized, small-scale installations meant for the socio-economic welfare of farmers. Imposing LTOA or QCA requirements defeats the object of the PM-KUSUM Scheme and is therefore relaxed under the powers conferred by Regulation 59 of the HERC OA Regulations, 2012, and Regulation 13 of the Green Energy Open Access Regulations,* 2023."

6.23. That the Petitioners' projects are identical to those in *Sun Photonics*. Therefore, this Hon'ble Commission, in line with judicial discipline and consistency, ought to extend the same relief herein.

6.24. That the Petitioners completed commissioning on 10.08.2024, yet the Respondents failed to process the LTOA agreement for six months, issuing approval only on 10.02.2025. This delay is entirely attributable to Respondents' inaction.

6.25. That the Procedure for Grant of Green Energy Open Access issued by Haryana Vidyut Prasaran Nigam Limited (HVPN) specifically provides under Clause 19.7 (Note) asunder:

"In case the distribution licensee (UHBVNL & DHBVNL) has not communicated any deficiency or defect in the application or refusal or consent within the time period specified for grant of consent, the consent shall be deemed to have been granted."

6.26. Delays attributable to Respondents, validated by their own records and the same has been admitted in the reply submitted by the DHBVN. In the present case, no deficiency, defect, objection, or refusal was ever communicated to the Petitioners within the stipulated period. On the contrary, the Solar Power Generators were in continuous and regular interaction with the Open Access Department of HVPNL through official email communications on matters relating to meter data, NABL reports, and MT-1 reports. Significantly, despite such active engagement and day-to-day correspondence, the Respondents never raised any objection or concern regarding the alleged non-grant of LTOA, which, as per the prescribed procedure, was required to be processed and granted within 30 days of final submission of documents. (Copy of email communication attached as Annexure E-3)

6.27. The consistent conduct of the Respondents in supervising technical compliances, seeking data, and acknowledging operational issues, without raising any objection on LTOA, clearly amounts to acquiescence and waiver by conduct, and attracts the doctrine of deemed consent as envisaged under Clause 19.7 of the Green Energy Open Access Procedure.

6.28. Therefore, the belated issuance of LTOA on 10.02.2025 cannot be used as a pretext to deny payment for energy injected by the Petitioners post-commissioning, as the Respondents are legally estopped from taking advantage of their own delay and silence.

6.29. It is a settled principle of administrative law that a statutory authority cannot take advantage of its own delay. In *BSES Rajdhani Power Ltd. v. DERC* (APTEL Appeal No. 187 of 2014), the Tribunal held that regulated entities cannot benefit from procedural lapses of their own making.

6.30. Therefore, Respondents' failure to act timely cannot prejudice the Petitioners' entitlement to payment for energy already injected into the grid.

6.31. That the Hon'ble Commission is vested with wide powers under Regulation 59 of the HERC OA Regulations, 2012, Regulation 13 of the Green Energy Open Access Regulations, 2023, and Regulation 65 of the HERC Conduct of Business Regulations,

2019, to relax procedural provisions, remove difficulties, and pass orders to secure the ends of justice.

6.32. That the Hon'ble Supreme Court in *PTC India Ltd. v. CERC* (2010) 4 SCC 603 observed: *"Regulatory Commissions have inherent powers to relax or modify regulations to meet the ends of justice and ensure smooth operation of statutory* frameworks."

6.33. That the APTEL in *Tata Power Co. Ltd. v. MERC* (Appeal No. 132 of 2010) further emphasized that procedural rigidity must give way to substantive justice, especially where renewable energy and public welfare schemes are concerned.

6.34. That the Respondents are estopped from denying payment after having supervised commissioning, approved synchronization, and utilized the power injected by the Petitioners. They have derived benefit from such power and cannot now claim it was unauthorized or infirm.

6.35. In *State of Punjab v. Dhanjit Singh Sandhu* (2014) 15 SCC 144, the Supreme Court held that the State and its agencies cannot approbate and reprobate. Once they accept benefits under a transaction, they are bound by it.

6.36. Further, in *Union of India v. N. Murugesan* (2022) 2 SCC 25, it was held that the State cannot enrich itself at the cost of citizens due to its own administrative fault.

6.37. That the petitioner has performed his part of the obligations with full honesty and integrity, and has acted bona fide at all stages and has complied with all directions and communications issued by the Respondents from time to time. Petitioner has not violated any rules or regulations of the respondents, has faithfully followed the terms and conditions of the PPA, has humbly and gracefully accepted the instructions of the respondents from time to time without asking for any additional technical or financial favor.

6.38. That the respondents would show that submissions made by them are totally vague, baseless, evasive and failed to address the substantive issues raised by the Petitioner; and the respondents are only trying to escape their liability and obligations on one pretext or the other.

6.39. That the petition filed by the petitioner is bona fide and is in the interest of justice. It is imperative to note that there are no grounds of withholding the payment against duly certified injection of power into the licensee's system. Yet, the respondents have refused to make the payments primarily because they have failed to understand the reasons for delay in signing of LTOA.

6.40. That the respondents have also failed to appreciate the fact that under PM KUSUM scheme, the transmission licensee has no role to play, whatsoever, in the process. It is only the DISCOM with whom the RPG has to interact and enter into the Power Purchase Agreement (PPA) at a pre-determined fixed cost at the designated 33 kV substation of the DISCOM without having to use any transmission licensee's network.

In the present matter, Respondent no. 3 HPPC has come into picture only because it has been assigned to discharge its responsibility of signing the PPA on behalf of DISCOMs. Respondent no. 1 HVPNL has unnecessarily assumed a self-assigned role for themselves of signing an LTOA with RPG treating it as an open access power whereas PM KUSUM does not mention any kind of Open Access or LTOA anywhere in the scheme. That's why, it is only the Commissioning Committee of DISCOM who has been authorized to synchronize and commission the project and declare the Commercial Operation Date (CoD).

6.41. That the Respondents themselves have created the dispute without any reason. They have practically failed to understand the difference between Solar Power projects installed for sale under open access to any consumer in India and the Solar power projects installed under PM KUSUM scheme. Whereas in a normal open access case the transmission network is used and proper energy flow has to be monitored, the situation under PM KUSUM scheme is different because the power generated has to be sold to DISCOM only at the fixed point and at the fixed cost for 25 years.

6.42. That the Respondents have refused to pay for the injected power on the grounds of non-signing of LTOA which itself has been termed invalid by the Hon'ble Commission in Sun Photonics case, as mentioned in the above paras.

6.43. That the Petitioners submitted all the relevant information to DISCOM and HVPN in the first instance and therefore to say the anything additional was demanded or given is factually incorrect. By raising this issue unnecessarily, the respondents only showed their highhandedness and hindrance they tried to create rather than supporting and promoting such RPGs in overcoming the paperwork.

6.44. Under PM KUSUM scheme, there is no requirement or necessity to inform the transmission utility before connecting the solar project with the grid. It is only the DISCOM which has to be informed. That is why, the Commissioning Committee does not include any officer / official of the transmission utility or the HPPC. The Commissioning Committee is only of the DISCOM and is the final authority to allow or disallow connectivity with the grid. The Petitioner, following the procedure informed the DISCOM and their Commissioning Committee allowed the connectivity with the grid w.e.f. 10.08.2024. By saying that the Respondents were not prior informed, they seem to be acting in a manner wherein they have assumed themselves as the final and self-proclaimed authority to permit such connectivity.

6.45. That the following prayers have been made by the Petitioner: -

In view of the submissions made herein above and those made at the time of the oral hearing, it is humbly prayed that this Hon'ble Commission may be pleased to:

a) Exercise its powers to direct the respondents to correct the COD in the LTOA agreement from 10.02.2025 to 10.08.2024 and make all the due payments to the

respective petitioners considering the actual COD as 10.08.2024 along with due interest and penalty charges to petitioners as per the PPA.

b) To allow any other relief as deemed fit by the Hon'ble Commission

Proceedings of the Case

7. The case was taken up for hearing on 10.12.2025, 03.02.2026, 05.03.2026 and finally on 07.04.2026. During the course of the proceedings, the Petitioner as well as the Respondent primarily reiterated the averments and submissions set out in their Petition/reply/rejoinder, which for the sake of brevity are not reproduced herein but shall be read as part of the record.

Commission's Analysis and Order

7 The Commission has carefully considered the pleadings of the parties, documents placed on record, written submissions and the arguments advanced during the course of hearing. The principal issue which arises for consideration in the present petition is whether the Petitioners are entitled to correction of the effective date of Long Term Open Access (LTOA) from 10.02.2025 to 10.08.2024 and consequential payments for the energy injected into the grid from 10.08.2024 onwards in accordance with the invoice raised on 11.02.2025, in respect of energy injected for the period from 10.08.2024 to 09.02.2025.

8 The undisputed facts emerging from the record are that the Petitioners were awarded solar projects of 0.85 MW each under Component-A of the PM-KUSUM Scheme and executed Power Purchase Agreements with HPPC for sale of power at the tariff determined by the Commission. The projects were granted connectivity by HVPNL on 02.07.2024 and the Connection Agreement was executed on 05.07.2024. It is also not in dispute that the solar projects were synchronized and commissioned on 10.08.2024 and injection of power into the system commenced from the said date.

9 The Petitioners have contended that after commissioning and synchronization of the projects on 10.08.2024, there was delay on the part of Respondent Nos. 1 and 2 in processing and granting LTOA, resulting in financial loss to the Petitioners. The Petitioners have further argued that since there was no default attributable to them, the effective date of LTOA ought to relate back to the actual date of commissioning i.e. 10.08.2024, in terms of Article 1 and Article 5.1.5 of the duly executed Power Purchase Agreement (PPA) dated 21.08.2023.

10 Per contra, Respondent No. 3 i.e. HPPC has vehemently opposed the petition and submitted that under the provisions of the HERC Open Access Regulations, 2012, grant of connectivity does not entitle a generator to inject firm power into the State Grid unless Long Term Open Access has been granted. HPPC has further argued that any injection of energy prior to grant of LTOA was unauthorized and at the sole risk and

responsibility of the Petitioners and, therefore, no payment liability can be fastened upon HPPC for such period.

11 The Commission observes that Regulation 6(13) of the HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 specifically provides as under: -

"The grant of connectivity shall not entitle an applicant to interchange any firm power with the State grid unless it obtains long-term open access, medium-term open access or short-term open access in accordance with the provisions of these regulations."

Further, Regulation 6(14) permits injection of infirm power only during testing and commissioning for a limited duration and that too after obtaining prior permission of SLDC. The relevant regulatory framework leaves no ambiguity that synchronization or connectivity by itself does not confer any right upon a generator to commercially inject firm power into the grid.

The Commission further notes that the Power Purchase Agreement executed between the Petitioners and HPPC also clearly distinguishes synchronization from commercial operation and specifically mandates compliance with scheduling, dispatch and applicable open access regulations before commercial injection of power into the grid. The contention of the Petitioners that the date of commissioning itself should automatically be treated as the date of commencement of commercial supply cannot be accepted in view of the express provisions of the Regulations as well as the terms of the PPA voluntarily executed between the parties.

12 At the same time, the Commission cannot lose sight of the fact that the present projects have been established under the PM-KUSUM Scheme, which is a flagship renewable energy programme intended to promote decentralized solar generation and enhance farmers' income. The record placed before the Commission also indicates that there existed certain procedural and interpretational issues amongst the Respondents themselves regarding applicability and requirement of LTOA for PM-KUSUM projects connected at distribution level. From the correspondence placed on record, particularly the communications exchanged between DHBVNL, HVPNL and HPPC, it emerges that there was lack of clarity amongst the Respondents regarding the applicability of LTOA requirements to the Petitioners' projects. DHBVNL itself had initially taken a position that LTOA may not be required for such projects connected directly to the distribution system. The matter was subsequently deliberated in meetings of the Open Access Coordination Committee, following which LTOA approval was ultimately granted on 10.02.2025. Therefore, the delay in grant of LTOA cannot be attributed entirely either to the Petitioners or to any single Respondent. The delay appears to have arisen primarily on account of regulatory and procedural uncertainty concerning implementation of the Green Energy Open Access framework vis-à-vis PM-KUSUM projects. The Commission is also conscious of the submissions made by HPPC that

permitting retrospective recognition of commercial injection without LTOA may create an undesirable precedent affecting grid discipline and operational certainty, particularly in view of the large number of PM-KUSUM projects being established in the State. Nevertheless, the Commission finds merit in the grievance of the Petitioners to the limited extent that the delay and ambiguity in processing of LTOA applications for PM-KUSUM projects indicates absence of a streamlined regulatory mechanism amongst the concerned agencies.

13 That the judgment quoted therein are not relevant to the present petition. The judgment of APTEL dated 04.07.2025 passed by the Hon'ble Tribunal in the matter of Power Company of Karnataka Limited v. Athani Sugars Limited - Appeal No. 192 of 2020 is regarding injection of power where no commercial agreement had been entered upon before injecting the power into the grid. But here in the present petition, PPA (Commercial Agreement) already stood signed for 25 years at a predetermined cost of Rs.3.11 /- per unit. The complete judgment is regarding the payment for the power injected before signing of PPA or the intervening period between expiry of previous PPA and signing of new PPA. Moreover, the judgment at many places refers to the permission from SLDC before injection of power, which is true but only in the cases where the power has transacted under open access regime and where transmission network has to be used for transmission to the destination point. But under PM KUSUM, it is neither a case of open access nor there is any requirement of permission or scheduling of power with SLDC. It is simply a sale of power to DISCOM without using any transmission network.

14 The Hon'ble Supreme Court in *Pawan Alloys & Casting Pvt. Ltd. v. U.P. State Electricity Board* (1997) 7 SCC 251 held that where a contract provides for certification by an authorized body, such certification is binding and conclusive unless proven fraudulent. Hence, COD declared by the Commissioning Committee cannot be disregarded.

15 The Hon'ble APTEL in *GUVNL v. Solar Semiconductor Power Co. (India) Pvt. Ltd.* (Appeal No. 211 of 2013) held: *"When energy is injected into the grid after commissioning with the knowledge and consent of the licensee, such energy cannot be treated as infirm. The licensee is bound to pay for such energy at the tariff agreed under the PPA."*

16 The Commission observes that the solar plants were physically commissioned and synchronized on 10.08.2024 and the same is supported by commissioning reports, meter data, and records of Respondents. In this regard, the Commission has referred to Article 1 of the PPA dated 21.08.2023, which defines "Commercial Operation Date (COD)" as: *"The date on which the commissioning certificate is issued upon successful commissioning (as per provisions of this Agreement) of the project."* Further,

Article 5.1.5 of the duly executed PPA provides that *"Declaration of COD shall only be done upon the successful visit by the Commissioning Committee."*

In accordance with the provisions of duly executed PPA between the parties, DHBVNL has issued commission report dated 05.11.2024, confirming the actual date of commissioning of the solar power plants as 10.08.2024. The relevant extract of the commissioning report dated 05.11.2024 is reproduced hereunder:-

*"**Subject: Commissioning Report of Solar Power Plant***

Please find enclosed the Commissioning Report of your Solar Power Plant, issued by the DHBVN Physical Commissioning Committee. In accordance with Clause Nos. 5.1.5 and 14.1 of the EOI, and Point No. 11 of the LoA, the DHBVN Physical Commissioning Committee has reviewed the reports you submitted and conducted a physical inspection of the plant. Based on this review, the actual commissioning date of the solar power plant is confirmed as August 10, 2024.

Superintending Engineer/Commercial,
For Chief Engineer/Commercial, DHBVN, Hisar

CC:
CE/Commercial, DHBVN, Hisar for information, please."

"DHBVN

Physical Commissioning Committee Report

Joint Verification Report

Name of Work:- Installation of Decentralized Ground/ Stilt Mounted Grid Connected Solar Pourer Planta of capacity upto 2MW on barren / fallow / uncultivable / pasture / marshy land / Agricultural land falling within a radius of 5 kms from substations notified by DHBVN under Component-A of PM KUSUM SCHEME.

Name of Solar Power Generator : DES Renewables PVT. Ltd.

LoA No. : 143/SE/C/498/2020/Vol-II dated 15.02.2023

Address of the Power situated at : Vitt Budak

Name of Op Circle/Division/Subdivision : Hisar/No. II Hisar/ Balsamand

Joint Verification Committee : 1. SE/Commercial, DHBVN, Hisar
2. XEN/Op No. II, DHBVN, Hisar
3. XEN M&P, DHBVN, Hisar

Authorization of Committee : Director/Op DHBVN, Hisar

Date of Physical Commissioning :27.09.2024

Capacity of Power Plant : 0.85 MW

1. *The plant has been inspected in response to the SPG request application dated 14.09.2024.*
2. *Documents and reports issued by various departments have been reviewed, including the CEI reports of the 11 kV line and transformer, M&P report (jointly issued by the M&P wing of DHBVN & HVPNL), HAREDA reports, deposit slip for supervision charges, HVPNL's connectivity approval, SLDC report, connection agreement, NABL report, Calibration certificates and invoices for the inverter, modules and transformer.*

3. *The observation noted in the CEI report regarding the need for insulating mats in front of the control panel (pertaining to the installation of 1x1250 kVA T/F and 1x850 KWP solar plant has been attended by the SPG (Photographs takes at site).*
4. *The plant was successfully energized on 10.08.2024 and physically commissioned on.*
5. *Photographs of the project from multiple angles have been captured on-site.*
6. *As per the MTI report issued jointly by M&P DHBVN & HVPNL on 10.08.2024, the committee observed that the on-load testing was conducted on 10.08.2024. The MTI report was issued following accuracy checks and the completion of the meter sealing procedure.*
7. *In compliance with Clause Nos. 5.1.5 and 14.1 of the EOI, and Point No. 11 of the LoA, DHBVN has reviewed the submitted reports and conducted a physical inspection of the plant. Based on this review, the actual commissioning date of the solar power plant has been determined as August 10, 2024.*
8. *The plant has been successfully commissioned on 10.08.2024, and the DHBVN commissioning committee has designated 10.08.2024 as the COD (Commercial Operation Date) for this project.*
9. *This report is based on the documents provided by SPG and the physical inspection of the plant. If any report or data is later found to he falsified or tampered with, or if any compliance requirement from SPG is determined to be incomplete, SPG will remain fully liable for its obligations and duties."*

17 The Commission has further observed that it has already invoked its 'power to relax' provided under Regulation clause 19 & 20 of the Haryana Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2019 as well as Regulation clause 55, 58 & 59 of the Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012, in its order dated 20.08.2025, in the case of M/s Sunphotonics Pvt. Ltd. & Anr. vs HVPNL & Ors." (Case No. HERC/P. No. 43 of 2025), removing the requirement of Long-Term Open Access (LTOA) and the scheduling either self or through a Qualified Coordinating Agency (QCA), specific to the project developers covered under PM-KUSUM Scheme.

18 Accordingly, the Commission holds that the actual COD of the Petitioners' plants is 10.08.2024. The date of 10.02.2025 reflects only the administrative grant of LTOA and cannot override the factual commissioning date. The Commercial Operation Date (COD) of the Petitioners' projects is hereby declared as 10.08.2024. The Respondents are directed to amend all records and agreements accordingly. Further, in line with the principle of restitution, interest @ 9.15% p.a. i.e. the average rate of interest on working capital allowed to DISCOMs in the ARR order dated 25.03.2026, shall also be payable from the due date of invoice dated 11.02.2025, in respect of energy injected for the period from 10.08.2024 to 09.02.2025 till the actual date of payment. Needless to add that any further delay in payment of the outstanding along with applicable interest

thereon, beyond the period of thirty days, will attract late payment surcharge @ 1.25% per month as per Article 10.3.3 of the duly executed PPA between the parties.

In view of the above findings, the present petition along with the IAs filed in the matter, if any, is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 14.05.2026.

	Sd/-	**Sd/-**	**Sd/-**
Date: 14.05.2026	**(Shiv Kumar)**	**(Mukesh Garg)**	**(Nand Lal Sharma)**
Place: Panchkula	**Member**	**Member**	**Chairman**