BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/Petition No. 105 of 2025
Date of Hearing : 14.05.2026
Date of Order : 05.06.2026

In the Matter of
Petition under section 42, 49, 86 (A, B & E) & 181 of the Electricity Act, 2003 read with HERC Open access Regulations 25/12/2012 as amended till date and HERC RE Regulations 40/2018 as amended till date praying for relaxation exercising powers conferred to the HERC in regulation 54, 55, 58, 59 of open access regulation.

Petitioners
1. M/s Chanderpur Renewable Power Co. Pvt. Ltd., Sohana, PO Mullana, Distt. Ambala
2. M/s Chanderpur Works Pvt. Ltd., Village Jorian, Yamunanagar
3. M/s Chanderpur Industries Pvt. Ltd. Village Kanjnu, Tehsil Radaur, Yamunanagar

Respondents
1. Uttar Haryana Bijli Vitran Nigam Ltd. (UHBVNL) through its Managing Director
2. Haryana Vidyut Prasaran Nigam Ltd. (HVPNL) through its Managing Director

Present on behalf of the Petitioners
1. Mr. Arvind Seth, Advocate
2. Mr. Rohit, Advocate
3. Mr. Shitij Chandra, Director
4. Mr. Rajiv Puri, G.M., Commercial

Present on behalf of the Respondents
1. Ms. Reeha Singh, Advocate for R-1 and R-2
2. Ms. Shree Dwivedi, Advocate, for R-1 and R-2
3. Mr. Baljeet Singh, Xen, SLDC (Op.), HVPNL

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 Chanderpur Renewal Power Co. Pvt. Ltd. (herein referred to as “Petitioner no.1”), Chanderpur Works Pvt. Ltd. (herein referred to as “Petitioner no.2”), Chanderpur Industries Pvt. Ltd (herein referred to as “Petitioner no.3”), seeking relaxation from Regulations 42, 43, 45 of HERC Open Access Regulations, 2012 (1st Amendment), 2013. The Petitioners have, inter-alia, sought consequential treatment of power proposed to be generated and consumed under the captive arrangement, without submission of day-ahead schedules and for the adjustment to be carried out month wise and not slot wise.

2. **Petitioner's submissions: -**

2.1 That the Petitioner No.1's project is 1 MW biomass and RDF from (MSW) Gasification based Captive Power Plant located at Village Sohana, Tehsil Mullana, Distt. Ambala, Haryana.

2.2 That this Project was set up as a Research & Development (R&D) Project of the Government of India with active support of HAREDA (Haryana Renewable Energy Development Agency), MNRE (Ministry of New and Renewable Energy) and IREDA (Indian Renewable Energy Development agency) (through KfW Germany).

2.3 That the basic purpose of setting up this Project was to demonstrate the process of gasification of biomass and to popularize the technology for the common benefit of rural masses and overall national environment. It is imperative to note that the said project aligns with renewable energy promotion mandate Under Section 86(1)(e) of the Electricity Act, 2003 which is reproduced as follows:

Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

2.4 That in the absence of a better utilization of biomass, especially the Wheat/Paddy Straw in rural areas, the farmers generally burn these biomass products of agriculture farming, which is becoming a serious health hazard for the masses. In this National Problem scenario, the instant Project was promoted/installed by the Petitioner Company.

2.5 That the installed capacity of the power plant of the Petitioner Company is 1 MW, which supplements the power needs of the Petitioner in the following manner: -

i) Out of the total installed capacity of the Power Plant, 0.26 MW is utilized at the generation end for catering to Plant Auxiliary Consumption and local use by the fabrication industrial unit at Village Sohana;

ii) Balance 0.740 MW is transmitted to the two industrial units of the Petitioner group Companies i.e. M/s Chanderpur Works Pvt. Ltd. located at Jorian and M/s Chanderpur Industries Pvt. Ltd. at Radaur.

iii) All the above Industrial Unit also have regular sanctioned Contract Demand from Distribution Utility i.e. Respondent No. 1. The contract demand & sanctioned load of these industrial units are as under:

Unit	Contract demand (kVA)	Sanctioned load (kW)
Chanderpur Renewal Power Ltd.	160	219.72
Chanderpur Works Pvt. Ltd.	350	542.32
Chanderpur Industries Ltd.	350	600

iv) That the Petitioner Companies are paying regular monthly bills including Fixed Demand Charges and other recurring energy charges to the Respondent Nigam, although the net power consumption from the grid is after adjustment of captive RE power used from open access.

2.6 That the Petitioner Company had obtained Long Term Open Access for evacuation of 740 kW power to the two industrial units of the Petitioner Company and had signed a Long-Term Open Access Agreement with the two Respondent Nigam on 09.04.2014.

2.7 That the power generated from this RE Power Plant is wheeled over the transmission system of Respondent No. 2 and for this purpose Petitioner Company has constructed 3 Nos. 11 kV independent exclusively dedicated feeders for injection/withdrawal of power into/from HVPN Grid at a cost of Rs.60 Lac i.e.

i) 3.7 kM long feeder from the Generating facility to 66 kV substation, Mullana to facilitate injection of (0.74 MW) power into HVPN System;

ii) 4.0 kM long feeder from 66 kV substation, Radaur to the works of M/s Chanderpur Industries at Village Kanjnu (Radaur) for drawl of 240 kVA captive power; and

iii) 1.0 kM long feeder from 220 kV substation, Jorian to the works of M/s Chanderpur Works Pvt. Ltd. at Jorian (Yamuna Nagar) for drawl of 275 kVA captive power.

2.8 That average monthly generation from this captive plant is 75,000 units only. Total power so generated is consumed by the industrial units of the Petitioner Company and at the moment there is no sale of this power to UHBVN or any Third Party.

2.9 That the Government of Haryana notified “Haryana Bio-Energy Policy of 2018 notified by the New & Renewable Energy Department, Government of Haryana” on 09.03.2018 which provides various incentives to the Biomass based RE Projects, and read as under,

B. Grid Interfacing and Power Evacuation: *(iii) The State transmission utility or the Transmission/ Distribution Licensee shall bear the cost of Extra High Voltage (EHV)/High Voltage (HV) transmission line upto a distance of 10 km. from the interconnection point.*

C. Third Party Sale, Wheeling, Banking and Open Access:

(ii) Discoms/Licensees shall permit electricity generated by eligible producers to be wheeled and banked without any charges.

(iv) The biomass project developer as per entitlement under the policy will also be allowed inter/intra State open access for Captive (within and outside the premises), sale of power to Discoms and Third-party sale simultaneously.

F. Exemption of Transmission & Distribution, cross subsidy charges, surcharges and Reactive Power Charges:

All cross-subsidy charges, Transmission & Distribution charges, surcharges and reactive power charges will be totally waived off for any biomass project set up in the State."

2.10 That Petitioner No.1 Company is a prestigious project established to promote the use of biomass (parali, etc.) and Refuse Derived Fuel (RDF) from Municipal Solid Waste (MSW) for power generation through gasifier technology. By use of this technology, all types of bio-waste including municipal solid waste and even polythene are utilised for power generation in the Petitioner's power generating plant. The project demonstrates an effective method of utilising waste material, which has become a serious nuisance for the country as a whole, while simultaneously generating power for economic development. Hence, the project deserves support from all quarters so that such initiatives survive and promote gainful utilisation of waste. However, the Respondent, on the basis of Open Access Regulations, is forcing the Petitioner to provide scheduling in 96-time blocks of 15 minutes each.

2.11 That the imposition of such scheduling requirements will frustrate the entire aim and object of promoting green energy, as Petitioner No.1 generates electricity using gasifier technology. Petitioner Nos.2 and 3, having open access connections, are being compelled to adhere to slot-wise scheduling under Regulations 42 and 45 of the Haryana Electricity Regulatory Commission (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) (1st Amendment) Regulations, 2013.

2.12 That the drawer of electricity by Petitioner No.2 & 3 company will depend on the electricity generated by Petitioner No.1 company and therefore, the imposition of condition of scheduling on the petitioners will frustrate the very aim and object for the

purpose of which the concessions were given to the companies generating the green energy.

2.13 That the consumption of electricity by petitioner no. 2 and petitioner no. 3 being the engineering and fabrication industry, depends on the volume of work and the consumption of electricity is usually low during night, therefore, there is no specified consumption and generation by the petitioner companies, thus the imposition of scheduling norms are liable to be relaxed to achieve the ultimate aim of green energy.

2.14 That due to the exorbitant levy of charges, the Petitioner was forced to shut the power plant since January 2019 resulting in the perpetual loss not only to the Petitioner Company but to the State and the entire Society.

2.15 That it is the duty of the society to ensure the survival of power plant set up by the Petitioner, so that others are also encouraged to set up more and more such type of projects. Hence the project deserves support from all quarters so that this venture survives.

2.16 That earlier the plant was shut down due to the imposition of wheeling charges, and even after the decision of the Hon'ble Tribunal on wheeling charges, the plant could not become operational due to the imposition of day-ahead scheduling requirements. The power plant has remained shut since January 2019, causing loss not only to the Petitioner but also to the larger public interest, thereby making the Petitioner a unique case warranting special dispensation in public interest.

2.17 That the petitioner No.1 earlier filed a petition before this Hon'ble Commission praying for exemption from wheeling charges. This Hon'ble Commission after considering the nature of the petitioner No.1- company and keeping in view the fact that the generation of the electricity by the petitioner-company is by using all biodegradable products viz. Municipal Solid Waste, wheat/paddy straw and even polythene which addresses the environmental issues arising there from burning/non-disposal.

2.18 That this Hon'ble Commission vide orders dated 11.03.2020 exercising powers vested under Regulation No.55 and 59 of HERC open access Regulations, exempted the petitioner from the levy of distribution weaving charges in larger public interest.

2.19 That the respondent No.1 preferred Appeal No.83 of 2022 before the Hon'ble Appellate Tribunal for electricity. The Hon'ble Appellate Tribunal for electricity vide orders dated 06.10.2022 dismissed the appeal filed by the UHBVN-respondent No.1.

2.20 That the respondent No.1 vide email dated 25.09.2020 asked the petitioner to provide a day ahead 15 minutes schedule for injunction and drawing of power as per Clause

45 of HERC Regulations on open access HERC/2012 dated 11.01.2012. It is pertinent to note that the Respondent vide the email dated 25.09.2020 asked to provide the scheduling for the very first time. It is submitted that that before the email dated 25-09-2020 the petitioner was not giving any day ahead scheduling and the monthly adjustment of unit generated by 1MW RE Power plant to both consumers (CPW and CIPL) in the ratio of 50:50.

2.21 That the petitioner vide letter dated 05.10.2021 requested the respondent No.1 that in view of Re: Regulation No.10(1) the Biomass Power Plant of installed capacity of less than 10 megawatt are not subject to the scheduling and dispatch. The Respondent, vide its letter dated 05.10.2021, has denied to allow the exemption to generator from day ahead scheduling as per regulation No. 10 of the RE Regulations.

2.22 That despite the scheduling requirement being communicated only on 25.09.2020, energy adjustments were stopped from April 2019. Since it is practically impossible to provide day-ahead scheduling for a past period, the Petitioner seeks refund/adjustment only for the period prior to 25.09.2020 and does not claim any adjustment thereafter.

2.23 That Respondent No.1 withheld amounts on account of wheeling charges and refunded Rs. 8,20,000/- pursuant to HERC's order but illegally retained the balance amount. During hearings before HERC, the Respondent never raised the issue of day-ahead scheduling as a ground for withholding adjustments.

2.24 That the action of respondent No.1 in withholding the adjustments from April 2019 is against the principles of natural justice and thus liable to be set-aside and respondent No.1 has illegally withheld the adjustments from April 2019 in spite of the fact that for the first time the petitioner company was informed qua the day ahead scheduling vide email dated 25.09.2020, therefore, it is clear that the day ahead scheduling was informed by respondent No.1 only vide email dated 25.09.2020 and withholding the adjustment amount prior to 25.09.2020 is illegal and arbitrary.

2.25 That the petitioner no.1, vide various communications, requested the higher authorities for praying for relaxation in the day ahead scheduling.

2.26 That the petitioner vide letter dated 14.09.2023 requested the respondent no.1 to refund the adjustment of amount not adjusted on account of wheeling charges (presuming that the respondent No.1 has illegally deducted the wheeling charges which has already been exempted by this Hon'ble Commission vide orders dated 11-03-2020.)

2.27 That the respondent No.1 vide letter dated 19.09.2023 has informed the petitioner that since the company has failed to provide the “Day ahead schedule which is a statutory requirement to avail the open access facility as per Open Access Regulations”, therefore, the adjustment of open access energy for the said period could not be provided.

2.28 That it is clarified by Hon’ble HERC vide order dated 29-10-2025 that the petitioner No.1 installed one R&D demonstration power plant based on gasification technology, is also exempted from day-ahead scheduling as provided in regulation 10 of Renewable Energy Regulations 2010, as the petitioner company is generating green energy, which is similar to biomass power plants.

2.29 That the HERC framed regulations 2012 which were amended by the Haryana Electricity Regulatory Commission (Terms and Conditions for grant of connectivity and open access for intra-State transmission and distribution system) (1st Amendment) Regulations, 2013.

2.30 That no inconvenience will be caused to the DISCOM, as the Petitioner’s RDF and biomass-based plant is unique in Haryana and contributes negligible quantum of power compared to the overall grid capacity.

2.31 That the success of this project will further the mission of renewable energy promotion in Haryana, and replication of such projects will help resolve issues relating to MSW disposal and paddy straw burning.

2.32 That the following main prayers have been made: -

a) Relaxation to Petitioner No. 2 and petitioner No. 3 as partial open access in Regulation 42, 43, 45 of Open Access Regulation, 2013 and relaxation to Petitioner No. 1 also to give day ahead scheduling

b) The adjustment should be month wise and not slot wise as per the procedure adopted upto 2019.

c) Directing the respondent No.1 to refund the adjustments which were withheld illegally prior to intimation of scheduling vide letter dated 20.09.2020 along with 12% interest.

d) To exempt the petitioner from day ahead scheduling as provided in Regulation 42, 43, 45 of the Haryana electricity Regulatory Commission (Terms and Conditions for grant of connectivity and open access for intra-State transmission and distribution system) (1st Amendment) Regulations, 2013.

e) To relax the Regulation 43 of the Haryana electricity Regulatory Commission (Terms and Conditions for grant of connectivity and open access for intra-State transmission and distribution system) (1st Amendment) Regulations, 2013 to the extent that the petitioner being a prestigious project indulging in the generation of green energy is allowed on monthly settlement of energy as provided in Regulation 43.

f) May kindly direct the respondent No.1 to compensate for the loss caused to the petitioner company due to forced closure of the RE power generating unit.

g) Pass such and further orders, as the Hon'ble Commission may deem fit and appropriate keeping in view the facts, needs and circumstances of the case.

h) May kindly give directions/instructions to utilities for exemption to Generator from day ahead scheduling under regulation-10 of RE Regulations.

3. **The respondent no. 1 (UHBVNL) reply dated 23.02.2026: -**

3.1. That on 12.05.2009, this Hon'ble Commission notified the Haryana Grid Code (HGC) Regulations, 2009 (**HGC**). The relevant extracts read as under:

"1. SHORT TITLE, COMMENCEMENT AND INTERPRETATION

(i) These regulations may be called the Haryana Grid Code in short 'HGC'

(ii) These regulations will be applicable to the State Load Despatch Centre, every transmission licensee in the State including STU and every user who is connected to and/or uses the State transmission system.

(iii) These regulations shall extend to the State of Haryana.

*2. **DEFINITIONS:-***

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(13) Captive Generating Plant Captive Generating Plant means a power plant set up by Generating any person to generate electricity primarily for his own use Plant (CGP) and includes a power plant set up by any Co-operative Society or Association of persons for generating electricity primarily for use of members of such Co-operative Society or Association.

……

(26) Despatch Schedule The Ex-power plant net MW and MWH output of a generating station, scheduled to be exported to the Grid from time to time.

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(70) Open Access 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 the regulations specified by the appropriate Commission.

(71) Open Access Customer Open Access customer means a consumer who receives supply of electricity from a person other than the distribution licensees of his area of supply, and the expression includes a generating company and licensee, who has availed of or intends to avail of open access.

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(107) Time Block Block of 15 minutes each for which special energy meters record specified electrical parameters and quantities with first Time Block starting at 00.00 Hrs.

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5.3 FREQUENCY MANAGEMENT

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(f) SLDC shall monitor actual drawal against scheduled drawal and regulate internal generation/demand to maintain this schedule. Generators, CGPs and bilateral agencies shall follow the despatch instructions issued by SLDC. Distribution companies and bilateral agencies shall co-operate with SLDC in managing load on instructions from SLDC as required.

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5.6 DEMAND ESTIMATION FOR OPERATIONAL PURPOSES

(a) SLDC shall develop methodologies/mechanisms on the basis of the data submitted by generation company(s) and distribution companies for daily, weekly, monthly and yearly demand estimation (MW, MVAr and MWh) for operational purposes. The data for the estimation shall also include load shedding, power cuts, etc. SLDC shall also maintain historical database for demand estimation.

(b)Distribution companies and other agencies involved in bilateral exchanges shall provide to the SLDC their estimates of demand/export for active power (MW), reactive power (MVAr) and energy consumption (MU) at each connection / external interconnection point on daily, weekly and monthly basis as per the formats to be finalized by SLDC. The distribution companies shall intimate to the SLDC the methodology used in producing their forecasts.

(c) The SLDC shall use this data

(i) to determine the generation schedule for next day;

(ii) to determine the most onerous conditions affecting constraints and voltage performance for next week;

(iii) to check outage plan viability for peak and lean periods for next month.

(d) (i) The data shall be in the form of 96 blocks (15 minutes period) averaged demand figure for that day, weekly and monthly data shall be in the form of 24 hourly averaged demand figures for that week/month and yearly data shall be in the form of month wise energy requirement for the year. All the above data shall be in respect of each inter-connection point;

(ii) The demand /export estimates provided by the distribution companies and other users involved in bilateral exchanges shall be updated as necessary and sent each month to the SLDC 15 days ahead on daily, weekly and monthly basis;

(iii) The demand estimates shall be further updated and sent to SLDC in accordance with the provision of section 5.13 (Scheduling and Despatch) of HGC;

(iv) The SLDC shall make its own demand forecast using hourly demand summation of each sub-station and CGP import / export figures or by using suitable computer program, to compare with demand estimates provided by users;

(v) Distribution companies shall provide to SLDC estimates of load that may be shed, when required, in discrete blocks with the details of the arrangements of such load shedding;

(vi) While the demand estimation for operational purposes is to be done on a daily, weekly and monthly basis initially, mechanisms and facilities at SLDC shall be created at the earliest to facilitate on-line estimation for daily operational use;

(vii) All data shall be collected in accordance with procedures and formats agreed between the SLDC and each user;

(viii) SLDC shall maintain a database of State demand on a 15 minutes basis;

(ix) SLDC shall notify a Contact Person who shall be responsible for day ahead demand forecast. The official and residential telephone numbers of the Contact Person shall be intimated to all the distribution companies. Similarly all the distribution companies shall notify their contact person with telephone numbers and

intimate SLDC. In case of change of contact person, it should be intimated to SLDC and vice versa.

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5.13 SCHEDULING AND DESPATCH

(a) STU shall submit a draft of Scheduling and Despatch Code within six (6) months from the notification of these regulations: Provided that the STU shall consult the SLDC in the development of the Scheduling and Despatch Code: Provided that the Commission shall, before approval, put up the draft version of the Scheduling and Despatch Code on its website for inviting comments from the public and the interested parties: Provided further that the Commission shall give a period of at least one (1) month for submission of comments by the public and the interested parties.

(b) The Scheduling and Despatch Code shall contain provisions for the following:

(i) actions and responsibilities of the SLDC and users in preparing and issuing generation/supply schedule on daily basis;

(i) modality of the flow of information between the SLDC and users for the purpose of scheduling and despatch;

(ii) modality of the flow of information between the SLDC and the transmission licensees for the purpose of scheduling and despatch;

(iv) modality of the flow of information between the SLDC and the RLDC for the purpose of scheduling and despatch: Provided that such provisions shall be consistent with the Scheduling and Despatch Code included in the Grid Code specified by Central Electricity Regulatory Commission under clause (h) of section 79 of the Act;

(v) procedures of issuing real time despatch/drawal instructions and rescheduling, if required, to the users and compliance with the same;

(vi) appropriate arrangements for settlement of deviations of actual generation or actual drawal from schedules and mechanism for reactive power pricing: Provided that such settlement shall be carried out in a transparent manner and shall include adequate mechanisms for data verification;

(vii) responsibilities of SLDC and users in voltage and frequency management; and

(viii) any other issue considered appropriate by the Commission for inclusion in the Scheduling and Despatch Code.

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5.14 MONITORING OF GENERATION AND DRAWAL

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5.14.5 Monitoring of Drawal

(a) SLDC shall continuously monitor actual MW drawal by distribution licensees and other users against their schedules through use of SCADA equipment, wherever available, or otherwise using available metering. SLDC shall request NRLDC and adjacent States as appropriate to provide any additional data required to enable this monitoring to be carried out."

[**Emphasis Supplied**]

3.2. That on 03.02.2011, this Hon'ble Commission notified the RE Regulations, 2010. The relevant extracts read as under:

"10. Despatch Principles for electricity generated from Renewable Energy Sources. – (1) All renewable energy power plants except for biomass power plants with installed capacity of 10MW and above, and non-fossil fuel based cogeneration plants shall be treated as 'MUST RUN' power plants and shall not be subjected to 'merit order despatch' principles."

3.3. That on 11.01.2012, this Hon'ble Commission notified the Open Access Regulations, 2012. The relevant extracts of the Open Regulations, 2012 read as under:

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

….

(10) "detailed procedure" means the detailed procedure laid down by the STU under these regulations and approved by the Commission;

(11) "embedded open access consumer" means a consumer who has supply agreement with the distribution licensee in whose area of supply the consumer is located and avails the option of drawing power from any other person under open access, during a day or more in any month or more than one month during the year, without ceasing to be a consumer of the said distribution licensee and continues to pay various charges as per tariff schedule applicable to relevant consumer category

…..

(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;

…….

(28) "Haryana Grid Code" means the Haryana Grid Code specified by the Commission under Clause (h) of sub-section (1) of section 86 of the Act;

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Chapter – III

Coordination committee and detailed procedure

4. Coordination committee. –

……

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.*

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53. Dispute resolution*. - All disputes and complaints arising under these regulations shall be decided by the coordination committee within a period of 30 days from the date of receipt of application from the concerned party. Appeal against the decision of the coordination committee shall lie with the Commission. The decision of the Commission shall be final and binding.*

……

54. Interpretation. *- If a question arises relating to the interpretation of any provision of these regulations, the decision of the Commission shall be final."*

3.4. That on 03.12.2023, this Hon'ble Commission notified the 1st Amendment to the Open Access Regulations, 2012 along with the Statement of Reasons. The relevant extracts of the statement of Reasons and the 1st Amendment, read as under:

*"**Statement of Objects and Reasons***

….

2……..Based on the inputs in the petitions/rejoinders, comments/suggestions/ objections of various stakeholders and inputs received from general public and other stakeholders during the hearing, the Commission has finalized the amendments to HERC OA Regulations with the objective of striking a balance between the interests of various stakeholders involved in open access. The Commission has attempted to address the following major issues through these amendments:

2.1. Entitlement and other conditions of open access

2.1.1 ……..

In the existing HERC OA Regulations 2012 also the condition of contract demand of 1 MVA or above for entitlement of open access was retained as such and was not lowered.

The Commission as per the provisions of section 42 of the Act was mandated to provide open access to consumers with maximum demand of 1 MW and above not later than 27.01.2009 (the date of Amendment 57/2003 being 27.01.2004). The same was provided by the Commission w.e.f. 01.04.2008 i.e well within the specified date. However, the condition of contract demand of 1 MVA and above for entitlement to open access has not been lowered, to further extend the phasing of open access to cover consumers with lower contract demand, for the last more than five years by the Commission. The commission, based on inputs received during the hearing and keeping other relevant factors in view, has decided to lower this limit of contract demand for entitlement to open access to 0.5 MVA.

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2.4. Additional conditions for open access for day ahead transactions:

Distribution licensees have often brought to the notice of the Commission the difficulties being faced by them in the planning / managing their drawl of power from the grid as also in the load control in a cost effective manner unless a confirmed schedule of power through open access tied up for the next day by the open access consumers is made available to them sufficiently in advance. The total quantum of open access power for the next day i.e. for 00.00 hours to

24.00 hours of the following day, against day ahead transactions is known by the distribution licensees only between 5 p.m to 6 p.m of the previous day. Thereafter the licensees have no time and are not in a position to take any corrective measures to affect alternations in their own schedule for surrendering any surplus power or for arranging more power in case of any shortfall as by that time distribution licensees' own bids/schedule for energy drawl would have been approved by the power exchange / RLDC. The result is that they invariably are forced to under draw / over draw or impose avoidable cuts leading to financial losses and consequent additional burden for other consumers due to actions of the open access consumers.

The Commission feels that it would not be fair and justifiable if any losses of the distribution licensee on account of energy transactions by open access consumers get passed on, directly or indirectly, to other consumers. The Commission, to address these problems /difficulties, after a careful consideration of all these aspects, has prescribed certain additional conditions for grant of open access in case of day ahead transactions by open access consumers. The foremost among these additional conditions is that for day ahead transactions, the open access consumers shall submit a confirmed slot-wise schedule of power through open access and from the licensee for the next day at 10:00 hours of the previous day to the distribution licensee and SLDC. In case there are any reductions in his open access schedule when it is finally accepted / cleared by the power exchange, he would be required to manage his drawl from the licensee as also his total drawl accordingly. *In case he exceeds his admissible drawl in any time-slot, penalty will be leviable. Amendments have been made in the relevant regulations accordingly. The principle that has been based upon to arrive at these conclusions is simple i.e in case a consumer wants to avail the benefit of cheaper power, he should be ready to face the associated risks also if any.*

3. <u>Other issues/amendments</u>

The remaining amendments which have been made in the regulations are primarily to remove some discrepancies or inconsistencies, or for improvements and to align the regulations with other related regulations notified by the Commission or other authorities after the notification of HERC OA Regulations 2012.

……..

Regulation No. HERC/ 25 / 2012 / 1st Amendment / 2013*: -*

……..

Amendment of Regulation 3 of the Principal Regulations. *Following definitions shall be added after the definition at serial no. (2) :-*

"(2a) "beneficiary" in relation to transmission system means the person who has availed of the transmission system on payment of transmission charges as determined by the Commission under relevant regulations. This includes a distribution licensee, a transmission licensee, a person who has setup a captive power plant or a generating company including merchant power plant or a consumer availing long-term or medium-term open access utilizing such transmission system. Short-term open access consumers will not be treated as beneficiaries;

*(2b) "bilateral transaction" means a transaction for energy (MWh) between a specified buyer and a specified seller, directly or through a trading licensee or discovered at power exchange through bidding, from a specified point of injection to a specified point of drawl for a fixed or varying quantum of power (MW) for any time period during a month.****"***

……..

5. Amendment of Regulation 8 of the Principal Regulations:- *Regulation 8 of the Principal Regulations shall be substituted as under:-*

"8. Entitlement and other conditions for open access*. – (1) Subject to the provisions of these regulations, any licensee, generating company, captive generating plant or a person other than consumer of the distribution licensee, connected at 11 KV or above and who has a capacity/maximum demand of 1 MW and above, shall be entitled for availing open access to the intra-State transmission system of STU and/or of any 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.*

Provided that in case of generating plants based on non-conventional / renewable energy sources there will be no capacity restriction for availing open access for wheeling of power.

(2) Any consumer of a distribution licensee having a contract demand of 0.5 MVA or above and connected to the distribution system of the licensee or to the transmission system of STU or of a transmission licensee other than STU at 11 kV or above, 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 consumer on such independent feeder, the conditions as in (3) below shall apply.

……..

(6) The grant of open access to any licensee, generating company, captive generating plant or a person other than consumer of the distribution licensee covered under sub clause (1) shall be subject to the condition that if power is scheduled to be sold/procured through open access in any time slot of the day, it shall not be less than 250 kW in case of capacity / maximum demand upto 1.5 MW, shall not be less than 500 kW in case of capacity / maximum demand above 1.5 MW but upto 5 MW and shall not be less than 1 MW in case of capacity/maximum demand of 5 MW and above.

……

12. Amendment of Regulation 42 of the Principal Regulations:- *Regulation 42 of the Principal Regulations shall be substituted as under:-*

"42. *Eligibility criteria, procedure and conditions to be satisfied for grant of long term open access, medium term open access and short term open access to embedded consumers shall be same as applicable to other short term open access consumers. However, the day-ahead transactions, bilateral as well as collective through power exchange or through NRLDC, by embedded open access consumers under short term open access shall be subject to the following additional terms and conditions:*

i) The Consumer shall submit to the distribution licensee a schedule of power through open access for all the 96 slots by 10:00 AM of the day preceding the day of transaction and this will be considered as confirmed schedule for working out the slot-wise admissible drawl of the consumer from the licensee with reference to his sanctioned contract demand. For example, if an embedded consumer with a contract demand of 10 MW has scheduled 4 MW power through open access in any time slot of the succeeding day as per the schedule submitted by him at 10 AM, then his admissible drawl from the licensee in that time slot will be 6 MW

The total admissible drawl in different time – slots shall, however, be worked out based on slot-wise admissible drawl from the licensee as above and the slot-wise schedule of power through open access accepted / cleared by the power exchange and intimated to the SLDC and distribution licensee by the consumer in compliance of regulation 45. *For example if, as per the schedule for drawl of power through open access submitted by the consumer at 10 AM of the day preceding the day of transaction, 4 MW power was scheduled through open access in a time slot and as per the accepted schedule this gets reduced to 3 MW, then his admissible total drawl in that time slot shall be 9 MW. i.e. 6 MW from the licensee and 3 MW through open access.*

……

13. Amendment of Regulation 43 of the Principal Regulations:- *Regulation 43 of the Principal Regulation shall be substituted as under:-*

"43 Settlement of Energy at drawl point in respect of embedded consumers*.-*

The mechanism for settlement of energy at drawl point in respect of embedded open access customers shall be as under:

(i) Out of recorded slot-wise drawl the entitled drawl through open access as per accepted schedule or actual recorded drawl, whichever is less, will first be adjusted and balance will be treated as his drawl from the distribution licensee.

*(ii) The recorded drawl will be accounted for / charged as per regulation 24 (2) (A) (a) (ii) of these regulations or regulation 42 as may be applicable.****"***

14. Amendment of Regulation 45 of the Principal Regulations:- *Regulation 45 of the Principal Regulation shall be substituted as under:-*

"45 Requirement of Scheduling for Embedded open access consumers*. - (1) Scheduling shall be done in accordance with relevant provisions of IEGC for inter-State transactions and in accordance with relevant provisions of Haryana Grid Code for intra-State transactions.*

(2) By 10.00 hours every day, these embedded consumers shall prepare and submit daily schedule of power, in MW, separately showing schedule of power from licensee and that from another supplier through open access for the next day, i.e. from 0000 hrs to 24.00 hrs of the following day to SLDC along with copy to distribution licensee. For day-ahead transactions, bilateral as well as collective, through power exchange or through NRLDC, this schedule of drawl of power through open access submitted

at 10.00 hrs shall be considered as final for the purpose of working out slot-wise admissible drawl from the licensee ***as per the provisions of regulation 42.***

Provided that in case the quantum of energy through open access as per schedule accepted by power exchange is less than the quantum intimated as per the schedule submitted at 10.00 hrs by the embedded open access consumer to the licensee, then he shall inform the SLDC / distribution licensee ***about the slot-wise accepted schedule of power*** *through open access and his total admissible draw and settlement of energy at the drawl point shall be regulated /settled* ***as provided in regulation 42 and 43 respectively****."*

[**Emphasis Supplied**]

From a perusal of the above, it is clear that while introducing the 1st Amendment, this Hon'ble Commission took cognizance of the concerns of the distribution licensees to the effect that it is difficult for distribution licensees to plan and manage their drawl from the grid along with load control in a cost effective manner unless a confirmed slot-wise schedule of power through open access tied up for the next day by the open access consumers is made available to them sufficiently in advance.

3.5. That on 09.04.2014, a Long-Term Open Access (LTOA) Agreement was entered into between Chanderpur, UHBVNL and Respondent No. 2 – Haryana Vidyut Prasaran Nigam Limited (HVPNL). The relevant provisions read as under:

"2. And Whereas Party of the third part is a Captive generator & Renewal project and is desirous to avail Long Term Open Access from party of the first part & party of the second part in accordance with HERC (Grant of Connectivity, Long- term and Medium-term intra state Open Access and related matters) Regulations, 2012, Regulation Dec, 2013 & its amendments to the Transmission and Distribution System for transfer of power from the respective places generation to the places of delivery.

3. AND WHEREAS in accordance with Haryana Electricity Regulatory Commission Regulations 2012, Regulation Dec, 2013 amendments (including their amendments if any) and in accordance with the term mentioned above, party of the first part & party of the second part has agreed to provide such open access required by party of the third part from the date of availability of evacuation distribution system for the transfer of power as under

S.no.	Description	Proposed connectivity	Power to be injected /drawn
1.	M/s Chanderpur Renewable Power Corporation Ltd., village Sohana, Hema Majra Road, P.O. Mullana, Distt. Ambala, Haryana **(Plant Site)**	11kV independent connectivity at 66kV substation Mulana - For injection of power	740 Kw
2.	M/s Chanderpur Works Pvt. Ltd., village Jorian, Yamunanagar, Haryana	11 kV feeder from 220 kV S/Station Jorian (The feeder has been installed and put on load- For evacuation of above power	320Kw
3.	M/s Chanderpur Industries Pvt. Ltd., village Kanjnu, Tehsil Radaur, Yamunanagar, Haryana.	11 kV feeder from 66 kV S/Station Radaur subject to the provision of independent feeder from 66 kV S/Station Radaur by UHBVN- For evacuation of above power	320Kw

……

5. AND WHEREAS Long Term Open Access customer have agreed to pay all the Transmission & wheeling charges in accordance with the regulation/ tariff order issued by Haryana Electricity Regulatory Commission from time to time for the use of its Transmission /distribution System. These charges would be shared and paid from the scheduled date of commissioning of generating unit.

6. AND WHEREAS it has become incumbent upon Long Term Open Access customer and parties to enter in to Long Term Open Access Agreement as envisaged under the Haryana Electricity Regulatory Commission Regulations, 2012, Regulation Dec, 2013 amendments (including their amendments if any) for payment of above wheeling charges.

7. In accordance with Haryana Electricity Regulatory Commission Regulations 2012, Regulation Dec, 2013 amendments (including their amendment if any) and in accordance with the term mentioned above parties agrees to provide such open access required by the Long Term Open Access customer from the date and in the manner mentioned in this agreement for a period of 12 years from the schedule date of generation of long- term open access customers.

…..

11. Parties agrees to provide Long Term Open Access required by Long Term Open Access customer as per the details mentioned above and in accordance with the Regulations under the Haryana Electricity Regulatory Commission Regulations, 2012, Regulation Dec, 2013 amendments and conditions specified by the HERC from

time to time. However, during the tenure of this agreement if any of the covenants and conditions recited in this agreement found inconsistent with the of the Electricity Act 2003 and/or applicable notifications/rules/regulations issued either by HERC as per the provisions of the Electricity Act then not withstanding anything contained in the agreement referred to above, the said rules and regulations shall prevail.

…….

13. All differences/disputes between the parties arising out or in connection with this Agreement shall be resolved in terms of the Redressal Mechanism provided under Regulation 33 & 37 of the HERC Regulations, 2012, Regulation Dec, 2013 amendments & its subsequent amendments"

3.6. That on 26.05.2014, the 1MW Chanderpur – Biomass Gasifier Power Plant declared its commercial operation date and and started injecting of power.

3.7. That on 21.05.2018, this Hon'ble Commission *vide* its Order in Case No. HERC/PRO – 70 of 2017 [M/s DCM Textiles Hisar (Unit of DCM Ltd.)] and Case No. HERC/PRO – 47 of 2017 [M/s Jindal Stainless Limited, Hisar] dealing with the adjustment of energy as regards open access consumers. The relevant extracts read as under:

*"**11. Commission's Analysis and Order***

The Commission has considered all the pleadings filed by the parties in the matter, oral arguments, relevant regulations, oral arguments of the parties as well as relevant data/statistics made available/placed on record in the case and Orders as under:-

*I. Haryana Electricity Regulatory Commission (Terms and Conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 were notified by the Commission vide notification dated 11.01.2012 (hereinafter be referred to as 'Principal Regulations'). **The Principal Regulations were consciously amended vide notification dated 03.12.2013 (hereinafter referred to as 'OA Amendments') after due deliberations with various stakeholders. These Regulations are in force since then without any amendment (hereinafter referred to as 'OA Regulations'). It is noted that, inter alia the provision for penalties for over drawl and compensation for under drawl were judicially incorporated in the OA Amendments to strike a balance between the interests of various stakeholders in order to promote Open Access in the State, honoring the mandate of the Electricity Act, 2003.***

II. The very germane of issue emerging out from both the Petitions is the change in billing process of embedded Open Access consumers by the distribution licensee i.e. DHBVNL. Aggrieved with the financial implications, due to this change in process of adjustment of open access power, the Petitioners preferred respective Petitions for seeking suitable relief. It is noted that the distribution licensee vide Sales Instruction No. 14/2015 dated 21.08.2015 (hereinafter referred to as 'OA Instructions'), in their own wisdom/discretion, altered the process of adjustment of Open Access Power availed by embedded short term Open Access consumers in order to remove the practical difficulties and procedural time involved.

III. ***It is noted that the OA Instructions were aimed to remove the practical difficulties and inter alia provides for adjustment of open access power after a period of one month considering the adjustment sheets.*** *However, from the bare perusal of Regulation 54 and 58 of OA Regulations, 2012, it is clear that the Commission is the appropriate authority to interpret and to expedite the removal of any difficulty arisen in giving effect to any of the provisions of these Regulations…..*

……..

IV. It is acknowledged that Regulation 48 of OA Regulations, 2012 provides for monthly billing by the distribution licensee subject to adjustments of quantum of energy and 19 other charges for drawl of power during the period of open access, which reads as follows:-

…….

It is further acknowledged that Regulation 43 of the OA Regulations, 2012 provides implicit mechanism for settlement of energy for the embedded consumers, which reads as follows:-

……

V. Further, the Commission in its Interim Order dated 28.08.2017 in PRO-47 of 2017, prima facie, held that adjustment for energy drawn through Open Access by an embedded consumer, out of billed energy, has to be given during the same month, based on Regulation 43 of OA Regulations. The Commission further acknowledged that no frequency codes shall be required for the purpose, however, imbalance/deviation, if any, can be done after the frequency code is available. The relevant part of ibid Interim Order is as follows:-

"13. The Commission has considered the arguments/submissions of the parties. Prima Facie, the Commission is of the view that adjustment for energy drawn through Open Access by an embedded Open Access Consumer, out of billed energy, has to be given during the same month, based on Regulation 43 of HERC Open Access Regulations, 2012 as amended on 03.12.2013. For this no "frequency code" is required. What remains is the imbalance/deviation settlement i.e. U.I. charges that are either receivable by the Open Access consumer or payable by them. This can be done after "frequency code" is available.

In view of the above discussion, the Commission directs DHBVNL and HVPNL to discuss and finalize the procedure for adjustment of power drawn through Open Access in the same month i.e. in accordance with Regulation 43 of HERC Open Access Regulations, 2012 as amended on 03.12.2013, within 15 days from the date of this Order and submit the same to the Commission. Till the procedure as above, is finalized, the DISCOMs shall revert to earlier practice prevalent prior to the impugned memo. No. 7054/58/PF dated 02.02.2017."

VI. ***From the perusal of provisions of OA Regulations and Interim Order mentioned above, it is clear that Regulations are clear and implicit regarding monthly billing along with mechanism for settlement of energy at drawl point in respect of embedded open access customers. As such, we are of considered view that the billing with respect to OA consumers is to be done strictly as per the Regulations in vogue.*** *The distribution licensee in case of any difficulty in interpreting or implementing the provisions of Regulations may approach the Commission for suitable amendments under Regulation 54 and 58 of OA Regulations.*

VII. In compliance to Commission's Order in the matters, the distribution licensee, however, proposed to adjust 80% of the implemented schedule by the first of every following month in the billing and the final adjustment of open access energy subsequently be proposed to be made in the next month on receipt of final account form HVPNL. The figure of 80% of the accepted schedule has been proposed based on the historical data of open access drawl in kWh and accepted schedule at State periphery in kWh for all the open access embedded consumers. The distribution licensee has also informed the Commission that, it has been observed, on an

average the energy variation is approximately 7% for the FY 2016-17, whereas, the maximum and minimum variation in a particular month for all the consumers were 55.46% and 0.33% respectively.

VIII. We observe that the distribution licensee has contained the analysis only to the Open Access units and accepted schedule at State periphery whereas the financial analysis has not been carried out while making the proposal for adjusting 80 % of accepted schedule. Merely analyzing the energy data, instead of billing data, does not reflect the financial implications, if any, on the distribution licensee. Moreover, the energy variations are being socialized wherein a disciplined consumer has to bear the liability of another consumer. It is not out of context to mention that suitable provisions of penalty and compensation for over drawl and under drawl respectively have been made in the OA Regulations in order to balance the interest of consumers as well as utilities. Considering the above we are of considered view that the proposal posed by the Respondents lacks substance and devoid of merit.

IX. On considering the matter, we are of considered view that the billing of the Petitioners should strictly be done as per the provision of OA Regulations which has already been interpreted by the Commission in its Interim Order dated 28.08.2017 in PRO-47 of 2017 as mentioned at sr. no. 'v' above. The distribution licensee is directed to act accordingly*."*

[Emphasis Supplied]

3.8. That on 10.12.2019, Chanderpur filed Petition being Case No. HERC/PRO-41 of 2019 before this Hon'ble Commission seeking the following reliefs:

"Admit and allow the Petition in the present form;

a) May kindly direct Respondent No. 1 to immediately refund the distribution wheeling charges illegally deducted from the bills of the Petitioner Company since January 2019;

b) May kindly direct Respondent No. 1 to pay interest @ 12% per annum on the above amount of distribution wheeling charges deducted from the bills of the Petitioner Company from the date of deduction to the date of refund;

c) May kindly direct Respondent No. 1 to purchase the surplus RE power injected into the Grid after adjusting the quantum of power consumed by the

Petitioner Company at the generic tariff determined by the Commission for such RE Projects;

d) May kindly direct the Respondent No. 1 to give adjustment of the captive power transmitted through open access in the electricity bill for same month and not to levy any surcharge on delayed adjustment of open access power;

e) The amount of surcharge for delayed payment charged already may please be directed to be refunded with interest from the date of deduction to the date of actual refund;

f) May please direct the Respondent No. 1 to calculate ACD amount on the net energy drawn by the Petitioner Company and refund the extra amount already recovered on this account;

g) May kindly direct the Respondent No.1 to compensate for the loss caused to the Petitioner Company due to forced closure of the RE power generating unit.

h) Pass such and further orders, as the Hon'ble Commission may deem fit and appropriate keeping in view the facts, needs and circumstances of the case."

3.9. That on 17.12.2019, this Hon'ble Commission passed an Order in Case No. HERC/PRO- 58 of 2018 in the matter of *M/s Shree Cement Limited v. Uttar Haryana Bijli Vitaran Nigam Limited and Ors.*, wherein the subject matter in issue was the enforcement of the mandatory requirement under Regulations 42 and 45 of the Open Access Regulations, 2012, which necessitates the submission of a confirmed day-ahead schedule to the distribution licensee (UHBVNL) by 10:00 AM of the preceding day. The relevant extracts of the Order read as under:

*"**The findings recorded by the Commission.:***

7. …The following issues arise for consideration and decision:-

a) Whether Regulation 42 of HERC (Terms & Conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 (HERC OA Regulation), is a mandatory provision?

b) Whether the Petitioner has complied with the Statutory provision?

c) Whether grant of adjustment by the Respondent Nigam, in respect of power bought by the Petitioner through Open Access, without the Petitioner following the provisions of the Statute, constitute implied waiver of the condition of intimation of day ahead schedule?.

d) Whether the Respondent Nigam suffered any financial loss and was constrained in planning its power procurement on day to day basis?

Issue (a):

Whether Regulation 42 of HERC (Terms & Conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 (HERC OA Regulation), is a mandatory provision?

The Commission has closely examined the said Regulation as well as the rival contention on the same. The Commission observes that all the provisions of the Regulations notified by the Commission in its legislative capacity, have the force of law behind it. Hence a statute has to be construed according to the intent of the legislation, as the same, as reflected in the 'objectives' is to make the dispensation effective and workable. A reading of the said provision i.e. Regulation clause no. 42 & 45 of HERC OA Regulations, establishes the fact that meaning/interpretation of the said provision is plain & simple and the same by no stretch of imagination is open to more than one interpretation, which may require interference of the Commission or any court of competent jurisdiction to choose the interpretation which represents the true intent of the said Regulation. Hence, the effect of the same has to be necessarily given to it irrespective of the consequences.

In view of the above discussion and the case laws cited by the Respondent, the Commission answers this issue in affirmative i.e. the requirement under Regulation 42 of the HERC OA Regulations is mandatory and binding.

Issue (b)

Whether the Petitioner has complied with the Statutory provision?

……

In view of the above, undoubtedly it was mandatory for the consumer to submit to the distribution licensee a schedule of power required through open access to the licensee by 10.00 AM of the day preceding the day of transaction, however, the same was fulfilled upon the submission of email as per Section 13 of the Information Technology Act, 2000. The obligation of the Petitioner was duly discharged when the it entered a computer resource outside the control of the Petitioner.*…….*

Issue (c)

Whether grant of adjustment by the Respondent Nigam, in respect of power bought by the Petitioner through Open Access, without the Petitioner following the provisions of the Statute, constitute implied waiver of the condition of intimation of day ahead schedule?

The Commission has examined the aforesaid issue at length. The Commission has taken note of the letter dated 27.12.2013 addressed by Haryana Vidyut Prasaran Nigam Limited (HVPNL) to all the embedded open access consumers, intimating the revised eligibility criteria for grant of open access, as per the revised OA Regulations notified on 03rd Dec., 2013. Upon Notification, the Regulations achieves the status of subordinate legislation and the public is deemed to have been informed and cannot claim ignorance of the amendment. The Commission, therefore, holds that there was a mandatory set of procedure to be followed by embedded open access consumers and an important part of which is an obligation cast upon the embedded open access consumers to submit to the distribution licensee a schedule of power through open access for all the 96 slots by 10:00 AM of the day preceding the day of transaction. ***This being in nature of subordinate legislation, the Distribution licensee had no power to waive off or modify the statutory conditions set out in the Regulations in any manner, whether explicit or implicit. If Act or Regulations mandate to follow a particular procedure, the same shall have to be adhered to by the person who desires to avail the benefit under the said Regulations. If consumer does not adhere to the conditions of Open Access Regulations/Procedure, it has to face the consequences. The charges are levied as an enforcement measure and not as a penalty in the strict sense.***

In view of the above, the Commission answers the issue framed above in negative i.e. grant of adjustment by the Respondent Nigam, in respect of power bought by the Petitioner through Open Access, without the Petitioner following the provisions of the Statute, does not constitute implied waiver of the condition of intimation of day ahead schedule.

Issue (d)

Whether the Respondent Nigam suffered any financial loss and was constrained in planning its power procurement on day to day basis?

……

The Commission observes that the Respondent Nigam failed to quantify the loss in individual case, as well as at an aggregate level. However, the Commission has taken note of the submission of the Respondent Nigam that the un-planned energy has gone wasted as on most of the dates there was under drawl.

In view of the above factual matrix, the Commission answers the issue in affirmative i.e. the Nigam did suffer some financial loss, which is difficult to quantify.

Conclusion-

Having answered the above issues, the Commission is of the considered view that Regulations 42 & 45 of HERC OA Regulations, 2012 being mandatory in nature and the Petitioner has complied with the requirement of Regulations in the seven dates out of nine dates for which open access power was disallowed by the UHBVNL/Coordination Committee for Open Access, as the intimation of drawl of open access was duly submitted before the time specified in Regulation 42 of HERC OA Regulations. *……*

8. Before parting with the Order, the Commission further directs UHBVNL to develop a portal within 3 months from the date of receipt of this Order, where the open access consumer can submit the schedule of power to be drawn through open access for all the 96 slots by 10:00 AM of the day preceding the day of transaction. Submission of the schedule on portal before 10 AM of the preceding day will be deemed to be information duly supplied in compliance of the HERC Open Access Regulations, 2012, as amended from time to time."

Thus, this Hon'ble Commission has held that Regulation 42 and 45 are mandatory and binding statutory provisions, and since these regulations function as subordinate legislation, the distribution licensee has no power to waive or modify these statutory conditions in any manner, whether explicitly or implicitly.

This Hon'ble Commission has in fact emphasized that the 10:00 AM deadline for submitting a day-ahead schedule is a critical enforcement measure to maintain grid security and discipline, ensuring that the licensee (UHBVNL) is not burdened by unplanned power purchases or the sale of surplus power at unfavorable rates.

Furthermore, this Hon'ble Commission has acknowledged that delays in schedule submissions leave the licensee with insufficient time to take corrective measures, such as surrendering surplus power or arranging for shortfalls, which results in the licensee being forced to under-draw or over-draw, leading to financial losses. It has been held that it would be neither fair nor justifiable if such losses, arising from a lack of discipline by open access consumers, were passed on to other consumers of the State as a pass-through expense in the ARR.

3.10. That this Commission, vide its order dated 11.03.2020 (HERC/PRO-41 of 2019), *inter-alia, exempted the Petitioner from the levy of distribution wheeling changes, in larger public interest, subject to the condition that 75% of the fuel used by it shall be wheat/paddy straw, polythene or municipal solid waste.* Further, *UHVBNL* was *directed to refund the distribution wheeling charges already deducted from the bills of the Petitioner, since January, 2019.*

In addition, thereto, in so far as the *adjustment of captive power transmitted through open access in the electricity bill of the same* is concerned, this Hon'ble Commission held that the same stands settled in light of the Judgment dated 21.05.2018 (HERC/PRO-70 of 2017 and HERC/PRO-47 of 2017) passed in in the matters of DCM Textile and M/s Jindal Stainless Steel *(Supra)*, wherein it was held that adjustment for energy drawn through open Access through Open Access by an embedded consumer, out of billed energy, has to be given during the same month. The relevant extracts of the Order read as under:

"……..

In view of the above, the Commission is of the opinion that the demand of wheeling charges has been raised on the Petitioner Company which is a Captive Power Generator and there is no denial of the fact that all the disputes between generator and the licensee shall lie with the Commission. Therefore, the Petitioner, may at its discretion seek appropriate remedy from CGRF/Electricity Ombudsman as well as from the State Commission, so far as disputes as Captive Power Generator and a Licensee are concerned. However, in order to settle the dispute, if any, with respect of Advance Consumption Deposit (ACD), which is arising out of a relation between a consumer and a licensee, lies with the CGRF/Electricity Ombudsman.

9. Having deciding the maintainability issue, the Commission now proceeds to decide the issues within the jurisdiction of this Commission. The foremost issue before the

Commission is decision on the applicability of distribution wheeling charges on the Petitioner. In order to examine the same, the Commission has framed the following issues for consideration and decision in the matter:-

a) Whether distribution wheeling charges are applicable on Captive Power Generators, having dedicated transmission lines and having Long Term Open Access.

b) Whether the project of the Petitioner is unique warranting the grant of some special dispensations?

c) Is the Commission empowered to grant special dispensations to the project of the Petitioner?

After hearing the learned counsel for the parties and going through the record of the appeal, the findings of the Commission on the issues are as under:-

a) Whether distribution wheeling charges are applicable on Captive Power Generators, having self constructed dedicated transmission lines and having Long Term Open Access?

In order to answer the question framed above, the Commission has carefully examined the relevant Regulation clauses of the HERC OA Regulations, (1st Amendment) Regulations, 2013 as well as HERC MYT Regulations, 2012 & 2019. The relevant clauses are reproduced hereunder:-

Regulation clause no. 19 of HERC OA Regulations:

……..

The combined reading of HERC OA Regulations and HERC MYT Regulations, makes it abundantly clear that wheeling charges is applicable on long-term open access consumers. The Regulations have even gone to the extent of specifying the methodology for determination of the same. No special provisions have been provided under HERC OA Regulations, for Long Term Open Access consumers who have constructed dedicated distribution system for their exclusive use, under self construction. Rather, special provisions have been provided for the wheeling charges applicable on dedicated distribution system, constructed at the cost of the licensee, where it is required to be worked out by distribution licensee and got approved from the Commission and shall be borne entirely by such open access consumer till such time the surplus capacity is allotted and used for by other consumers. Thus, there is not even an iota of doubt that wheeling charges are applicable in case of dedicated distribution system is constructed for Open Access Consumer. However, in the case

where such dedicated distribution system is constructed by the distribution licensee, then, the wheeling charges leviable on such consumer shall be required to be got approved from the Commission by the distribution licensee. In case where dedicated distribution system is self constructed by Open Access Consumer, then in that case, no separate approval of the Commission is required for levy of wheeling charges. Moreover, similar provision has been provided under Regulation clause no. 19(2) of HERC OA Regulations for levy of intra-state transmission charges and the State Transmission Utility i.e. HVPNL is regularly levying and collection such charges from the applicable beneficiary including the Petitioner.

In view of the above discussions, the Commission observes that provisions of Regulation clause no. 19(3) of HERC OA Regulations is squarely applicable in the instant case. Accordingly, the Commission answers the issue framed in affirmative i.e. distribution wheeling charges are applicable on Captive Power Generators, having self constructed dedicated transmission lines and having Long Term Open Access.

b) Whether the project of the Petitioner is unique warranting the grant of some special dispensations?

The Petitioner has submitted that its Biomass based Captive Power Plant was set up as a demonstration project/Research & Development (R&D) Project of the Government of India with active support of HAREDA, MNRE and IREDA (through KfW Germany). The basic purpose of setting up this Project was to demonstrate the process of gasification of biomass and to popularize the technology for the common benefit of rural masses and overall national environment. By the use of this technology all types of bio-waste including Municipal Solid Waste and even polythene is being used for power generation in the Power Generating Plant of the Petitioner. Due to the exorbitant levy of charges, the Petitioner has been forced to shut the power plant since January 2019 resulting in the perpetual loss not only to the Petitioner Company but to the State and the entire Society.

The Commission observes that polythene and burning of paddy straw is the menace for the environment. The project of the Petitioner was set up as a demonstration project to demonstrate the generation of electricity by using all bio-degradable products viz. Municipal Solid Waste, Wheat/Paddy Straw and even Polythene, thereby addressing the environmental issues arising from their burning/nondisposal, which is otherwise creating health hazard in the

State and NCR. This will demonstrate the method of using the waste material, which is becoming a big nuisance for the country as a whole, and generate power for economic development of the country. The Commission is of the considered opinion that it is the duty of the society to ensure the survival of power plant set up by the Petitioner, so that others are also encouraged to set up more and more such type of projects. Hence the project deserves support from all quarters so that this venture survives. The Commission notes with concern that the power plant of the Petitioner is shut down since January, 2019, causing loss not only to the Petitioner but also detrimental to the larger public interest. Accordingly, the Commission answers the issue framed in affirmative i.e. the power plant of the Petitioner is unique warranting the grant of some sort of special dispensations, in public interest.

c) Is the Commission empowered to grant special dispensations to the project of the Petitioner?

……

The Commission observes that Regulation clause no. 55 of HERC OA Regulations, empowers the Commission to adopt a procedure which is at variance with any of the provisions of these Regulations, in special circumstances. Further, Regulation clause no. 59 of HERC OA Regulations, empower the Commission to relax any of the provisions of these Regulations in public interest. Accordingly, the Commission answers the issue framed in affirmative i.e. the Commission is empowered under Regulation clause nos. 55 & 59 of HERC OA Regulations to relax the provisions of these Regulations, in public interest and for reasons to be recorded in writing.

Conclusion:-

10. Having answered the above issues, the Commission is of the considered view that the distribution wheeling charges are applicable on the Petitioner, under Regulation clause no. 19 of HERC OA Regulations read with Regulation clause no. 62 of HERC MYT Regulations. However, the demand raised by UHBVNL, in respect of wheeling charges from August, 2014 to December, 2018, vide memo no. Ch.-67/CE/Comml./Billing/OA-105 dated 08.08.2019, is time barred as per the Limitations Act, 1963, in respect of the claims preferred for the period prior to 07.08.2016.

Nevertheless, as observed in the preceding paras, the power plant of the Petitioner is unique using all bio-degradable products viz. Municipal Solid Waste, Wheat/Paddy

Straw and even Polythene as fuel, warranting the grant of special dispensation in public interest, which has already been shut down due to financial unviability caused by levy of distribution wheeling charges w.e.f. January, 2019. Accordingly, in exercise of the powers vested under Regulation Clause nos. 55 & 59 of HERC OA Regulations, the Commission exempt the Petitioner from the levy of distribution wheeling charges, in larger public interest, subject to the condition that 75% of the fuel used by it shall be wheat/paddy straw, polythene or municipal solid waste. The Respondent No. 1 i.e. UHBVNL is directed to refund the distribution wheeling charges already deducted from the bills of the Petitioner, since January, 2019 within 15 days from the date of receipt of this Order, failing which they shall be liable to pay interest @ 12% p.a.

Regarding, prayer of the Petitioner to direct UHBVNL to purchase surplus RE power injected into the grid at generic tariff determined by the Commission, it is observed that the DISCOMs have to plan procurement of power based on the demand projections and RPO obligations, by exercising the financial prudence. As such, the Commission does not intend to interfere in the power procurement planning of DISCOMs, by issuing such directions. The Petitioner may approach DISCOMs with proper proposal to sell its surplus power. The DISCOMs may, after exercising financial prudence, agree to buy such power at such rate, subject to the approval of the Commission to be obtained by them in that eventuality. Meanwhile, the Petitioner may enter into a Banking Agreement with the distribution licensee as per HERC RE Regulations and bank its surplus power with the distribution licensee and withdraw it at a suitable within the financial year on payment of banking charges.

Further, the Commission observes that the issue raised by the Petitioner regarding adjustment of captive power transmitted through open access in the electricity bill of the same month, has already been settled by the Commission in its earlier Order dated 21.05.2018 (HERC/PRO-70 of 2017 and HERC/PRO-47 of 2017) in the matter of M/s. DCM Textile and M/s. Jindal Stainless Steel, wherein it was held that adjustment for energy drawn through Open Access by an embedded consumer, out of billed energy, has to be given during the same month. The relevant extract of the Order of the Commission dated 21.05.2018 is reproduced below:-

V. Further, the Commission in its Interim Order dated 28.08.2017 in PRO-47 of 2017, prima facie, held that adjustment for energy drawn through Open Access by an

embedded consumer, out of billed energy, has to be given during the same month, based on Regulation 43 of OA Regulations. The Commission further acknowledged that no frequency codes shall be required for the purpose, however, imbalance/deviation, if any, can be done after the frequency code is available. The relevant part of ibid Interim Order is as follows:-

"13. The Commission has considered the arguments/submissions of the parties. Prima Facie, the Commission is of the view that adjustment for energy drawn through Open Access by an embedded Open Access Consumer, out of billed energy, has to be given during the same month, based on Regulation 43 of HERC Open Access Regulations, 2012 as amended on 03.12.2013. For this no "frequency code" is required. What remains is the imbalance/deviation settlement i.e. U.I. charges that are either receivable by the Open Access consumer or payable by them. This can be done after "frequency code" is available. In view of the above discussion, the Commission directs DHBVNL and HVPNL to discuss and finalize the procedure for adjustment of power drawn through Open Access in the same month i.e. in accordance with Regulation 43 of HERC Open Access Regulations, 2012 as amended on 03.12.2013, within 15 days from the date of this Order and submit the same to the Commission. Till the procedure as above, is finalized, the DISCOMs shall revert to earlier practice prevalent prior to the impugned memo. No. 7054/58/PF dated 02.02.2017."

xxxxxxxxxx

xxxxxxxxxx

"IX. On considering the matter, we are of considered view that the billing of the Petitioners should strictly be done as per the provision of OA Regulations which has already been interpreted by the Commission in its Interim Order dated 28.08.2017 in PRO-47 of 2017 as mentioned at sr. no. 'v' above. The distribution licensee is directed to act accordingly."

The Respondent No. 1 is directed to strictly comply with the ibid Orders of the Commission."

Note: UHBNVL had preferred an Appeal being Appeal No. 83 of 2022 before the Hon'ble Tribunal challenging the Order dated 11.03.2020 passed by this Hon'ble Commission in HERC /PRO-41 of 2019.

3.11. That on 25.09.2020, UHBVNL upon noticing that Chanderpur has not been providing or complying with the mandatory requirement of providing with the day ahead scheduling, wrote a letter to Chanderpur as under:

"This is in reference to HERC open access regulations according to which, If the firm is injecting and drawing the power the same may please be intimate to this office as till date the day head schedule of injection and drawing of power is not being received from the firm.

In this context, it is intimated that the firm is not providing the day-ahead 15-minute schedule to this office till date.

As per HERC regulations on open access HERC/25/2012 dated 11.01.2012 Clause 45:

(2) By 10.00 hours every day, these embedded consumers shall prepare and submit daily schedule of power, in MW, separately showing schedule of power from licensee and that from another supplier through open access for the next day, le from 0000 hrs to 24.00 hrs of the following day to SLDC along with copy to distribution licensee and UHBVN reference dated 08.11.2019 point no. 6 (vii) (& following constitute integral part of the document, clause 1(c) at page 3) of the LTOA document, the consumer/ firm was supposed to provide the confirmed day ahead schedule to the Discom by 10 A.M at ltoaschedule@uhbvn.org.in

It has been observed that power from the Captive Power Plant is being injected into the system without any prior/ day ahead intimation. Accordingly, you are requested to submit via email the confirmed day ahead schedule (injection and drawl) before 10 A.M in compliance of the HERC Open Access Regulations."

3.12. That on 28.09.2020, UHBVNL reiterated its stance in Letter dated 25.09.2020 vide its e-mail to Chanderpur, that they have not been providing or complying with the mandatory requirement of providing the day ahead scheduling.

3.13. That on 06.10.2020, Chanderpur vide its Letter to UHBVNL requested withdrawal of the above-mentioned notice and, inter-alia, stated that our power plant is Renewable Energy Captive Power Plant based on Biomass having long term open access permission of 0.74 MW and as per …… Clause 10(1) of HERC/23/2010 Regulations dated 03.02.2011 out plant comes under category of "MUST RUN" power plants and hence does not require scheduling.

3.14. That in December, 2020, UHBVNL adjusted Rs. 4,10,000/- as well as Rs. 4,98,514/- (which included Rs, 4,10,000/- for the refund of wheeling charges) in the bills of Chanderpur.

3.15. That on 15.03.2021 Chanderpur filed a Petition being No. HERC/PRO- 2 of 2021 under Section 142 and 146 of the Electricity Act, 2003 for alleged non-compliance of this Hon'ble Commission's Order dated 11.03.2020.

3.16. That on 15.04.2021, this Hon'ble Commission, *inter-alia,* approved and notified the detailed Procedure for grant of intra-state Medium and Long term open access (**Detailed Procedure**). The relevant extracts read as under:

*"**9 Scheduling of Medium Term/ Long Term Open Access Transaction***

9.1 Scheduling of inter-State open access transactions shall be done in the manner as specified by the CERC from time to time.

9.2 Scheduling of intra-State open access transactions shall be done by SLDC in accordance with the provisions of the Haryana Grid Code/applicable regulations of HERC.

9.3 Revision of scheduled energy shall be permitted in accordance with the provisions of IEGC or the Haryana Grid Code or HERC DSM Regulation as the case may be"

3.17. That on 28.06.2021, this Hon'ble Commission passed an Order in Petition No. HERC/PRO- 2 of 2021 in the matter of *Chanderpur Renewal Power Co. Pvt. v. Haryana Vidyut Prasaran Vitran Nigam Limited and Anr.,* wherein, *inter-alia,* Chanderpur was granted liberty to *file a separate Petition seeking relaxation in the applicable Regulations or seek appropriate remedy in a Court of competent jurisdiction for challenging the Regulation(s) in vogue.* This Hon'ble Commission in fact declined to entertain the said Petition on account of the principle amount being paid within time and the only issue remaining was with respect to the interest component.

3.18. That on 05.10.2021, Chanderpur *vide* its Letter requested UHBVNL for exemption from the mandatory requirement as per Regulation 45 of the Open Access Regulations (1st Amendment). The relevant extracts read as under:

"But first time we have received the email on dated 25/09/2020 in which we have been asked to provide "day head 15 minutes schedule of injection and drawing of power" as per the clause 45 of HERC regulation on open access HERC/25/2012 dated 11.01.2012.

So, we have received this email on dated 25/09/2020 and our adjustments was stopped from April, 2019. We are not able to provide day ahead scheduling of previous period. Our plant was shut down due to non-adjustment of our generation. So, please release our adjustments till 25/09/2020 immediately because it is not positive to give the scheduling of back date / period.

Now, we want to bring your kind attention as we are the renewable energy biomass based captive power plant, so we are covered under the clause no. 10 (1) of HERC/23/2010 Regulations dated 03.02.2011 hence does not require scheduling. The clause is re-produced as below:

"10. Despatch principles for electricity generated from Renewable Energy Sources. - (1) All renewable energy power plants except for or biomass power power plants with installed capacity of 10 MW and above and non-fossil fuel based cogeneration plants shall be treated as must run.

(2) The biomass power generating station with an installed capacity of 10 MW and above and non-fossil fuel based co-generation projects shall be subjected to scheduling and despatch code as specified under Haryana Grid Code (HGC) and other relevant regulations including amendments thereto."

Now, in RE Regulation HERC/53/2021 dated 30/04/2021 as per clause no. 10 (1) the Biomass Power Plants of installed capacity less than 10MW are not subject the scheduling and dispatch.

We further want to inform you that HERC Regulation No. 43/2019/HERC dated 29/04/2019 Haryana Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2019 are also not applicable on our company. As per clause no. 4 of this regulation we are also exempt from Deviation Settlement Mechanism.

So, from the above two regulations (Regulation HERC/53/2021 and Regulation No. 43/2019/HERC) the contention of HERC and Govt of Haryana is clear to promote these Biomass Power Plants and exempt these small plants from the day ahead scheduling. On the other side the clause 45 of HERC regulation on open access HERC/25/2012 dated 11.01.2012 as mentioned by you under which you are asking for the day ahead scheduling is the general open access agreement for all

consumers and to promote the RE Sector specially Biomass Power Plants in Haryana the HERC has issued these to regulations (Regulation HERC/53/2021 and Regulation No. 43/2019/HERC) which are overruled all other regulations otherwise there is no mean to issue these regulations."

3.19. That on 05.10.2021, Chanderpur vide its Letter to the Secretary to Government, Haryana Power Department sought for relaxation from the day ahead scheduling.

3.20. That on 10.11.2021, UHBVNL vide its Letter to Chanderpur informed that their request was not found feasible for the adjustment of open access energy without providing day ahead schedule as the same being a statutory condition as per the OA regulations.

3.21. That on 18.11.2021, Chanderpur vide its Letter to the Additional Chief Secretary, Power and New & Renewable Energy, inter-alia, requesting exemption from day ahead scheduling as well as wheeling charges.

3.22. That on 06.10.2022, the Hon'ble Appellate Tribunal passed an Order in Appeal No. 83 of 2022 (filed by UHVBN), upholding this Hon'ble Commission's Order dated 11.03.2020, in Petition being HERC/PRO-41 of 2019.

3.23. That on 19.09.2023, UHBVNL vide its Letter to Chanderpur reiterated its stand in respect of providing day ahead schedule as the same being a statutory condition as pet the OA regulations.

3.24. That on 29.09.2025, UHBVNL vide its Letter to Chanderpur certified that the plant has been non-operational since March, 2020.

THE PRESENT PETITION IS NOT MAINTAINABLE AS BEING TIME-BARRED:

3.25. That the present Petition is *ex-facie* barred by limitation. The Petitioners' own case is that adjustment of captive energy was discontinued from April, 2019, and that the requirement of submission of day-ahead schedule was communicated to them, *vide* communication dated 25.09.2020. Thus, the alleged cause of action, if any, arose either in 2019 or at the latest in September 2020. However, the present Petition has been filed only in the year 2025 i.e., after a lapse of almost 5/6 years, well beyond the prescribed limitation period of three years for raising such claims or disputes.

3.26. That Hon'ble Supreme Court in *Andhra Pradesh Power Coordination Committee and Others v. Lanco Kondapalli Power Limited, (2016) 3 SCC 468,* has held that the limitation period for raising claims or disputes is three years from the date of the

cause of action. Claims beyond this period are not legally recoverable unless explicitly permitted under the applicable legislation.

3.27. That having failed to raise the issue at the relevant time by way of an appropriate Petition, the Petitioners cannot now seek to reopen settled issues through the present Petition after a substantial lapse of time. The present attempt is therefore liable to be rejected on this ground alone.

3.28. That the relief sought by the Petitioners, in effect, amounts to a belated challenge to the regulations, which is impermissible in law. Subordinate legislation, once notified, carries the force of law and remains binding unless set aside by a competent court, and the Petitioners cannot seek to bypass the same by invoking equitable considerations.

3.29. That the Open Access Regulations, 2012 (as amended) framed by this Hon'ble Commission in exercise of its statutory powers under the Electricity Act, 2003 constitute subordinate legislation having the force of law and are binding on all entities availing Open Access, including the Petitioners. The requirement of submission of day-ahead scheduling and preparation of energy accounts in terms of Regulations 42, 43 and 45 of the Open Access Regulations, 2012 (as amended) is mandatory in nature and cannot be dispensed with merely on the basis of individual hardship or operational convenience. All allegations to the contrary are wrong and denied.

PETITION PREFERRED UNDER SECTION 86(1) OF THE ELECTRCITIY ACT, 2003 IS NOT MAINTAINABLE IN VIEW OF THE NON- COMPLIANCE OF THE REGULATORY AND CONTRACTUAL FRAMEWORK:

3.30. That the present Petition, preferred under Section 86 of the Electricity Act, 2003, is not maintainable inasmuch as the Petitioners have failed to follow the dispute-resolution framework contemplated under the Open Access Regulations, 2012 (as amended) and the Long-Term Open Access (LTOA) Agreement dated 09.04.2014 executed between the parties. The Petitioners have directly approached this Hon'ble Commission seeking relaxation from statutory requirements without invoking the prescribed regulatory mechanism.

3.31. That Regulation 53 of the Open Access Regulations, 2012 provides that all disputes and complaints arising under the Regulations are to be decided by the Co-ordination Committee, with an appeal thereafter, lying before this Hon'ble Commission. The

Petitioners have not placed on record any material to demonstrate that the dispute-resolution mechanism contemplated under the Regulations was invoked in accordance with law.

3.32. That Clause 2, 6, 7 and 11 (quoted above) under LTOA Agreement dated 09.04.2014, executed in accordance with the Open Access Regulations, 2012 (as amended) expressly provides that the rights and obligations of the parties shall be governed by the applicable Regulations and that, in case of inconsistency, the provisions of the Electricity Act, 2003 and the Regulations framed thereunder shall prevail. The Petitioners, having availed Long-Term Open Access under the said agreement and continued to operate within the regulatory framework, are bound by the procedural and statutory requirements governing Open Access transactions.

SCOPE AND IMPORT OF REGULATIONS 42, 43 AND 45 OF THE OPEN ACCESS REGULATIONS, 2012 (AS AMENDED) AND THE STATEMENT OF OBJECTS AND REASONS - PURPOSE OF THE 1ST AMENDMENT:

3.33. That the requirement of scheduling, energy accounting and settlement of energy for embedded Open Access consumers is governed by Regulations 42, 43 and 45 of the Open Access Regulations, 2012, as amended in 2013.

3.34. That the following submissions are being made:

i) A bare perusal of Regulation 42(i) makes it clear that an embedded Open Access consumer is required to submit a confirmed day-ahead schedule of power through Open Access for all the 96 time-blocks of the succeeding day by 10:00 hours of the preceding day, which schedule is then used for determining the slot-wise admissible drawal of power from the distribution licensee. The Regulation thus, specifically provides that Open Access scheduling is time-block specific (15-minute slots) and not based on aggregate monthly energy. *For example, if an embedded consumer with a contract demand of 10 MW has scheduled 4 MW power through open access in any time slot of the succeeding day as per the schedule submitted by him at 10 AM, then his admissible drawl from the licensee in that time slot will be 6 MW.*

ii) Further, Regulation 45 expressly provides that scheduling for embedded Open Access consumers shall be carried out in accordance with the relevant provisions of the Haryana Grid Code [Regulation 45(1)], and that such consumers shall submit daily schedules of power separately indicating drawal

from the licensee and drawal through Open Access for the next day (00:00 hrs to 24:00 hrs) to the SLDC with a copy to the distribution licensee [Regulation 45(2)].

iii) Regulation 43, which deals with settlement of energy at the drawal point, provides the mechanism for adjustment of energy based on recorded slot-wise drawal *vis-à-vis* the accepted schedule. The Regulation clearly stipulates that, out of the recorded slot-wise drawal, the entitled drawal through Open Access as per the accepted schedule (or actual recorded drawal, whichever is less) shall first be adjusted, and the balance shall be treated as drawal from the distribution licensee.

3.35. That the combined reading of Regulations 42, 43 and 45 makes it evident that:

i) scheduling is required to be submitted day-ahead in 96 time-blocks;

ii) energy accounting and settlement are carried out on the basis of slot-wise schedules and actual drawal;

iii) the mechanism prescribed under the Regulations does not contemplate monthly energy adjustment in the absence of scheduling data; and

iv) Monthly billing or adjustment, where applicable, is therefore consequential to and dependent upon slot-wise scheduling and energy accounting, and cannot substitute the statutory scheduling requirement.

3.36. That the requirement of scheduling is intrinsic to the grant and operation of Open Access under the Open Access Regulations, 2012 (as amended). In this regard, Regulation 8(6) (as quoted above) expressly provides that the grant of Open Access to a licensee, generating company or captive generating plant is subject to the condition that power scheduled to be sold or procured through Open Access in any time-slot of the day shall not be less than the minimum quantum specified therein.

3.37. That the Statement of Objects and Reasons to the 1st Amendment to the Open Access Regulations, 2012, as already reproduced hereinabove, duly records that distribution licensees had brought to the notice of this Hon'ble Commission the difficulties in planning and managing power procurement and load control in the absence of confirmed day-ahead schedules from Open Access consumers. It was specifically noted that unless a confirmed schedule for the next day is available sufficiently in advance, distribution licensees are left with no time to surrender surplus power or arrange additional power, resulting in under-drawal or over-drawal and

consequent financial impact. Reference may be made to Paras 2, 2.1.1 2.4 and 3 of the Statement of Reasons as reproduced hereinabove.

3.38. That it was in this background that this Hon'ble Commission prescribed the requirement that Open Access consumers shall submit a confirmed slot-wise schedule of power through Open Access for the next day, thereby, ensuring predictability in drawal, grid discipline, and cost-effective system operation. The amendment was thus, introduced to strike a balance between the interests of Open Access consumers and distribution licensees, and to ensure that losses arising from unplanned Open Access transactions are not passed on to other consumers.

3.39. That the condition of intimating day-ahead scheduling was introduced by way of an amendment as this Hon'ble Commission acknowledged the difficulties being faced by the Distribution Licensee when the consumers were not intimating the schedule. Therefore, the procedure prescribed under Regulation 42 is not just an empty formality. The same is necessary for claiming adjustment under Regulation 43 of the Open Access Regulation, 2012(as amended in 2013). This Hon'ble Commission *vide* Order dated 11.10.2021 passed in Petition being Case No. HERC/PRO 72 of 2020 in the matter of *Goodrich Carbohydrates Limited v. Haryana Vidyut Prasaran Nigam Ltd. (HVPNL) and Ors.,* has held that compliance of Regulation 42 is mandatory. Relevant extracts of the Order dated 11.10.2021 reads as under:

"Further, Regulation 42 specifies that the open access shall be granted subject to the condition that the consumer shall submit a schedule of power through open access for all the 96 slots by 10:00 AM of the day preceding the day of transaction. The purpose of imposing such a condition is to enable the DISCOMs to systematically plan the scheduling of power from various sources. There is no denial of the fact that solar power is 'infirm power' and solar power plants are 'must-run' and not subject to scheduling or backing down by DISCOMs, however, the intimation of day ahead transaction of such power is imperative to enable DISCOMs to plan their power procurement.

……..

The Regulations occupying the field as reproduced herein leaves no iota of doubt that the petitioner was entitled to inject power into the grid w.e.f. 26.02.2020 i.e. after signing of the LTOA and was further required to provide day-ahead schedule in order to enable the DISCOMs to plan their power requirements. The generator/captive power consumer was even liable for levy of deviation charges for deviations from

such schedule. Thus, the petitioner is not entitled to seek adjustment of solar power generated/injected during September 2019 to 16.05.2020 from its captive solar power plants, due to injection of power prior to signing of the LTOA agreement and thereafter not submitting the day ahead schedule of solar generation. The LTOA agreement was signed under the relevant provisions of HERC OA Regulations, 2012. The petitioner has not adopted the prescribed dispute resolution mechanism provided in the LTOA agreement signed on 26.02.2020 and Regulation clause no. 53 of HERC OA Regulations, 2012 and instead proceeded to file a petition in this Commission. ***Accordingly, the petitioner has contravened the provisions of the Regulations notified by the Commission in its legislative capacity, having the force of law behind it. The petitioner is also estopped from seeking relief for other captive plant owners without any authorization from them.*** *The Commission is not imposing any penalty on the petitioner at this stage for such delinquent actions and non-compliance of the Regulations of the Commission. ….."*

3.40. That in view of the above-mentioned provisions, it is submitted that it is mandatory for the Petitioners to provide the day ahead schedule of injection and drawing of power to ensure compliance of the Open Access Regulations, 2012 (as amended) as well as the LTOA agreement between the parties. The argument of the Petitioner that the Respondent has raised the issue of scheduling of power from the Petitioner's power plant for the first time only on 25.09.2020 is also irrelevant considering that the said requirement arises out of an express provision of the Open Access Regulations, 2012(as amended). This Hon'ble Commission in various Orders has already held that such statutory conditions cannot be waived off or modified by the Distribution Licensee.

3.41. That UHBVNL has merely sought compliance with the mandatory provisions of the Open Access Regulations, 2012 which are in the nature of subordinate legislation. The requirement communicated to the Petitioners to submit day-ahead scheduling was therefore, not discretionary in nature, but in furtherance of the regulatory framework governing Open Access transactions.

3.42. That the Petitioners' contention that the energy adjustment should be carried out on a monthly basis without submission of day-ahead schedules is contrary to the express provisions of the Open Access Regulations, 2012 and the mechanism for scheduling, energy accounting and settlement prescribed therein. Any allegation that the

Petitioners were being “forced” or “compelled” to comply with the said requirements is wholly misconceived and denied.

ISSUE ALREADY STANDS SETTLED BY THIS HON’BLE COMMISSION AS WELL AS THE HON’BLE APPELLATE TRIBUNAL:

3.43. That the issue relating to the mandatory requirement of submission of day-ahead schedules for Open Access transactions already stands settled by this Hon’ble Commission in its Order dated 17.12.2019 passed in Case No. HERC/PRO-58 of 2018 titled M/s Shree Cement Limited v. Uttar Haryana Bijli Vitran Nigam Limited & Ors.

3.44. That in the said Order (as quoted above), this Hon’ble Commission, after examining Regulations 42 and 45 of the Open Access Regulations, 2012 (as amended in 2013), categorically held that the requirement of submission of a confirmed day-ahead schedule by an embedded Open Access consumer is mandatory and binding in nature, and that the provisions of the Regulations, being subordinate legislation, must be complied with by entities availing Open Access.

3.45. That this Hon’ble Commission further held that grant of adjustment by the distribution licensee without submission of day-ahead schedules does not amount to waiver of the statutory requirement, and that if a consumer does not adhere to the procedure prescribed under the Open Access Regulations, it must face the consequences thereof. The present Petition, in effect, seeks to belatedly reopen an issue that already stands settled by this Hon’ble Commission.

3.46. That the Petitioners’ reliance on the Order dated 11.03.2020 passed by this Hon’ble Commission in Petition No. HERC/PRO-41 of 2019, and the judgment of the Hon’ble Appellate Tribunal dated 06.10.2022 in Appeal No. 83 of 2022 to contend that UHBVNL ought to have raised the issue of day ahead scheduling as well as the adjustment of energy, is misplaced. The said proceedings were confined to the issues raised by the Petitioner regarding the levy of distribution wheeling charges and the grant of limited exemption in that regard in exercise of this Hon’ble Commission’s powers under the Open Access Regulations, 2012. The said orders did not grant any exemption from compliance with the scheduling requirements under Regulations 42, 43 and 45 of the Open Access Regulations, 2012 (as amended) which were in force and binding upon the Petitioners during adjudication of the above proceedings. If the Petitioners were aggrieved by the requirement of day-ahead scheduling or the non-

adjustment of energy on account of non-submission of schedules, the same ought to have been raised by the Petitioner at the relevant time.

3.47. That the Petitioners' contention that UHBVNL did not raise the issue of day-ahead scheduling in the proceedings before the Hon'ble Appellate Tribunal in Appeal No. 83 of 2022 is misconceived and denied. The subject matter of the earlier proceedings before this Hon'ble Commission in Petition No. HERC/PRO-41 of 2019 and the subsequent appeal before the Hon'ble Tribunal was limited to the levy of distribution wheeling charges and related issues, and not the requirement of day-ahead scheduling under the Open Access Regulations, 2012. The issue of scheduling therefore did not arise for consideration in those proceedings, and no adverse inference can be drawn against UHBVNL on that account.

3.48. That a reference in this regard may also be made to the decision dated 05.03.2025, passed by the Hon'ble Appellate Tribunal in Appeal No. 61 of 2022 and Appeal No. 62 of 2022 in the matter of Ranee Polymers Private Limited v. Haryana Electricity Regulatory Commission and Ors. and Batch. The relevant extracts read as under:

*"**Common question of law involved in the two appeals: -***

*13. The controversy in both the appeals revolves around the correct and **meaningful interpretation of amended regulation No.42** of 2012 OA Regulations framed by the Commission. In other words, we are tasked to **determine whether its compliance is mandatory** (as held by the Commission in the impugned orders) **or merely directory** (as contended by the Appellants.)*

14. We may note that the Commission had notified HERC (OA) Regulations, 2012 on 11.01.2012. Subsequently, vide notification dated 03.12.2013, certain amendments were carried out in these regulations, one of which relate to imposition of additional conditions for open access for day ahead transactions thereby amending the Regulation 42.

The amended Regulation 42 reads as under: -

……

15. Since a reference to Regulation 43 was also made by the learned counsels during the course of arguments, we extract the same also hereunder:-

……

16. Perusal of amended Regulation 42 reveals that embedded open access consumers were required to submit to the distribution licensee i.e. DHBVN, a

schedule of power to be obtained through open access for all the 96 slots of a particular day by 10AM of the day preceding the day of transactions, which was to be considered as confirm schedule for working out slot-wise admissible drawal of the consumer from the licensee with reference to a sanctioned contract demand. This requirement has been explained in the regulation itself with the following illustration: -

……

Our Analysis

20. We may noted that in order to determine whether a legal provision is mandatory or directory, one must look into the subject matter of the provision and relation of that provision to the general object intended to be secured. The determination of the issue whether the legal provision is mandatory or directory would, in the ultimate analysis, depend upon the intent of the law maker which has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other. (See State of Mysore Vs. V.K. Kangan 1976 2SCC 895).

21. Thus the factors to be considered while determining whether a legal provision is mandatory or directory are :-

i. Language and tone of the provision;

ii. Legislative intent and purpose;

iii. Context and surrounding provisions; and

iv. Consequences of non-compliance

22. Generally, the mandatory legal provisions use imperative language (e.g. 'shall', 'must'), impose a duty or obligation, are intended to ensure protection of substantive rights/interests and prescribe consequences for non-compliance thereof. On the other hand directory legal provisions generally use permissible language (e.g. 'may', 'can'), provide guidance or procedure, are intended to facilitate administrative convenience or efficiency and do not prescribe any consequences for non-compliance thereof.

23. ***In the instant case, the Commission has consciously used the word "shall" in the amended Regulation 42. (See condition (i) imposed vide amended Regulation 42). The use of word 'shall' itself prima facie indicate that the***

Legislative body i.e. the Commission intended to make this Regulation mandatory to be followed by the open access consumers. Thus, the very language of said Regulation itself lends support to the arguments advanced on behalf of the 2nd Respondent to the effect that it is a mandatory legal provision.

24. Further, ***perusal of the Statement of objects and reasons*** *accompanying notification dated 3rd December, 2013 by which amendment was carried out the Regulation 42, would reveal that the* ***Commission took into account the difficulties faced by the Distribution Licensees in planning /managing their drawl of power from the grid as also in the load control in a cost effective manner unless a confirm schedule of power through open access tied up for the next day by the open access consumers is made available to them sufficiently in advance.*** *We feel it pertinent to extract deliberations of the Commission in introducing the amendment to the Regulation 42 of 2012 OA Regulations requiring the open access consumers to intimate the Distribution Licensees the confirmed slot wise schedule of power through open access for the next day by 10 AM of the previous day, which is as under :-*

…….

25. Thus, ***it is manifest that the Commission felt need to provide additional conditions for Open Access for day ahead transactions by way of amendment in Regulation 42 in order to address the problems/difficulties faced by the Distribution Licensees and to prevent the Distribution Licensees to pass on the losses,*** *if any, faced by them on account of energy transactions by the open access consumers, thereby protecting the interests of the consumers which is the prime responsibility of the Commission.*

26. Evidently, the ***main reason or object*** *for the Commission in imposing additional conditions* ***for Open Access for day ahead transactions was "Public interest" i.e. to save the consumers at large from being burdened with distribution losses caused on account of open access consumers and to ensure Grid discipline as well as systematic planning & scheduling of power by OA consumers so that the distribution licensees can manage their drawl from the grid in a cost effective manner.***

28. Having regard to the discussions/deliberations of the Commission which persuaded it to put additional conditions for open access consumers by way of amendment to the Regulation 42, and public purpose underlying it as well as the specific language of the said Regulation 42, ***there hardly remains any doubt regarding the fact that the intention of the Commission was to make compliance of amended Regulation 42 mandatory for open access consumers. In case the compliance of said Regulation was not intended to be mandatory, there was no reason or occasion for the Commission to amend it.***

29. The argument advanced on behalf of the Appellant that the amended Regulations 42 does not enjoy mandatory character for the reason that it does not provide any consequences for its non-compliance, is devoid of any force. We have already extracted Regulation 43 of 2012 OA Regulations, herein above which was also amended by way of notification dated 3rd December, 2013. It clearly provides consequences for non compliance of Regulation 42. Clause 1 of the said Regulation 43 envisages that out of recorded slot-wise drawl the entitled drawl through open access as per accepted schedule or actual recorded drawl, whichever is less, will first be adjusted and balance will be treated as his drawl from the distribution licensee.

……...However, in case the embedded open access consumer does not intimate the Distribution Licensees about the quantity of power scheduled by it through open access, as required under Regulation 42, his accepted schedule would be 0 MW even though, he may have obtained 4 MW of power through open access. In that case, the drawl from the licensee would be treated as 10 MW even if he may have consumed only 6 MW of power from the licensee. ***Thus, in case of non-compliance of the amended Regulation 42, the OA consumer will have to pay twice for the power scheduled through open access; firstly to the exchange from where it is obtained and secondly to the Distribution Licensees.***

……...

31. We feel in agreement with the submissions of the Learned Counsel for 2nd Respondent that ***terming the Regulation 42 as only directory will render the amendment otiose and would defeat the very purpose of imposing additional conditions*** *for open access consumers.*

32. Therefore, in view of the above discussion, we hold that the provisions of amended Regulation 42 of 2012 OA Regulations are mandatory in nature."

[**Emphasis Supplied**]

Note: A Civil Appeal being Civil Appeal No. 9836 of 2025 has been filed by Ranee Polymers Private Limited before the Hon'ble Supreme Court. However, there is no stay in the matter.

PETITIONERS' RELIANCE ON "MUST-RUN" STATUS AND THE DSM REGULATIONS, 2019 IS MISPLACED:

3.49. That the Petitioners have sought to rely upon Regulation 10(1) of the RE Regulations, 2010 to contend that the biomass-based generating plant of Petitioner No. 1, being of installed capacity less than 10 MW, is not subject to scheduling and dispatch requirements. The said contention is misconceived and denied.

3.50. That the provisions relating to "must-run" status of renewable energy generating stations operate in a different field and do not override the requirements applicable to Open Access transactions. The concept of "must-run" pertains to the treatment of renewable energy generators in grid operation and backing-down instructions, and does not dispense with the statutory requirements governing Open Access scheduling, submission of day-ahead schedules, preparation of energy accounts, and settlement of energy at the drawal point in terms of the Open Access Regulations, 2012 (as amended).

3.51. That in the present case, the electricity generated from the captive plant of Chanderpur is to be injected into the grid and wheeled through the transmission/distribution system for consumption by Petitioner Nos. 2 and 3 at different locations under Long-Term Open Access. Such transactions are squarely governed by the Open Access Regulations, 2012 (as amended) and the HGC, which mandate submission of day-ahead scheduling and slot-wise accounting of energy.

3.52. That even where a generating station is treated as "must-run", the Open Access consumer drawing power through the grid remains obligated to comply with the scheduling and energy-accounting mechanism prescribed under Regulations 42, 43 and 45 of the Open Access Regulations, 2012 as already held by this Hon'ble Commission in the case of Shree Cement (Supra).

3.53. That the Petitioners' reliance on the Haryana Bio-Energy Policy, 2018 is misplaced, as the said policy does not provide for any exemption from compliance of the requirement of day-ahead scheduling and energy accounting as per the Open Access Regulations, 2012 (as amended).

3.54. That the Petitioners' reliance on the Haryana Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2019 (DSM Regulations) is misplaced. The DSM Regulations and the Open Access Regulations, 2012 (as amended) operate in distinct fields. While DSM Regulations deal with the commercial settlement of deviations from scheduled generation or drawl, the requirement of scheduling flows independently from the HGC and Regulations 42, 43 and 45 of the Open Access Regulations, 2012 (as amended) as incorporated in the LTOA Agreement, which govern Open Access transactions involving injection and drawl of electricity through the grid.

3.55. That Day-ahead scheduling is required for commercial settlement under the Open Access framework. In the absence of day-ahead scheduling, the SLDC cannot prepare energy accounts based on scheduled and actual injection/drawl and commercial settlement in terms of the Open Access framework becomes unworkable. The Petitioners' reliance on DSM exemption to avoid compliance with scheduling requirements is therefore misplaced.

PETITIONERS' ALLEGED CLAIM OF DELAY IN COMMUNICATION AND RETROSPECTIVE ADJUSTMENT IS MISPLACED:

3.56. That the Petitioners have sought to allege that the requirement of submission of day-ahead scheduling was communicated to them only vide email dated 25.09.2020. The said contention is incorrect and denied. It is submitted that the communication dated 25.09.2020 was only a reiteration of the existing regulatory requirement.

3.57. That the obligation to submit day-ahead scheduling does not arise from individual communications issued by the Respondent, but flows directly from Regulations 42, 43 and 45 of the HERC Open Access Regulations, 2012 (as amended) read with the Haryana Grid Code, which were in force during the entire relevant period. The Petitioners, having availed Long-Term Open Access under the LTOA Agreement dated 09.04.2014, were bound to comply with the applicable Regulations.

3.58. That any alleged delay in communication of the scheduling requirement cannot confer a right upon the Petitioners to seek exemption from compliance with the

Regulations, nor can any alleged lapse on the part of UHBVNL be used to justify non-compliance with statutory provisions by the Petitioners. The non-adjustment of energy in such circumstances is therefore not retrospective in nature, but a consequence of non-compliance with the regulatory scheduling requirements already in force.

3.59. That even otherwise, it is a settled position of law that a statutory right or obligation cannot be taken away or waived by the act of parties.

3.60. That as quoted above, this Hon'ble Commission, in its Order dated 17.12.2019 in M/s Shree Cement Limited v. UHBVNL & Ors., after examining Regulations 42 and 45 of the Open Access Regulations, 2012 (as amended in 2013) has held that "the requirement under Regulation 42 of the HERC OA Regulations is mandatory and binding." That "this being in nature of subordinate legislation, the Distribution licensee had no power to waive off or modify the statutory conditions set out in the Regulations in any manner, whether explicit or implicit".

RELIEF BEING SOUGHT IS CONTRARY TO THE OVERALL GRID STABILITY:

3.61. That the relief sought to be claimed by the Petitioners could result in a large number of such generators operating outside the ambit of 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.

3.62. That the Petitioners have sought invoke this Hon'ble Commission's power to relax and/or remove difficulties. The grant of such a dispensation would set an untenable precedent, encouraging other similarly placed market participants to seek identical relief, which in turn would endanger grid security.

NO LIABILITY CAN BE FASTENED UPON THE RESPONDENT FOR ANY ALLEGED DELAY OR OTHERWISE:

3.63. That without prejudice to the foregoing submissions, it is respectfully submitted that no liability, whether financial or otherwise, can be fastened upon UHBVNL for any

alleged delay, omission or consequence arising therefrom, when the same is neither attributable to nor within the control of UHBVNL.

3.64. That the requirement of day ahead scheduling is a statutory requirement and seeking compliance of the regulatory framework cannot in any manner any attract liability any liability on UHBVNL. Any such attribution would amount to penalising UHBVNL for seeking compliance of the mandatory requirements under the Open Access Regulations, 2022 which is contrary to settled principles of law and impermissible.

3.65. That, even otherwise, 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.

3.66. That the Petitioners' allegation that the generating plant has remained shut down on account of any action attributable to UHBVNL is incorrect and denied. Further, the Petitioners' allegation regarding illegal withholding of adjustment of energy or money is also misconceived and denied. It is reiterated that UHBVNL has merely required compliance with the Open Access Regulations, 2012 including submission of day-ahead scheduling, which is a statutory obligation applicable to all Open Access consumers. The decision to keep the plant under shutdown is a commercial and operational decision of the Petitioners, for which the Respondent cannot be held responsible.

3.67. That in regard to the Petitioners' claim seeking refund of alleged withheld amounts, it is submitted that the amounts directed to be refunded pursuant to the Order dated 11.03.2020 passed by this Hon'ble Commission, were released by UHBVNL towards the principal amount (Rs. 8,20,000/-) in December, 2020, in compliance with the said Order.

4. **The respondent no. 2 (HVPNL) reply dated 06.04.2026: -**

The Respondent No. 2 (HVPNL), in its reply dated 06.04.2026, has substantially reiterated the submissions already made by Respondent No. 1 (UHBVNL). Accordingly, the same are not reproduced herein for the sake of brevity and to avoid prolixity.

5. **Rejoinder dated 27.04.2026, filed by petitioners to the reply filed by respondent no. 1 and 2 (UHBVN and HVPNL): -**

5.1. That the reply filed by the respondents is wholly misconceived, legally untenable, and proceeds on a complete misapprehension of the scope and nature of the present Petition. At the threshold, it is submitted that the Petitioners are not challenging the vires, validity, or general applicability of the provisions of the HERC Open Access Regulations, 2012, including Regulations 42 and 45. The Petitioners are, rather, seeking a case-specific, equitable, and legally permissible exercise of the powers vested in this Hon'ble Commission under Regulations 55 and 59 of the said Regulations, having regard to the peculiar facts and technical realities of the present case. The Respondents have deliberately attempted to convert a limited plea for relaxation into an alleged challenge to the regulatory framework itself, solely in order to avoid dealing with the real issue raised by the Petitioners.

5.2. That the real controversy arising for consideration before this Hon'ble Commission is not whether Regulations 42 and 45 exist, nor whether day-ahead scheduling is generally contemplated under the Open Access regime. The true and determinative issue is whether such requirements can be enforced with full rigidity against a small-scale, less than 1 MW, MSW/RDF-based renewable captive generating project, where the generation profile is inherently variable, the quantum involved is minuscule, and the practical effect of such rigid insistence is to render the project commercially and operationally unviable. The Reply of the Respondents does not meaningfully engage with this question and instead proceeds on a broad and mechanical assertion that scheduling requirements are "mandatory", as if that by itself concludes the matter.

5.3. That the entire approach of the Respondents is vitiated by failure to appreciate the distinction between the existence of a regulatory requirement and the manner of its application in an exceptional factual situation. It is a settled principle that regulatory provisions are not to be applied in a vacuum, divorced from the facts to which they are sought to be applied. Where the Regulations themselves confer power upon the Commission to relax, adapt, or adopt a procedure at variance, the insistence of the Respondents that every provision must operate in an inflexible and undifferentiated manner is itself contrary to the regulatory scheme.

5.4. That the present Petition is fully maintainable before this Hon'ble Commission under Section 86(1)(f) of the Electricity Act, 2003, as the dispute arises between a

generating company and the distribution licensee in relation to the implementation of the Open Access framework, including scheduling, energy accounting and denial of adjustment. The Petitioners are not seeking any modification or challenge to the validity of Regulations 42 and 45 of the HERC Open Access Regulations, 2012, but are only seeking exercise of the express statutory powers of relaxation vested in this Hon'ble Commission under Regulations 55 and 59, in the peculiar facts of the case. The relief sought thus squarely falls within the adjudicatory and regulatory jurisdiction of this Hon'ble Commission. It is further submitted that the cause of action is continuing in nature, arising from repeated denial of adjustment of energy, and therefore the present Petition cannot be said to be barred on any ground of limitation.

5.5. That it is further submitted that the present Petition is not liable to be dismissed on the ground of delay or laches, as the cause of action in the present case is continuing and recurring in nature. The grievance of the Petitioners arises from the repeated and ongoing denial of adjustment of energy generated and captively consumed, which is reflected in each billing cycle and settlement period. Every instance of non-adjustment and each subsequent billing give rise to a fresh and independent cause of action. The Petitioners have been consistently pursuing their grievance with the Respondents, however, in the absence of any effective resolution, the present Petition has been filed. It is a settled principle of law that where the wrong complained of is recurring and results in continuous financial prejudice, the Petition cannot be rejected on the ground of limitation or alleged delay.

5.6. That the present case squarely warrants exercise of the powers of relaxation vested in this Hon'ble Commission under Regulation 55 and Regulation 59 of the HERC Open Access Regulations, 2012, as well as the general powers preserved under Regulation 70 and Regulation 74 of the HERC Renewable Energy Regulations, 2025. The Petitioners' case presents a combination of exceptional circumstances, namely: (i) a small-scale renewable project of less than 1 MW capacity, (ii) inherent technical impracticability in complying with strict day-ahead scheduling due to variability in MSW/RDF-based generation, (iii) absence of any demonstrable prejudice to the Respondents or the grid, and (iv) disproportionate financial consequences arising from denial of energy adjustment. The Regulations themselves contemplate that in such peculiar and deserving cases, strict application of procedural requirements may be relaxed in order to prevent manifest injustice and to ensure that the regulatory framework operates in a fair, reasonable and purposive manner. The present case is

a fit case for such exercise of discretion, failing which the very objective of promoting renewable energy would stand defeated.

5.7. That the Petitioners respectfully submit that the present case, on the face of the record, involves special facts and circumstances warranting consideration under Regulations 55 and 59 of the HERC Open Access Regulations, 2012. The project in question is neither a large conventional generating station nor a utility-scale renewable power plant engaged in high-volume grid transactions. Rather, it is a small renewable captive project with an installed capacity of less than 1 MW. The Petitioners have been granted open access for a quantum of 740 kW; however, owing to the age and operational limitations of the plant, the actual and realistic power available for injection under open access is only approximately 400 kW, as placed on record. The effective scale of generation and injection is therefore minimal and insignificant in comparison to the overall grid and the system load handled by the Respondents.

5.8. That this small scale of the project is not an incidental fact, but goes to the very root of the matter. The Open Access scheduling requirements under Regulations 42 and 45 are designed primarily to ensure disciplined grid operation in the context of larger and more predictable transactions. Their rigid enforcement against a project of this size, nature, and operational profile amounts to applying the same standard to fundamentally unequal situations. Such an approach is arbitrary in law and contrary to the basic principle that unequal's cannot be treated equally when there exists a clear and rational basis for differentiation.

5.9. That the Petitioners' project is a renewable energy project based on MSW/RDF and biomass gasification, and is therefore not merely a private commercial arrangement, but one which serves larger statutory and public purposes. The project contributes to scientific management and utilization of municipal solid waste, reduces dependence upon open dumping and open burning, assists in environmentally sound handling of refuse derived fuel, and promotes decentralized generation from renewable resources. These features are not peripheral; they place the project squarely within the larger statutory policy underlying Section 86(1)(e) of the Electricity Act, 2003, namely the promotion of generation from renewable and non-conventional energy sources.

5.10. That the Respondents' Reply fails to appreciate that a regulatory approach which leads to closure, strangulation, or non-viability of such a project is directly contrary to

the statutory objective of encouraging renewable energy. A regulation framed to facilitate grid discipline cannot be interpreted or enforced in a manner that defeats the larger legislative policy of renewable promotion, particularly where the project is of small scale, negligible system impact, and substantial environmental utility.

5.11. That the central factual and technical plea of the Petitioners is one of technical impracticability, and the same has not been meaningfully rebutted by the Respondents. The Petitioners' plant operates on Refuse-Derived Fuel (RDF) derived from Municipal Solid Waste (MSW), along with biomass and related feedstock, the calorific value, composition, moisture content, and combustion characteristics of which are inherently variable. Unlike conventional fuel-based generation, the output from such a plant is dependent upon variable feedstock conditions, segregation quality, and operational balancing of the gasification system, rendering precise advance forecasting inherently uncertain. It is further submitted that the Petitioners' project is a small-scale plant, and the deployment of sophisticated forecasting, scheduling, and measurement infrastructure required for high-precision output prediction is economically and practically unviable. The cost and complexity of such systems are disproportionate to the scale of operations of the Petitioners, thereby making strict compliance with precise forecasting requirements infeasible in the facts and circumstances of the present case.

5.12. That the Petitioners have further placed on record that the project also has an element of technological development and process optimization, including variable feedstock use and operational adjustments. In such circumstances, requiring exact day-ahead scheduling for all 96-time blocks amounts to insisting upon a degree of predictability that the very nature of the technology does not permit. The requirement, when applied with full rigidity to such a project, ceases to be regulatory discipline and becomes an impossible burden.

5.13. That it is a settled principle of law, recognised across regulatory and adjudicatory jurisdictions, that the law does not compel the doing of that which cannot possibly be performed. The maxim *'lex non cogit ad impossibilia'* squarely applies. Once the Petitioners have demonstrated that exact scheduling in the peculiar technological framework of the plant is inherently unreliable and practically unworkable, the Respondents cannot insist upon strict compliance and then penalize the Petitioners for the very impossibility created by the nature of the plant itself.

5.14. That the impracticability is not confined only to the generation side. The captive consumers associated with the project are industrial units engaged in heavy manufacturing and fabrication activities, involving dynamic production cycles, CNC machinery, welding and fabrication loads, and order-based operations. Their electricity demand fluctuates in real time depending on production requirements. It is further submitted that the consumption pattern is highly variable even within a day; during night hours, the load typically reduces to nearly one-third of the daytime demand and, at times, may fall to negligible or near-zero levels depending on operational schedules. Accordingly, exact forecasting of drawal in fixed 15-minute time blocks is equally difficult. The result is that the scheduling burden under Regulation 42 on the consumption side and under Regulation 45 on the generation side becomes, in the facts of the present case, doubly impracticable.

5.15. That the Respondents' insistence upon rigid compliance is particularly unreasonable because no corresponding prejudice has been shown to arise to the DISCOM. The captive consumers continue to maintain their contract demand and continue to pay the applicable monthly fixed charges and other charges to the Respondent DISCOM. The network remains reserved for them, and the fixed cost component of the system is duly recovered. In these circumstances, the Respondents' plea of financial burden is hollow, since no loss of fixed revenue has been shown to occur on account of the variation in actual drawl.

5.16. That equally, the Respondents have failed to place any material whatsoever to show that the Petitioners' project has caused any actual grid disturbance, frequency issue, balancing crisis, procurement distortion, or measurable system instability. The quantum involved is extremely small. An effective availability of around 400 kW in the context of the State grid is negligible. In the absence of any evidence of real operational prejudice, the repeated invocation of "grid discipline" remains a mere abstract formula and cannot justify denial of substantive adjustment to the Petitioners.

5.17. That even assuming, without admitting, that there is some deviation from the ideal schedule, the consequence imposed by the Respondents namely denial of adjustment of actual generated and captively consumed energy is grossly disproportionate. The Petitioners are not claiming fictitious generation or unverified consumption. The generation and consumption are recorded, metered, and capable of accounting. The refusal to give effect to actual energy merely because exact

advance scheduling was not feasible is punitive, confiscatory in effect, and fails the test of proportionality.

5.18. That the principle of proportionality is of direct relevance in the present matter. A procedural requirement cannot be enforced in such a manner that it destroys the substantive benefit itself, especially where the underlying data is available, the grid impact is negligible, and the public interest in sustaining the renewable project is substantial. The Respondents have chosen the most extreme consequence possible, without considering whether the object of the Regulations could be met through a less drastic and more reasonable mechanism.

5.19. That this is precisely why the Petitioners have sought a pragmatic solution, namely continued monthly accounting and adjustment of generation and captive consumption, which, as pleaded, had operated in practice earlier without causing any demonstrable prejudice to the Respondent DISCOM. Such a mechanism preserves transparency, recognizes actual energy, prevents unjust enrichment, and balances regulatory discipline with practical feasibility.

5.20. That, if strict 15-minute block-wise day-ahead scheduling is rigidly imposed upon the Petitioner, the inevitable mismatch between scheduled and actual injection/drawl arising from inherent operational variability would result in systematic under-utilization of the permitted open access capacity. Such forced inefficiency would directly impair the financial viability of the project by reducing realizable revenue, thereby constraining the funds available for operation, maintenance, and ongoing research and development activities. It is submitted that any deviation in the present case is neither deliberate nor avoidable but is a natural consequence of the technical characteristics of the project. Imposition of deviation or imbalance charges in such circumstances would unjustly penalize the Petitioner and place a disproportionate financial burden on a small-scale renewable R&D initiative, thereby jeopardizing its sustainability.

5.21. That it is further submitted that the generating plant and the captive consumers operate as an integrated arrangement, and the viability of one is intrinsically dependent on the other. In the absence of corresponding relaxation at both the generation and consumption ends, the entire open access framework, as applied to the Petitioner, becomes commercially unworkable and devoid of practical benefit. On the other hand, permitting relaxation along with a mechanism for monthly adjustment of generation and consumption; already followed in practice without any adverse

impact on the Respondent, Uttar Haryana Bijli Vitran Nigam Limited (UHBVN), would ensure efficient utilization of renewable energy while maintaining equitable accounting. In view of the negligible system impact, substantial environmental benefits, and genuine technical constraints involved, strict enforcement of scheduling requirements in the present case is neither reasonable nor practicable and warrants appropriate regulatory relaxation.

5.22. That it is respectfully submitted that a substantial capacity of rooftop solar power is already operating in the State under the net-metering framework, with approximately 45–50 MW presently injecting electricity into the grid without any requirement of day-ahead scheduling, owing to its complete dependence on natural factors such as sunlight and weather conditions. The State Government has further set an ambitious target of achieving nearly 1.1 GW of rooftop solar capacity by 2026–27, reflecting a clear policy direction towards large-scale expansion of such inherently variable distributed renewable generation. Despite the absence of slot-wise scheduling, the Respondent DISCOM continues to effectively manage such variability through standard grid management practices, thereby demonstrating that the existing system is fully capable of accommodating fluctuating renewable inputs without any material financial or operational disruption.

5.23. That, in comparison, the Petitioner's MSW/RDF-based plant supplies only about 400 kW of power, which is negligible in the context of the distributed renewable capacity already integrated into the grid. It is therefore untenable to suggest that such a minuscule quantum of power would impose any meaningful burden on the system. Moreover, while rooftop solar projects primarily contribute to renewable generation and consumer savings, the Petitioner's project provides an additional and significant public benefit by enabling scientific disposal of municipal solid waste and agricultural residues, thereby reducing landfill accumulation and preventing open burning. The project thus serves a dual function of renewable energy generation and environmental protection. In view of the negligible system impact and enhanced public interest served, the Petitioner respectfully submits that it is entitled to comparable facilitative treatment and that strict scheduling requirements merit suitable relaxation in the present case.

5.24. That there are presently very limited viable technological solutions for small-scale captive waste-to-energy plants based on Refuse-Derived Fuel (RDF) derived from Municipal Solid Waste (MSW). Large-scale waste-to-energy projects require

significant capital investment, complex infrastructure, and extensive logistical arrangements, making them economically burdensome and difficult to implement in most regions. Despite several tenders and policy initiatives by the Government for centralized MSW/RDF based power plants, only a few such projects have been successfully established, and even those have faced considerable operational challenges. This clearly indicates that large-scale models alone cannot effectively address the widespread issue of municipal waste management. In contrast, the Petitioner's project represents a decentralized, small-scale captive waste-to-energy model that is both practical and replicable. Such projects enable efficient utilization of locally available waste, reduce dependence on conventional energy sources, and improve financial viability through integration with existing industrial infrastructure. They also offer broader public benefits by supporting decentralized waste management and can be readily adopted by industries, including under Corporate Social Responsibility initiatives, for addressing waste challenges in nearby areas. In view of its minimal grid impact and significant environmental and technological benefits, the Petitioner's project warrants facilitative regulatory treatment as a demonstration model promoting sustainable and scalable waste-to-energy solutions.

5.25. That the comparative regulatory framework in Haryana itself supports the Petitioners' plea. Under the Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019, the forecasting and scheduling framework applies only to wind and solar generators of 1 MW and above. This threshold is of considerable significance, as it reflects a conscious regulatory determination that very small generators should not be subjected to the same level of scheduling rigour as larger projects. It is further submitted that under the applicable Renewable Energy Regulations, including Regulation 10(1), biomass-based generating stations with an installed capacity below 10 MW are not subjected to mandatory scheduling requirements. Similarly, the Deviation Settlement Mechanism (DSM) framework is applicable to biomass generators only above the prescribed threshold of 10 MW. Thus, the regulatory scheme consistently recognizes that smaller biomass-based generators are not expected to comply with stringent scheduling and deviation obligations. In this background, the insistence of the Respondent, Uttar Haryana Bijli Vitran Nigam Limited (UHBVN), on imposing such requirements on the Petitioners' sub-1 MW biomass-based project is contrary to the underlying regulatory framework and intent.

5.26. That while the said 2019 Regulations apply specifically to solar and wind generation, the principle emerging therefrom is of direct persuasive relevance: the Commission itself has recognised, through the threshold of 1 MW, that small-capacity renewable projects stand on a different footing and are not to be placed under the full burden of strict forecasting and scheduling discipline.

5.27. That the Petitioners' project, being below 1 MW, is therefore on an even stronger footing for claiming regulatory flexibility. If generators of small capacity are consciously kept outside the strict framework under the 2019 Regulations, there is no rational basis to subject the Petitioners' small MSW/RDF based renewable project to a more onerous regime. To do so would amount to regulatory inconsistency and discriminatory treatment.

5.28. That the Petitioners respectfully submit that this is not merely an argument of analogy, but of non-discrimination in regulatory treatment. The Respondents' stand produces an anomalous result where a small renewable generator, with a negligible grid footprint and substantial environmental benefit, is placed in a worse position than categories of renewable generators for whom the regulatory framework itself recognises a threshold-based relaxation. Such treatment is arbitrary and violative of basic norms of fairness.

5.29. That the regulatory framework under the HERC (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2025 further supports the Petitioners' case. These Regulations expressly recognise a range of renewable categories, including biomass, biomass gasification, municipal solid waste, and RDF-based projects, thereby acknowledging that such projects fall within the renewable regulatory architecture of the State.

5.30. That the said 2025 Regulations also lay down an important principle regarding dispatch of renewable energy. Regulation 10(1) reflects that renewable power plants are to be treated in a facilitative manner, and the overall regulatory approach is to promote and accommodate such generation rather than burden it with rigid operational requirements. The framework clearly indicates that smaller renewable projects, which are not large utility-scale plants, should be supported in their operation. It is further submitted that as per Regulation 10(1) of the Renewable Energy Regulations, biomass-based generating stations having capacity below 10 MW are not required to undertake mandatory scheduling. Further, the Deviation

Settlement Mechanism (DSM) is also applicable only to biomass generators above 10 MW. This shows that the regulatory framework itself does not intend to impose strict scheduling and deviation requirements on small biomass-based plants like that of the Petitioners. Despite this, the Respondent, Uttar Haryana Bijli Vitran Nigam Limited (UHBVN), is insisting on applying such requirements to the Petitioners' project, which is contrary to the intent of the Regulations.

5.31. That the 2025 Regulations are also significant because they expressly preserve the Commission's wide power to do justice in special cases. Under Regulation 70, this Hon'ble Commission may, by general or special order, relax any of the provisions of the Regulations for reasons to be recorded in writing. Under Regulation 73, the Commission may remove difficulties; and under Regulation 74, the Commission's inherent procedural latitude to meet the ends of justice is expressly preserved. These provisions reinforce the Petitioners' submission that the regulatory scheme in Haryana is not one of rigid absolutism, but of structured flexibility where justice and practicality so require.

5.32. That the Respondents' Reply is conspicuously silent on the real breadth of the Commission's relaxation powers. Their case is built almost entirely on the abstract proposition that scheduling provisions are mandatory. But even where a provision is ordinarily mandatory, the existence of an express power to relax, coupled with peculiar facts demonstrating impossibility, disproportionality, absence of prejudice, and strong public interest, makes the present case a textbook instance for exercise of such power.

5.33. That the Petitioners' project is also stated to be a unique and pioneering small-scale MSW/RDF based initiative within the State. Whether viewed from the standpoint of renewable promotion, environmental compliance, decentralised waste management, or innovation in waste-to-energy conversion, the project deserves a facilitative regulatory approach. A rigid insistence on scheduling compliance, leading to denial of adjustment and practical closure of the project, would have the effect of discouraging precisely the kind of decentralised renewable initiative that public policy otherwise seeks to foster.

5.34. That the Petitioners have further placed on record the broader environmental and developmental benefits of the project, including scientific disposal of RDF, utilisation of agricultural residues, reduction in landfill dependence, and support to decentralised waste-to-energy models. These aspects are not matters of sentiment

but relevant considerations in regulatory adjudication, because the Electricity Act and the renewable regulations themselves are informed by public interest, energy transition, and sustainability.

5.35. That the Petitioners also rely upon the prior regulatory treatment accorded by this Hon'ble Commission in relation to the same project, including the order passed in Case No. HERC/PRO-41 of 2019 dated 11.03.2020, as referred to in the Petitioners' pleadings. The Petitioners submit that the earlier recognition of the project's peculiar position is a relevant circumstance. The abrupt and rigid change in approach by the Respondents, without any rational transitional basis, offends the principles of legitimate expectation, fairness, and regulatory consistency.

5.36. That the Petitioners are not seeking any wholesale exemption from law. They are seeking a proportionate and workable accommodation within law. Their prayer is limited, fact-specific, and tied to the peculiar nature of the project. It is precisely for such exceptional situations that Regulations 55 and 59 of the Open Access Regulations, 2012, and the wider relaxation and justice-oriented powers preserved in the renewable regulatory framework, exist.

5.37. That, therefore, the issue before this Hon'ble Commission is not whether it should rewrite the Regulations, but whether it should exercise the discretion expressly conferred upon it by the Regulations in order to prevent manifest injustice. The Petitioners respectfully submit that where (i) the project is less than 1 MW, (ii) the project is renewable and environmentally beneficial, (iii) exact scheduling is technically impracticable, (iv) no real prejudice to DISCOM has been shown, (v) the energy data is available and verifiable, and (vi) the consequence of rigid enforcement is project non-viability, the answer can only be in the affirmative.

5.38. That It is further respectfully submitted that the Petitioners' project is a **unique small-scale MSW/RDF-based renewable energy initiative within the State of Haryana**, and represents a rare instance of decentralised waste-to-energy generation. The project is not merely a private commercial venture but performs an important public function by facilitating **scientific utilisation of municipal solid waste, reduction of landfill burden, mitigation of open burning and overall environmental improvement**. If such projects are subjected to **rigid and impractical regulatory conditions**, which are inherently unsuited to their scale and technology, the inevitable consequence would be to render them commercially unviable. This would not only adversely affect the Petitioners' project but would also have a **chilling effect**

on future investment in similar renewable and waste-to-energy initiatives within the State.

5.39. That in the present regulatory and policy framework, where promotion of renewable energy and sustainable waste management is a stated objective, it is imperative that such projects are treated in a **facilitative and pragmatic manner**. Any approach which discourages or penalises such initiatives would be contrary to public interest and the broader statutory mandate of promoting environmentally sustainable energy solutions.

5.40. That viewed cumulatively, the facts of the present case disclose a compelling basis for relief. The Respondents' stand is mechanical, formalistic, and oblivious to the object of the statute, the structure of the Regulations, and the practical realities of the project. The Petitioners' plea, on the other hand, is fully consistent with the statutory objective of renewable promotion, the principle against compelling impossibility, the doctrine of proportionality, the need for rational classification, and the express power of relaxation conferred upon this Hon'ble Commission.

5.41. In view of the aforesaid facts and submissions, it is most respectfully submitted that the Reply filed by the Respondents deserves to be rejected, and the present Petition deserves to be considered and allowed by adopting a fair, reasonable, and context-sensitive application of the regulatory framework, including grant of suitable relaxation from rigid day-ahead scheduling requirements and continuation of a practicable adjustment mechanism commensurate with the nature, scale, and public utility of the Petitioners' project.

5.42. That the Government of Haryana has formulated Haryana Bio Energy Policy, 2018 to promote generation of energy from the surplus biomass in the State. It has been specifically mentioned that for giving effect to this policy, necessary amendments in various policies, rules, regulation wherever necessary shall be expeditiously undertaken by the concerned department.

5.43. That the object of the Policy is provided in Chapter II. Clause 2.1 and 2.2 of the Haryana Bio-Energy Policy, 2018 is being reproduced hereunder:-

*"**2.1 Objectives***

- *To create conducive environment to attract private investment in biomass projects.*

- *To harness biomass based power/ biogas/ bio-CNG/ bio-manure/ bio-fuels etc. as it has huge potentional of energy with sustainable environmental benefits through techno-economically viable technologies.*
- *To support research and development, demonstration and commercialization of new technologies.*

2.2 Target & Eligible Technologies

2.2.1 It is proposed to achieve a target of minimum 150 MW biomass based power generation (or equivalent) by 2022.

2.2.2 Eligible Technologies: *This Policy will strive to promote Biomass to bio energy projects based on the technologies approved by MNRE and categorized as biomass based projects for power generation using Rankine cycle, Bio-CNG/bio-gas cum organic manure projects using advanced anaerobic digestion and bio-fuels/ bio ethanol and other innovative* technologies etc."

5.44. That from the perusal of the aforesaid clauses, it is clear that the Bio-gas-cum-organic mineral project and bio fuels etc are eligible technologies.

5.45. That it is a matter of record that the petitioner is also using the Bio-mass technology to generate the electricity. Therefore, the petitioner is fully covered under the Haryana Bio-energy Policy, 2018.

5.46. That Chapter 3 deals with the incentives to be provided to promote and develop bio-mass based projects. Clause E provides that the bio-mass project upto 10 megawatt must run project. It is further provided that the scheduling and dispatch code shall be applicable only on the bio-mass power projects of 10 Megawatt and above generation capacity, however, it is a matter of record that the petitioner's biomass generation plant is 1 megawatt, therefore, the scheduling and dispatch code shall not be applicable on the petitioner.

5.47. That Clause F also provides exemption. Clause F of the Haryana Bio-energy Policy, 2018 is reproduced hereunder:-

"F. Exemption of Transmission & distribution, cross subsidy charges, surcharges and Reactive Power Charges

All cross subsidy charges, Transmission & distribution charges, surcharges and reactive power charges will be totally waived off for any biomass projects set up in the State."

5.48. That from the perusal of Clause F Chapter III of the Haryana Bio-energy Policy, 2018, it is clear that the biomass based plants are exempted from any surcharges, however, forcing the petitioner to follow the slot-wise scheduling is nothing but an attempt to circumvent the exemption granted under Chapter III Clause F of Haryana Bio-energy Policy, 2018. Therefore, the prayer of the petitioner to grant exemption from slot-wise scheduling is in consonance with the Haryana Bio-energy Policy, 2018.

5.49. That the respondent No.1 withheld amounts on account of wheeling charges and refunded Rs.8,20,000/- pursuant to HERC's order but illegally retained the balance amount of Rs. 5,35,736/-. The Petitioner, vide its letter bearing No. CRPL/03/2023-2024 dated 01.06.2023, formally requested Respondent No. 1 to refund and/or adjust the aforesaid amount.

5.50. That the claim raised in the present petition is not barred by limitation, as the cause of action is continuing and recurring in nature, arising from repeated denial of energy adjustment. It is further submitted that the Petitioners have been continuously pursuing the matter through correspondence and representations, as is evident from the record and therefore the present Petition cannot be said to be belated. Accordingly, the objection raised by the Respondents on the ground of limitation is untenable and liable to be rejected. The reliance placed by the respondents on the judgment in Andhra Pradesh Power Coordination Committee v. Lanco Kondapalli Power Limited, are not applicable to the facts of the present case. The said judgment pertains to claims arising out of specific and concluded causes of action, whereas the present case involves a continuing and recurring cause of action, arising from repeated denial of energy adjustment reflected in successive billing cycles. The Petitioners have been continuously pursuing the matter through ongoing correspondence, and therefore, the principle of limitation as sought to be applied by the Respondents has no application in the present case. Accordingly, the reliance placed on the said judgment is misconceived and liable to be rejected.

5.51. That the reliance placed on the judgment in *Goodrich Carbohydrates Limited v. Haryana Vidyut Prasaran Nigam Ltd.* is misplaced and not applicable to the facts of the present case. The said case pertained to a different factual matrix involving a solar generating plant and issues relating to injection of power prior to execution of LTOA and subsequent non-compliance, whereas the present case concerns a small-capacity (less than 1 MW) biomass/MSW-based renewable R&D/demonstration

project, where strict day-ahead scheduling is inherently impracticable due to both generation-side and consumption-side constraints, as explained hereinabove. For the successful operation and completion of the R&D and demonstration aspects of the project, exemption from day-ahead scheduling is required at both the generation and consumption ends. Further, a mechanism for periodic, preferably monthly, adjustment is necessary to account for variations in actual generation and consumption, so as to ensure proper settlement of energy.

5.52. That the captive consumers are embedded consumers of Uttar Haryana Bijli Vitran Nigam Limited (UHBVN), and they have neither reduced their contract demand nor their sanctioned load at the time of availing open access. The consumers continue to pay fixed charges on their entire sanctioned load, including the portion met through open access. Therefore, the obligation of the Respondent to supply power to such consumers remains unaffected, even in the absence of open access drawl. Grant of exemption from strict scheduling requirements on the consumption side would neither disrupt the system operations of UHBVN nor impose any additional financial burden on it.

5.53. That the reliance placed on the Order dated 17.12.2019 in the case of M/s Shree Cement Limited v. Uttar Haryana Bijli Vitran Nigam Limited is misplaced and not applicable to the facts of the present case. The said case pertained to a high-tension industrial consumer and did not involve a small-capacity (<1 MW) biomass/MSW-based renewable R&D/demonstration project, such as that of the Petitioners, where operational conditions are materially different and strict day-ahead scheduling is inherently impracticable.

5.54. That while the provisions of the Open Access Regulations may have been in existence, the practical enforcement and insistence on strict day-ahead scheduling was admittedly communicated only vide email dated 25.09.2020, and therefore, denial of energy adjustment for the prior period is arbitrary and retrospective in effect.

5.55. That without prejudice, the Petitioners are not seeking any waiver of statutory provisions, but are invoking the power of relaxation expressly vested in this Hon'ble Commission under Regulation 59 of the HERC Open Access Regulations, 2012. The distinction between "waiver" and "relaxation" is material, as the latter is a statutory power exercisable by this Hon'ble Commission in appropriate cases.

5.56. That the reliance placed on the decision in M/s Shree Cement Limited v. Uttar Haryana Bijli Vitran Nigam Limited is misplaced, as the said case pertained to a high-

capacity industrial consumer and did not involve a small-capacity (<1 MW) biomass/MSW-based renewable R&D/demonstration project, where operational conditions are materially different and warrant a distinct approach.

5.57. The following prayers have been made:-

a) Reject the Reply filed by Respondent No.1 (UHBVNL) as being misconceived, legally untenable and devoid of merit.

b) Relaxation to Petitioner No. 2 and Petitioner No. 3 as partial open access in Regulation 42, 43, 45 of Open Access Regulation, 2013 and relaxation to Petitioner No. 1 also to give day ahead scheduling.

c) The adjustment should be month wise and not slot wise as per the procedure adopted upto 2019.

d) Directing the respondent No. 1 to refund the adjustments which were withheld illegally prior to intimation of scheduling vide letter dated 20.09.2020 along with 12% interest.

e) To exempt the petitioner from day ahead scheduling as provided in Regulation 42, 43, 45 of the Haryana Electricity Regulatory Commission (Terms and Conditions for grant of connectivity and open access for intra-State transmission and distribution system) (1st Amendment) Regulations, 2013.

f) To relax the Regulation 43 of the Haryana Electricity Regulatory Commission (Terms and Conditions for grant of connectivity and open access for intra-State transmission and distribution system) (1st Amendment) Regulations, 2013 to the extent that the petitioner being a prestigious project indulging in the generation of green energy is allowed on monthly settlement of energy as provided in Regulation 43.

g) May kindly direct the respondent No.1 to compensate for the loss caused to the petitioner company due to forced closure of the RE power generating unit.

h) May kindly give directions/instructions to utilities for exemption to Generator from day ahead scheduling under regulation-10 of RE Regulations.

i) Allow the present Petition by exercising the powers of relaxation vested in this Hon'ble Commission under Regulations 55 and 59 of the HERC Open Access Regulations, 2012, read with the enabling provisions of the Renewable Energy Regulations, 2025, and the inherent powers of this Hon'ble Commission, in the peculiar facts and circumstances of the present case.

j) Grant appropriate relaxation from the rigid requirement of day-ahead scheduling in 15-minute time blocks under Regulations 42 and 45, in respect of the Petitioners' small-scale (<1 MW) MSW/RDF-based renewable captive generating project, having regard to the inherent technical impracticability, negligible grid impact, and overriding public interest considerations;

k) Direct the Respondents to permit and implement a fair, reasonable and workable mechanism for adjustment of actual energy generated and captively consumed, preferably on a monthly basis or such other periodic basis as this Hon'ble Commission may deem fit, in substitution of rigid slot-wise accounting;

l) Direct the Respondents to give due credit and adjustment for the actual energy generated and consumed by the Petitioners, including for the past period, without denial on the sole ground of non-compliance with impracticable scheduling requirements;

m) Restrain the Respondents from taking any coercive or adverse action, including denial of open access benefits, imposition of penal charges, or disallowance of energy adjustment, on account of non-compliance with day-ahead scheduling requirements in the peculiar facts of the present case.

n) Pass such further or other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case, in the interest of justice, equity, and promotion of renewable energy.

Proceedings in the Case

6. The case was heard on 03.02.2026, 05.03.2026 and finally on 14.05.2026, in the court room of the Commission. 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/written submissions, 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 heard the arguments of the parties at length as well as carefully considered the pleadings of the petitioners, the replies filed by the respondents, the documents placed on record, and the applicable provisions of the Electricity Act, 2003, the Haryana Electricity Regulatory Commission (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 as amended ('OA Regulations'), Haryana Electricity

Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2019 ('DSM Regulations'), Renewable Energy Regulations, Haryana Grid Code (HGC) and HERC (Conduct of Business) Regulations, 2019.

8. Before proceeding to examine the issues on merits, the Commission considers it appropriate to first adjudicate upon the preliminary objection regarding the maintainability of the present petition. The Respondents have contended that the petition, preferred under Section 86 of the Electricity Act, 2003, is not maintainable, as the petitioners have failed to exhaust the dispute resolution mechanism prescribed under the HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012, as amended ("HERC OA Regulations"), as well as the Long-Term Open Access (LTOA) Agreement dated 09.04.2014.

The Commission notes that Regulation 53 of the HERC OA Regulations specifically provides that all disputes and complaints arising under the said Regulations shall, in the first instance, be decided by the Coordination Committee within a stipulated period, and any appeal against the decision of the Coordination Committee shall lie before the Commission. Thus, the regulatory framework envisages a two-tier dispute resolution mechanism, wherein the Coordination Committee acts as the primary forum. At the same time, the Commission has also examined the provisions of Section 86(1)(f) of the Electricity Act, 2003, which empowers the State Commission to adjudicate upon disputes between licensees and generating companies. The Commission further takes note of the judgment of the Hon'ble Appellate Tribunal for Electricity dated 17.07.2020 in Appeal No. 112 of 2020 (Amplus Sun Solutions Pvt. Ltd. vs. HERC & Ors.), wherein it was desired to decide the dispute dehors the connected matters which may be pending before Coordination Committee. The operative part of the said judgement is reproduced hereunder:-

"……It is the grievance of the Petitioners/Appellant that the matter had also to be brought before the Coordination Committee, which is a body created and guided by the regulations on the subject framed by the State Commission.

During the hearing, it was fairly conceded that the Coordination Committee is a body conceived primarily as a facilitator though also entrusted with certain role in adjudication over the disputes. The Petitioners and Appellant contended that the delegation of powers to the Coordination Committee to the extent it concerns the adjudicatory role of the Commission is illegal and impressible in view of the inhibition

expressly set out in Section 97 of the Electricity Act, 2003. The prime grievance here, however, has been that in spite of being approached, the State Commission has not been responsive and the disputes remain unaddressed for prolonged period, the power plant of the Petitioners and the Appellant meanwhile lying idle and unused.

After some hearing, having taken instructions, Mr. Anil Grover, learned senior counsel for the State Commission assured that the petitions which are subject of these matters will be taken up by the State Commission on a date suitable to its calendar but definitely on or before 31.07.2020 and adjudicated upon in accordance with law within four weeks thereof by reasoned orders being passed. The appellant and the petitioners herein before us are satisfied with such assurance. They, however, also insisted that the State Commission should address their requests for interim connectivity expeditiously. We are confident that such prayer would be considered and appropriate orders passed thereupon by the State Commission keeping in view of the urgency involved.

While we find the above to be an appropriate resolution to the present controversy, we would add ***that the State Commission would proceed to decide the disputes which are subject of the petitions presented before it within the above time frame dehors the connected matters which may be pending before Coordination Committee."***

(Emphasis supplied)

Upon a conjoint reading of the statutory provisions and the regulatory framework, the Commission is of the considered view that while disputes arising strictly under the Open Access Regulations between an open access consumer and a licensee are ordinarily required to be first agitated before the Coordination Committee, the jurisdiction of the Commission under Section 86(1)(f) of the Act cannot be ousted, particularly where the dispute involves a generating company and raises issues of interpretation of regulations, grant of relaxation, or exercise of statutory powers vested in the Commission.

In the present case, the Petitioners include a generating company operating a captive renewable energy project, and the issues raised pertain not merely to operational disputes but also to interpretation of regulatory provisions and prayer for relaxation of the Regulations. Such reliefs fall squarely within the domain of the Commission and cannot be effectively adjudicated by the Coordination Committee.

Accordingly, while the Petitioners, in their capacity as Long-Term Open Access consumers, may avail remedies before the Coordination Committee for certain operational disputes, the Commission holds that the present petition, insofar as it seeks adjudication under Section 86(1)(f) of the Act and relaxation of Regulations, is maintainable before this Commission.

The preliminary objection raised by the Respondents on the ground of maintainability is, therefore, rejected.

9. Having decided the issue of maintainability, the Commission now proceeds to examine the issues falling within its jurisdiction. The Commission observes that the requirement of day-ahead scheduling under Regulations 42, 43 and 45 of the Open Access Regulations is well settled and undisputed, and therefore does not warrant any further elaboration. Accordingly, the issues that arise for determination in the present petition are broadly as under:–

i) Whether, in the facts and circumstances of the present case, the Commission ought to exercise its powers to remove difficulties and grant relaxation from certain provisions of the Open Access Regulations?; and

ii) Whether the Petitioners are entitled to refund/adjustment of the amounts withheld for the period prior to 25.09.2020 on account of non-intimation of the day-ahead scheduling?

After hearing the learned counsel for the parties and perusing the material available on record, the findings of the Commission on the issues framed are as under:–

i) Whether, in the facts and circumstances of the present case, the Commission ought to exercise its powers to remove difficulties and grant relaxation from certain provisions of the Open Access Regulations?

At the outset, the Commission observes that the requirement of submission of day-ahead scheduling in 96 time blocks is a statutory mandate under Regulations 42 and 45 of the Open Access Regulations read with the Haryana Grid Code. The said provisions have been framed to ensure grid discipline, enable accurate demand forecasting, and facilitate efficient power procurement planning by the distribution licensee. The Commission has, in its earlier orders, consistently held that these provisions are mandatory in nature and have the force of subordinate legislation. Therefore, any consumer or generator availing open access is ordinarily bound to comply with the same. The Commission further notes that the rationale behind the

requirement of day-ahead scheduling is to prevent unplanned drawl or injection of power, which may lead to operational and financial imbalances for the distribution licensee. In the absence of prior scheduling, the licensee is deprived of the opportunity to optimize its power procurement portfolio, thereby resulting in either surplus power or shortfall, both of which have adverse financial implications that may ultimately be passed on to other consumers. Accordingly, adherence to scheduling requirements is integral to maintaining overall system efficiency and equity among stakeholders.

However, the Commission cannot overlook the peculiar facts and circumstances of the present case. The Petitioner No.1 has established a 1 MW biomass and Refuse Derived Fuel (RDF) based gasification power plant, which has been set up as a Research and Development demonstration project with support from governmental agencies. The primary objective of establishing the said project was to demonstrate the process of biomass gasification and to promote the adoption of such technology for the larger benefit of rural communities and the environment. By employing this technology, various forms of bio-waste, parali etc. including Municipal Solid Waste and polythene, are utilized for generation of electricity in the Petitioner's power plant. The project utilizes agricultural residue and municipal solid waste for power generation, thereby addressing critical environmental concerns such as stubble burning and waste disposal. The Commission takes note that such projects are in furtherance of the mandate under Section 86(1)(e) of the Electricity Act, 2003, which requires the Commission to promote generation of electricity from renewable sources. However, owing to the imposition of exorbitant charges, the Petitioner was constrained to shut down the power plant from January 2019, resulting in continuous losses not only to the Petitioner Company but also adversely impacting the larger public interest.

The Commission has examined the provisions of Regulations 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, which provides as under:

"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."

Further, Regulations 19 and 20 of the HERC (Deviation Settlement Mechanism and related matters) Regulations, 2019 provides as under:

"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."

Further, Regulation 65 of the HERC (Conduct of Business) Regulations, 2019 provide as under:

"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."

The Commission also notes that in its earlier Order dated 11.03.2020, it had already recognized the uniqueness of the Petitioner's project and had granted exemption from levy of distribution wheeling charges in exercise of its powers under Regulations 55 and 59 of the Open Access Regulations, in larger public interest. The said Order has attained finality upon dismissal of the appeal by the Hon'ble Appellate Tribunal. The present petition, therefore, requires the Commission to examine whether similar relaxation is warranted in respect of scheduling requirements and settlement mechanism.

On the issue of applicability of scheduling provisions to the Petitioner's generating station and its captive users, the Commission observes that small-scale biomass-based plants of limited capacity operate under inherent variability due to fuel characteristics and operational constraints. The Commission finds merit in the contention of the Petitioners that strict adherence to 15-minute block-wise day-ahead scheduling may not be practically feasible for such a small and variable generation

unit including its captive users, particularly when the entire generation is being consumed captively within the group entities. The Commission further observes that the quantum of power involved in the present case is negligible in comparison to the overall grid demand, and the power generated is primarily utilized for captive consumption. Therefore, the impact of deviation, if any, on grid operations is minimal. In such circumstances, a rigid insistence on slot-wise scheduling may defeat the larger objective of promoting renewable energy and sustainable waste management.

The Commission further observes that DSM Regulations, 2019, provides that *"Deviation Settlement Mechanism under these Regulations shall be applicable for all Seller(s), including Open Access Generators, Captive Generators re-generators with capacity 10 MW and above (excluding In-Situ Captive Generators) connected to Intra-State Transmission system but excluding Wind and Solar Generating Station(s)."*

Accordingly, it is evident that deviation settlement provisions are not applicable to Petitioner No. 1, being a generating station of capacity less than 10 MW.

The Commission has carefully considered the entire gamut of judgments relied upon by the Respondents. The ratio emerging from the said judgments is that the existence of a genuine difficulty is a sine qua non for the exercise of the Commission's powers to remove difficulties or grant relaxation under the applicable regulatory framework.

In the present case, the Commission is satisfied that the existence of such difficulty stands adequately established. As discussed hereinabove, the Petitioner was constrained to shut down its power plant from January 2019 owing to the practical impossibility of complying with the requirement of 15-minute time-block-wise scheduling. The power to relax is based on the circumstances of the case. Such a case has to be one of those exceptions to the general rule. There has to be sufficient reason to justify relaxation which has to be exercised only in the exceptional case where non-exercise of the discretion would cause hardship and injustice to a party. The circumstances placed on record demonstrate that strict adherence to the said provisions was not feasible in the facts of the case and resulted in substantial operational impediments. The Commission is, therefore, of the considered view that the aforesaid facts constitute sufficient evidence of the existence of a genuine

difficulty, thereby warranting the exercise of the Commission's powers for removal of difficulty and/or grant of relaxation, as the case may be.

The Commission, having considered the submissions and arguments of the parties and peculiar nature of the 1 MW Refuse Derived Fuel (RDF) based gasification power plant, using all bio-degradable products viz. Municipal Solid Waste, Wheat/Paddy Straw and even Polythene as fuel, which was set up as a demonstration project, which has already been shut down due to difficulty faced by the conditions of day ahead scheduling in 15 minutes time block, finds it appropriate to exercise its powers to remove difficulties and relax certain provisions in the public interest, as conferred in Regulations 58 and 59 of the HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012, Regulations 19 and 20 of the HERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019 and the inherent powers under Regulation 65 of the HERC (Conduct of Business) Regulations, 2019 and decides that requirement of 15 minutes slot-wise, day-ahead scheduling provided under Regulations 42 and 45 of the Open Access Regulations is relaxed for the Petitioners' 1 MW biomass/RDF-based captive generating plant including its captive consumers.

Further, the Commission has, in earlier orders, clarified that billing and adjustment of energy is to be carried out on a monthly basis. The said order of the Commission has attained finality; not warranting reconsideration of the same. The Petitioners have sought continuation of the earlier practice of month-wise adjustment without strict adherence to slot-wise scheduling. The Commission is of the considered view that while the principle of slot-wise accounting is embedded in the regulatory framework, relaxation can be considered in exceptional cases where strict compliance is impractical and where such relaxation does not materially prejudice the interests of the distribution licensee or other consumers. In the present case, considering the small capacity of the plant, its captive nature, and its environmental significance, the Commission is inclined to allow adjustment of captive

generation as well as its consumption by captive users on a monthly basis, without considering the 15 minutes slot-wise generation and consumption. Accordingly, the Commission answers the issue framed in affirmative i.e. given the fact that the power plant of the Petitioner is unique warranting the grant of some sort of special dispensations, in public interest, it is fit case for the Commission to exercise its powers to remove difficulties and grant relaxation from certain provisions of the Open Access Regulations.

ii) Whether the Petitioners are entitled to refund/adjustment of the amounts withheld for the period prior to 25.09.2020 on account of non-intimation of the day-ahead scheduling?

On the issue of refund of withheld adjustments for the period prior to 25.09.2020, the Commission observes that the requirement of day-ahead scheduling existed under the applicable Regulations since 2013 and cannot be said to have been introduced for the first time vide email dated 25.09.2020. The Petitioners, being Open Access Consumers, are deemed to have been aware of the statutory requirements. At the same time, it is observed that the Respondent had, for a considerable period prior to 2020, permitted adjustment of energy without insisting upon strict compliance with the scheduling requirements. In such circumstances, denial of adjustment for the period prior to explicit enforcement of the scheduling requirement raises issues of fairness and legitimate expectation.

However, the Commission further observes that adjustment of captive energy had already been discontinued from April 2019 and that the requirement of submission of day-ahead schedule was specifically communicated vide communication dated 25.09.2020. Thus, the alleged cause of action, if any, arose either in 2019 or, at the latest, in September 2020. The present Petition, however, has been filed only in the year 2025, after a lapse of nearly five to six years, which is well beyond the prescribed limitation period of three years for raising such claims or disputes.

In this regard, the Hon'ble Supreme Court, in Andhra Pradesh Power Coordination Committee and Others v. Lanco Kondapalli Power Limited, held that the limitation period for raising claims or disputes is three years from the date on which the cause of action arises, and claims beyond such period are not legally recoverable unless specifically permitted under the applicable statutory framework.

Having failed to raise the issue at the relevant point of time by way of an appropriate petition, the Petitioners cannot now seek to open the issues, governed by the extant Regulations, through the present Petition after a substantial lapse of time.

Accordingly, the issue is answered in the negative, and the Commission holds that the Petitioners are not entitled to refund/adjustment of the amounts withheld for the period prior to 25.09.2020 on account of non-intimation of day-ahead scheduling. It is, however, clarified that the requirement of intimation of day-ahead schedule stands waived prospectively in respect of the Petitioners.

Conclusion:-

10. Accordingly, in exercise of the powers vested under Regulations 58 and 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, the Commission deems it appropriate to grant partial relief to the Petitioners in the peculiar facts of the case.

11. In view of the foregoing discussion, the Commission passes the following Order:

    (i) The requirement of 15 minutes slot-wise, day-ahead scheduling under Regulations 42 and 45 of the Open Access Regulations is held to be mandatory in general; however, in the specific facts of the present case, the same is relaxed for the Petitioners' 1 MW biomass/RDF-based captive generating plant, in exercise of the Commission's powers of relaxation.

    (ii) The Respondent No.1 is directed to allow adjustment of energy generated and consumed by the Petitioners on a monthly basis, instead of strict slot-wise settlement, for the period during which the plant operates under the present dispensation.

    (iii) The Petitioners are not entitled to refund/adjustment of the amounts withheld for the period prior to 25.09.2020 on account of non-intimation of day-ahead scheduling. Needless to add that the requirement of intimation of day-ahead schedule, has been waived off for the petitioner, prospectively.

    (iv) The Petitioners shall, however, cooperate with the SLDC and the distribution licensee by providing indicative monthly generation and consumption data, as may be required for system planning and grid management.

(v) The relief granted herein is confined to the peculiar facts of the present case, having regard to the unique nature of the project and its contribution to renewable energy and waste management, and shall not be treated as a precedent in other cases.

The petition stands disposed of in the above terms.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 05.06.2026.

	-Sd/-	**-Sd/-**	**-Sd/-**
Date: 05.06.2026	**(Shiv Kumar)**	**(Mukesh Garg)**	**(Nand Lal Sharma)**
Place: Panchkula	**Member**	**Member**	**Chairman**