BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA

Case No. HERC/PRO-41 of 2019

Date of Hearing	**:**	**27.01.2020**
Date of Order	**:**	**11.03.2020**

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 25/2012 as amended till date and HERC RE Regulations 40/2018 as amended till date.

Petitioner M/s. Chanderpur Renewal Power Co. Pvt. Ltd.

Respondents
1. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL)
2. Haryana Vidyut Prasaran Nigam Limited (HVPNL)

Present On behalf of the Petitioner
1. Shri R.K. Jain, Advisor

Present On behalf of the Respondents
1. Shri Samir Malik, Advocate
2. Shri Rajesh Goel, SE, HVPNL
3. Shri B.S. Kamboj, Xen, RA
4. Shri S.K. Dhull, Xen, Commercial

Quorum

Shri D.S. Dhesi,	**Chairman**
Shri Pravindra Singh Chauhan,	**Member**
Shri Naresh Sardana,	**Member**

ORDER

Brief Background of the Case

1. The present petition has been filed by M/s. Chandrapur Renewable Power Co. Ltd., seeking directions against UHBVNL primarily for refund of distribution wheeling Charges deducted from the bills of the petitioner company since January 2019 along with interest @ 12%, to give adjustment of the captive power transmitted through open access in the electricity bill for same month, to purchase the surplus RE power injected into the Grid after adjusting the quantum of power consumed by the Petitioner & to calculate ACD amount on the net energy drawn by the Petitioner Company

2. The petitioner has submitted as under: -

a) That the Petitioner is the owner of 1 MW Biomass based Captive Power Plant located at Distt. Ambala. This Project was set up as a 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.

b) That it is widely acknowledged, 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.

c) 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:-

a) 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;

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

c) 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.	275	542.32
Chanderpur Industries Ltd.	240	300.00

d) The Petitioner pays 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 quite negligible.

d) That the Power Plant of the Petitioner is connected to the 66 kV Substation of HVPN and accordingly had signed Connection Agreement with Respondent No. 2 on 11.10.2013. The Petitioner had obtained Long Term Open Access for evacuation of 740 kW power to the two industrial units of the Petitioner and had signed a Long-Term Open Access Agreement with the two Respondent Nigam on 09.04.2014.

e) That the power generated from this RE Power Plant is wheeled over the transmission system of Respondent No. 2 and for this purpose Petitioner 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.

a) 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;

b) 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

c) 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.

f) 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 and at the moment there is no sale of this power to UHBVN or any Third Party.

g) 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."

h) That inspite of this clear provision for exemptions allowed to Bio-energy Power Plants in the State, the Petitioner is being made to pay very heavy charges for wheeling the captive power over the State Transmission System. As per the recent ARR order of HVPN for FY 2019-20 dated 07.03.2019, the Petitioner is required to pay monthly transmission charges of Rs. 37,600, which translate to nearly 50 Ps/unit compared to the approved charges for the short term open access consumers as 27 Ps/unit. The Petitioner had presented its observations during the Public Hearing held on HVPN ARR for FY 2019-20 as well.

i) That during the Public Hearing on HVPN ARR, the Petitioner had explained at length the impact of various charges on the cost of power generated from this biomass-based plant, which works out as Rs.11.00 per unit. Break-up of the cost is as under,

Average cost of generation of power	= Rs.9/unit
Impact of Fixed Demand charges	= Rs.1.50/unit
Transmission Wheeling Charges	= 50 Ps/unit

Compared to this landed cost of RE power, the average tariff for industry in the State is Rs.7/unit. Thus, the cost of RE power works out to be over 50% higher than the grid tariff.

j) That the Respondent No. 1 has started billing distribution wheeling charges @ Rs. 1,64,000 per month since January 2019, which amounts to an additional impact of Rs.

2.19/unit raising the cost of power to the Petitioner Company as Rs.13.19/unit. These additional charges billed to the Petitioner by Respondent No. 1 since January 2019 are totally bad in law and against the provisions of the Electricity Act, 2003, National Tariff Policy and the RE Regulations.

k) That due to the levy of these illegal charges and resultant abnormal cost of captive power, the Petitioner is forced to shut down the power plant till the matter is sorted out by the Commission. Accordingly, the Petitioner is made to bear heavy standby charges and heavy financial losses.

l) That main arguments against the imposition of these charges are: -

a) The Petitioner has constructed the captive power plant, As per Section 9 of the Electricity Act, 2003, which permits to construct, maintain, operate a captive generating plant and dedicated transmission lines. Further Act allows the captive generator to carry this power to the destination of his use.

b) The Petitioner is wheeling the captive power only through the transmission system of HVPN.

c) The Petitioner is not utilizing the Distribution System of the Respondent Nigam. The entire power injection/evacuation system for this power plant has been laid by the Petitioner.

d) The metering, billing or adjustment of the RE power injected and/or power withdrawn is done at respective grid substations of HVPNL without using the distribution system.

e) The Petitioner bears the entire system losses on its independent feeder:
As the entire metering of RE power i.e. injection/withdrawal/accounting is done at the HVPN substations, the total distribution losses over the 11-kV dedicated independent feeders of the Petitioner are borne by the Petitioner.

f) The Petitioner is paying the Fixed Demand Charges for all the 3 Industrial Units:
It needs to be appreciated that the Petitioner is the only embedded consumer who is made to pay the Fixed Demand Charges for the entire sanctioned connected load/contract demand, and in addition the Respondent No. 1 is asking the Petitioner Company to pay distribution wheeling charges.

The Commission in its ARR order dated 07.03.19 has worked out total distribution wheeling charges as 83 Ps/unit which comprises of 55 Ps/unit towards the Network Establishment & Operation Cost and 28 Ps/unit as cost of Distribution Losses. In the instant case, none of these components are applicable as the entire cost of distribution lines has been borne by the Petitioner and all the distribution losses are already being borne by the Petitioner. Thus, the Petitioner Company has already paid for these

charges by way of the entire cost of the independent feeders (both for injection/drawl of captive RE power), distribution losses and again by way of Fixed Demand Charges.

Therefore, any demand of distribution wheeling charges by Respondent No. 1 from the Petitioner Company is nothing but multiple recovery of same amount under different heads.

Moreover, the Commission, while working out the Additional Surcharge for Open Access Consumers has accepted the basic principle that the Fixed Demand Charges being recovered from the embedded consumers include the Distribution System cost and the fixed charges paid to the generators. Thus, there is no justification for raising demand for the distribution wheeling charges from the Petitioner Company.

m) That the plant of the Petitioner was commissioned in August 2014 and at no stage demand for payment of distribution charges was raised by Respondent No.1. It is for the first time that these charges have been added in the bills issued from January 2019 by Respondent No. 1.

n) That the Petitioner took up this matter at various levels of the Respondent Nigam but there was no positive response.

Banking & Adjustment of the captive Power:

o) That the power generated by the captive RE Power Plant of the Petitioner Company is transmitted to the destination of use and the power so transmitted is to be adjusted in the electricity bills of the respective industrial units. Surplus injection, if any, is to be banked and benefit given in the subsequent energy bills. However, this facility is not being given to the Petitioner contrary to the provisions under the RE Regulations.

p) That Regulation 58 of the RE Regulations, 2017 provide the order of adjustment of RE power, captive power, open access power and the Utility power. As per these Regulations also, the first charge is the RE/Captive power, followed by open access power and the last is the Utility power.

q) That Regulation 43 of the HERC Open Access Regulations HERC/25/2012/1st Amendment/2013 provides for the settlement of energy at drawl point and reads 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.

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

However, the Respondent No. 1 is not settling the drawl as per the above laid down procedure. The adjustment is given 2-3 months later. The Petitioner Company has to approach the Respondent No.1 every month and get the adjustment in the bill. Such adjustment is considered as part payment of the bill, which attracts levy of surcharge on delayed payments. Thus the Petitioner Company is being asked to pay surcharge on the bills, which is totally against the Regulations and the instructions issued in this regard. An amount of Rs.1,71,889/- has been levied by the Respondent Nigam on account of such surcharge from March 2018 to February 2019.

Recovery of extra Security amount on account of Advance Consumption Deposit (ACD) from the Petitioner Company:

r) That under Section 47 of the EA-2003 the Distribution Licensee is authorized to require reasonable Security from the consumers. Regulation 5.9 of the HERC Duty to Supply Regulations HERC/34/2016 reads as under: -

"5.9 Review of Security Deposit for power consumption (ACD)

(1) At the beginning of the financial year, the licensee shall review the consumption pattern of the consumer for the adequacy of the security deposit from April to March of the previous year. A consumer, except the HT industrial supply consumer, is required to maintain a sum equivalent to his average payment for the period of two billing cycles. An HT industrial supply consumer, is required to maintain a sum equivalent to his average payment for the period of one and half billing cycles. Where 'average payment' shall be equal to the average of actual bills paid in the last financial year:

Provided further that average payment shall not include the arrears of any kind recovered in the last financial year pertaining to the prior period."

s) That as per this Regulation, the Licensee can require ACD to the extent of last 12 months average billing. While calculating the average bill, the captive power drawn through open access has to be deducted and only the average of net billing has to be accounted for. The actual demand for ACD is totally contrary to these Regulations.

Permission for Sale of extra RE generation to Licensee:

t) That at times there is excess power generated by the RE captive generating plant due to lower in-house power demand due to various operational reasons. As the Respondent No.1 is not buying the surplus power, the Petitioner Company has no other alternative than to reduce power generation or even forced to close the power plant. The Petitioner Company would like to make available this surplus power to the Respondent No.1 at the generic tariff determined by the Commission for Biomass Gasifier based power plants. Thus, the Petitioner Company would be able to run the power plant to its optimum capacity and bring down the ultimate generation cost. This will also help the Respondent No.1 to meet its RPO obligations as well.

u) That the following prayer has been made: -

a) Admit and allow the Petition in the present form;

b) 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;

c) 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;

d) 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;

e) 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;

f) 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;

g) 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;

h) 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.

i) 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.

Proceedings in the Case

3. The case was heard on 30.09.2019, 26.11.2019, 10.12.2019 and finally scheduled for hearing on 27.01.2020, wherein counsel appearing on behalf of the Petitioner mainly reiterated the contents of their petition which for sake of brevity not reproduced herein.

4. The Commission heard the arguments of the parties at length and vide its Interim Order dated 27.01.2020, allowed them to file their summarized concluding submissions.

5. In response to the Interim Order of the Commission, UHBVN filed its concluding submissions as under: -

Reply on behalf of the Respondent No. 1

(A) Maintainability

(a) Lack of Jurisdiction of HERC

Disputes between generator and distribution licensee - to be adjudicated by HERC under Section 86 (1)(f)

i) Section 86 of the Electricity Act, 2003 deals with the functions of the State Commissions. Sub-clause (f) of clause (1) of S. 86 provides that the state commissions shall adjudicate upon the disputes between the licensees and the generating companies.

ii) The Petitioner, by way of the instant petition, filed before this Commission under S. 42, 49, 86 (a, b & e), 181 of the Electricity Act, 2003 has *inter alia* raised the following disputes with respect to :

a) Refund of distribution wheeling charges from the bills of the Petitioner since January 2019 and interest thereon;
b) Late payment surcharge;
c) Advance Consumption Deposit;

iii) However, it is submitted that all the aforesaid issues are consumer centric, i.e. they are raised on the invoices of the consumers and not the generator. Thus, the instant petition, being filed by a generator, raising consumer centric issues, is not maintainable.

iv) It is a settled principle of law that a party cannot confer jurisdiction upon a court, which otherwise in law does not have jurisdiction to entertain a particular dispute.

v) The Haryana Electricity State Commission is established under the delegated powers granted by the provisions of the Electricity Act, 2003 and it cannot assume jurisdiction which is not provided by the parent statute.

Consumer Grievances Redressal Forum

vi) It is further submitted that the Electricity Act, 2003 provides for establishment of a Consumer Grievances Redressal Forum ("CGRF") to deal with consumer centric disputes. Dispute between a consumer and a DISCOM are to be dealt with under S. 42 (5) and (6) of the Electricity Act, 2003 which mandate a distribution licensee is to establish a Consumer Redressal Forum in accordance with the guidelines issues by the respective State Commission to enable the consumers to seek redressal of their grievances. Further, the consumers aggrieved by non-redressal of their grievances before the Consumer Redressal Forum can also make a representation to the Electricity Ombudsman appointed by the State Commission.

vii) In furtherance of the aforesaid provision, Regulation 7 of the HERC (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security) Regulations, 2016 ("Duty to Supply Regulations") provides for establishment of Complaints Redressal System whereby an aggrieved consumer may file a complaint before the CGRF for settlement of their grievances. The said regulation 7 further provides for an appeal to the Electricity Ombudsman to be filed by a consumer aggrieved by the order passed by the CGRF.

viii) Further, in exercise of the power conferred on it by Section 181 read with Sub-Section (5) to (8) of Section 42 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling

in this behalf, the HERC, to provide for a system of redressal of consumer grievances, has laid down the Haryana Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) and (Electricity Ombudsman) Regulation, 2004 ("CGRF Regulations").

ix) Thus, the Petitioner, though being a generator, has raised consumer centric issues in the instant petition and has couched the petition in such a way so as to mislead this Commission and oust the jurisdiction of the CGRF.

x) This act on part of the Petitioner is an abuse of process of law and amounts to forum shopping which time and again has been severely criticised by the Apex Court and ought not to be encouraged by this Commission.

xi) This Commission and the Hon'ble Appellate Tribunal of Electricity has held in a catena of cases in as much when a forum has been constituted for redressal of consumer grievances by the mandate of Section 42 of the Electricity Act, 2003, no other forum or authority has jurisdiction. (ref: *Judgment dated 28.11.2006 passed by the Hon'ble Appellate Tribunal of Electricity Appeal No. 125, 126 and 127 of 2006 and judgment passed by the Apex Court in Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd., reported in (2007) 8 SCC 381)*

Coordination committee

xii) Without prejudice to the aforesaid submissions, Regulation 53 of the HERC (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) (1st amendment) Regulations, 2013 ("OA Regulations") provides for setting up of a coordination committee to deal with disputes arising under the OA Regulations.

xiii) Thus, for redressal of any dispute arising under the OA Regulations, the Petitioner before approaching this Commission directly, ought to have first approached the Coordination committee.

xiv) Thus, to sum up, the instant petition is not maintainable in as much as this Commission does not have Jurisdiction to entertain a dispute between a consumer and a DISCOM the Petitioner ought to have approached the Consumer Grievances Redressal Forum established by this Commission under Section 42(5) of the Electricity Act, 2003 read with CGRF Regulations for redressal of its grievances.

xv) Moreover, the instant petition has been filed by the petitioner under Section 42 of the Electricity Act 2003. It is pertinent to notice that subsections (5), (6) and (7) of Section 42 of Electricity Act 2003 itself provides for setting up of forum for redressal of grievances before CGRF and Ombudsman by the Commission by the consumers. On one hand, the petitioner contends that it is a RE Generator and not a consumer, but on the other hand, the alleged disputes raised in the petition are of tariff, wheeling charges, refund of

electricity charges, interest thereupon which are clearly the matters of dispute between Respondent no. 1 and the Petitioner and warrant intervention, if any, of the CGRF and / or at the most of the Ombudsman. Notwithstanding the above, the OA regulations mandate setting up of a Coordination Committee under Regulation 4 and Regulation 53 provides for resolution of any disputes arising under the Regulations before the Coordination Committee, irrespective whether the aggrieved is a consumer or a RE generator. Therefore, the petition is not maintainable before the Commission.

(b) Jurisdiction to award damages-Civil Court

xvi) It is submitted that the prayer made by the Petitioner for grant of damages/losses cannot be entertained by this Commission since the power to ascertain and grant damages has been conferred upon civil courts, which after a proper trial and examination of evidence, allows or rejects the claim for damages based upon the principle of "preponderance of probabilities".

(B) REGULATORY FRAMEWORK

Regulations governing the law of distribution wheeling charges

xvii) The Electricity Act, 2003 defines the term "distribution system" under S. 2 (19) which means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers.

xviii) The term "wheeling" has been defined under S. 2(76) of the Electricity Act, 2003 as the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62.

xix) Regulation 19 of the OA Regulations govern the law with respect to "Transmission charges and wheeling charges". The amended Regulation 19 subclause (3) of the OA Regulations, 2013 deals with distribution wheeling charges and provides that any open access consumer using intra-State distribution system shall pay wheeling charges to the distribution licensee for usage of the distribution system, as determined by this Commission for the relevant financial year as per the provisions of HERC MYT tariff Regulations 2012, or its statutory re-enactments, as amended from time to time.

The relevant extract of Regulation 19 is quoted as under:

*"10. Amendment of Regulation 19 of the Principal Regulations :-Regulation 19 of the Principal Regulations shall be substituted as under:- "**19. Transmission charges and wheeling charges.-***

(3) Open access consumer using intra-State distribution system shall pay wheeling charges to the distribution licensee (s) for usage of the distribution system as determined by the Commission for the relevant financial year as per the provisions of Haryana Electricity

Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012, or its statutory re-enactments, as amended from time to time.

The wheeling charge payable to the distribution licensee by long-term & medium term open access consumers shall be in Rs./MW and shall be computed by dividing the approved ARR of the licensee for wheeling business by peak load demand in MW served by the licensee in the preceding year.

Provided that wheeling charges shall be payable by the long-term and medium-term open access consumer on the basis of contracted capacity in MW and by short-term open access consumers on the basis of scheduled energy transactions cleared by the relevant Load Despatch Centre.

Provided further that wheeling charges (Rs/kWh) payable by the short-term-open access consumers shall be as determined by the Commission in the ARR/ Tariff order for the relevant financial year.

Provided also that where a dedicated distribution system has been constructed for exclusive use of an open access consumer at the cost of the licensee, the wheeling charges for such dedicated system shall 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 persons or purposes after which these charges shall be shared in the ratio of the allotted capacities."

xx) The 2nd Amendment, 2013 to the Duty to Supply Regulations, 2005 deals with the provisions for supply of electricity through an independent feeder. Regulation 4.5.3 (i) provides that in case the applicant requests for supply of electricity through an independent feeder, the charges of controlling Circuit Breaker, metering cubicle complete with CTs & PTs, Meter and terminal equipment required at the feeding sub-station, Electric Line up to the metering cubicle complete with CTs, PTs and meter at the consumer end shall be borne by the applicant.

The relevant extract of Regulation 4.5.3 is quoted as under:

"4.5.3 Supply through independent feeder:

(i) In case the applicant requests for supply of electricity through an independent feeder, the charges of controlling equipment including Circuit Breaker, Bay (if to be erected), CTs & PTs, Isolators, Line and Earth switch, Meter required at the feeding sub-station, Electric Line up to the consumer end and the meter at consumer end shall be borne by the applicant.

Such consumer, who on his own, requests for supply of electricity through an independent feeder, will be billed as per the meter reading taken jointly by consumer and the licensee, of the meter placed at the sub-station from where the independent feeder is emanating. The licensee will inform the consumer through phone / SMS to be present for joint reading of meter. In case the consumer fails to be present, it will be treated as deemed to be present for meter reading. The installation of metering arrangements at the consumer-end would be optional and would be in addition to the meter at the sub-station. However, for billing purposes only the sub-station meter reading shall be used."

xxi) Further, Regulation 4.7 of the Duty to Supply regulations, 2005 provides that all equipment except the meter (if supplied by the applicant), upon energization, shall become the property of the Licensee and it is the responsibility of the Licensee to shall maintain the same without claiming any operation & maintenance expenses, including replacement of defective/damaged material/equipment from the consumer.

Dedicated independent feeder installed constitutes a part of distribution network of the Distribution Licensee

xxii) It is submitted that as per the definition given under S. 2(76) of the Electricity Act, 2003, "wheeling" means that the distribution system (as defined under S. (19) of the Electricity Act, 2003) of a distribution licensee used by another person for the conveyance of electricity on payment of charges to be determined under section 62. However, the said provisions does not provide any exception for supply of electricity through independent feeder at the request of the applicant/consumer.

xxiii) Chanderpur Works Pvt. Ltd. (CWPL) and Chanderpur Industries Pvt. Ltd. (CIPL) (being a part of the group company of the Petitioner), pursuant to their application for permission for supply of electricity through an independent feeder, was accorded such approval by the answering Respondent for providing 11 kV independent feeder to existing HT industrial service connection, pursuant to which it entered into a connection agreement dated 11.10.2013 with the Respondent no. 2 and Long Term Open Access Agreement (LTOA) dated with the Respondent no. 1 and Respondent no. 2.

xxiv) As per Regulation 4.7 of the Duty to Supply Regulations 2005, all equipment, including the dedicated independent feeder as set up by the Petitioner, upon energization has been taken over by the distribution licensee, i.e. the answering Respondent and has becomes the property of the distribution licensee and it is the duty of the answering Respondent to maintain and operate it at its own cost.

xxv) Furthermore, the amended regulation 19 of the OA regulations govern the provision for distribution wheeling charges and provides that any open access consumer using intra-State distribution system shall pay wheeling charges to the distribution licensee for usage of its distribution system.

xxvi) Thus, the mandate of the law as enumerated above is quite clear that upon its request for supply of electricity through an independent feeder, the Petitioner was supposed to set up such dedicated feeder at its own cost. After energization, such system shall be taken over by the distribution licensee, i.e. the answering respondent and the Petitioner is duty bound to pay distribution wheeling charges to the answering respondent for usage of its distribution system.

xxvii) Thus, the said regulation provides that the entire cost of supply of electricity through an independent feeder has to be borne by the application. The said regulation also provides that the metering has to be done at the sub-station from where feeder is emanating.

xxviii) It is submitted that the law with respect to interpretation of a charging sections is well settled and provide that the charging section dealing with "levy" or "charge" to be strictly constructed. It is settled law that a charging section, which is imposing a liability upon a person under a statute, has to be construed strictly. If a person is claiming an exemption from certain charges under the Regulations, such exemption has to be carved out specifically in such regulations. It has been held by the Hon'ble Supreme Court in the case of ***CIT, Central, Calcutta v. National Taj Traders AIR 1980 SC 485*** in the context of a fiscal statute that the principle of strict construction is applicable only to the charging provisions or a provision imposing penalty and is not applicable to the machinery provisions.

xxix) Further, in **Bhai Jaspal Singh v. CCT**, reported in **(2011) 1 SCC 39**, while dealing with construction on exemption notification observed as under :

"26. ……In Crawford's Statutory Construction, it is stated that "provisions" providing for an exemption may be properly construed strictly against the person who makes the claim of an exemption. In other words, before an exemption can be recognised, the person or property claimed to be exempted must come clearly within the language apparently granting the exemption……"

xxx) Thus, the aforesaid regulation 19 of the OA Regulations mandating the Petitioner to pay distribution wheeling charges to the Respondent no. 1 has to be construed strictly and in the absence of any exemption under the OA Regulations, any special exemption sought by the present petitioner of the aforestated provisions of the OA Regulations is not legally sustainable.

xxxi) It is most pertinent to note here that the only exception provided under the mandate of law is under 3rd proviso to the amended Regulation 19 of the OA which provides that where a dedicated distribution system has been constructed for exclusive use of an open access consumer at the cost of the licensee, the wheeling charges for such dedicated system shall be worked out by distribution licensee and got approved from the Commission and shall be borne entirely by such open access consumer.

xxxii) However, where a dedicated feeder has been set up at the cost of the consumer, the charges for wheeling (as defined under S. 2 (76) of the Electricity Act, 2003) for the conveyance of electricity will be levied at the tariff to be determined by this Commission under S. 62 of the Electricity Act, 2003.

Re: Exemption from Wheeling Charges only to Solar PV Power Plants

xxxiii) The HERC (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 ("RE Regulations") notified on 24.07.2018 grants exemption to Solar PV Power Plants from payment of, *inter alia*, transmission and wheeling charges only during the control period as prescribed under the RE Regulations. However, other RE power plants are not exempted from the aforesaid charges. The Biomass based RE projects are only granted exemption from Additional Surcharge and Cross Subsidy Surcharge which is being availed by the Petitioner herein.

xxxiv) It is submitted that since the Respondent no. 1 is governed by the Regulations passed by this Commission and the Haryana Bio-Energy Policy, 2018 notified by the Government of Haryana on 09.03.2018, has not been adopted by this Commission in its Regulations, thus, it cannot be made applicable to the Respondent no. 1.

xxxv) Moreover, the RE Regulations were notified much after the Haryana Bio-Energy Policy, 2018 and thus, they cannot be made applicable to the Petitioner herein.

xxxvi) Furthermore, since the Petitioner is regularly paying transmission charges to the Respondent no. 2 for use of its transmission system without raising any demur, there arises no occasion for the Petitioner to object to payment of only the distribution wheeling charges to the Respondent no. 1 for usage of its distribution system and availing the facility of long term open access, which have been levied in accordance with the regulations passed by this Commission.

Thus, it is submitted that the Petitioner is using the combined transmission and distribution system of the Respondent no. 2 and Respondent no. 1 respectively. However, it is paying transmission charges to the Respondent no. 2 but refusing to pay wheeling charges to the Respondent no. 1, which is completely unsustainable in law.

(C) CONTRACTUAL FRAMEWORK

LTOA Agreement dated 09.04.2014 with Respondent no. 1 for payment of distribution wheeling charges

xxxvii) It is submitted that the parties, while entering the LTOA agreement were ad- idem that the Petitioner will liable to pay distribution wheeling charges to the Respondent no. 1 for availing the long term open access facility from the Respondent no. 1 in accordance with the regulations/ tariff order issued by this Commission from time to time and further, that

the independent line for connectivity once commissioned will become the property of the licensee

xxxviii) The relevant clause 5 of the agreement dated 09.04.2014 is reproduced as under:

"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."

xxxix) Thus, the Petitioner, being the Long term Open Access Consumer, is liable to pay wheeling charges to the Respondent no. 1 for availing open access facility and usage of its distribution network for injection of power from its captive power plant to the 66KV sub-station and drawl of power from the 66 KV sub-station to the two industrial units of Respondent no. 1, i.e. CWPL and CIPL.

xl) Further, a perusal of the aforesaid provisions makes it abundantly clear that the Petitioner has no exclusive right over the 11kV independent feeders laid by the Petitioner and it is the property of the Respondent no. 1.

xli) The stand taken the petitioner that they had to sign the agreements and affidavits on dotted lines and that they had no other option but to sign is in fact an admission that they knew what they were signing and agreeing while entering into a contract with the respondents. Furthermore, this issue is completely frivolous and untenable having been raised for the very first time in the rejoinder submitted by the Petitioner before this Commission. Thus, after duly executing the LTOA agreement with the Respondent no. 1 the Petitioner cannot now claim ignorance of its provisions and refuse to abide by the same.

xlii) The Petitioner has made entirely baseless contentions and misconstrued the provisions of the OA Regulations, Sales Circular no. 03/2012 as well as the LTOA Agreement. It is submitted that the contention of the Petitioner that in case the power was to be sold to the utility, power evacuation lines upto the first 10KM length were to be laid at the cost of the utility however, the Petitioner agreed to bear the entire cost including independent lines is misconceived and is liable to be rejected. This is so because the requirement of bearing the cost of power evacuation lines upto 10KM by the utility arises when surplus power is being sold to the utility under a Power Purchase Agreement. However, the said condition is not applicable in the facts and circumstances of the present case in as much as no PPA exists between the Petitioner and the Respondent no. 1 and no power is being sold to the Nigam.

Undertaking dated 31.01.2014 given by the Petitioner

xliii) It is pertinent to note that the Petitioner was very well aware of the aforestated Regulations as well as the Sales Circular no. U-03/2012. The Petitioner even entered into a duly notarized Affidavit dated 31.01.2014 expressly undertaking that "I have no exclusive right over the feeder. However, the feeder erected will become a property of the Nigam after energization of 11KV independent feeder".

xliv) Thus, a consumer intending to use an independent feeder has to either deposit the full cost of constructing the feeder with the Nigam or either opt for self-execution of work.

xlv) After energization of the line, the entire feeder erected by the consumer or at the behest of the consumer becomes the property of the Nigam and such consumer has no independent right over such feeders. Therefore, the 11kv independent feeder though was erected by the Petitioner under the self-execution of work, however, after energization, it has become the property of the Respondent no. 1 Nigam.

(D) OTHER ISSUES RAISED BY THE PETITIONER

Re: Sales Circular no. U-03/2012 dated 15.03.2012

xlvi) It is further pertinent to note that the Respondent no. 1 issued a Sales Circular no. U-03/2012 dated 15.03.2012 with respect to construction of independent feeder for single or a group of consumers (for 11kV level) in accordance with the HERC OA Regulations. It is submitted that one of the conditions prescribed therein is that the consumers having independent feeder shall not have an exclusive right over the feeder. It further stipulated that the feeder erected at the cost of the consumer shall become a property of the Nigam after energization. Further, the billing of consumer connected on independent feeder shall be made on the basis of energy meter installed at the sub-station.

xlvii) Thus, after energization, the feeder erected by the Petitioner has become the property of the Respondent no. 1 and therefore, the Petitioner, for use of the distribution network of the Respondent is liable to pay distribution wheeling charges to the Nigam. Moreover, the entire maintenance and distribution losses is borne by the Nigam. Furthermore, as per the sales circular no. U-03/2012, the energy meter has to be installed at the sub-station and metering and billing has to be done for the meter installed at the sub-station. Thus, the contention of the Petitioner that total cost of the generating plant etc. has been borne by the Petitioner and the metering, billing of the power injected and evacuated is being done at the transmission Sub-station of Respondent no. 2 without any intervention of the Respondent no. 1 is baseless and holds no ground.

xlviii) It is submitted that Section 9 of Electricity Act, 2003 as relied on by the Petitioner is with respect to Captive Generation and sub-section (2) of Section 9 provides that *"provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission".*

However, the Respondent no. 1 is a distribution utility claiming distribution wheeling charges from the Petitioner and there can be no dispute qua transmission facility against the Respondent no. 1. Thus, the Petitioner himself has admitted that since in the present case there is no dispute regarding availability of the transmission facility, the matter in the present petition does not warrant adjudication of the Commission

That furthermore, the proviso clause 1 of S. 9 stipulates that *"supply of electricity from captive generating plant through the grid shall be regulated in the same manner as the* generating station of a generating company." Thus, there is no distinction between supply of electricity from captive generating plant through the grid and that of generating station of a generating company. The Petitioner is reading the provisions of the Electricity Act in piecemeal and misconstruing the said provisions with an intent to mislead this Commission.

Thus, the Petitioner cannot claim exemption from payment of wheeling charges on the pretext of the said false and flimsy grounds.

xlix) Thus, apart from the OA Regulations and the LTOA Agreement dated 09.04.2014 mandating the Petitioner to pay wheeling charges to the Respondent no. 1, even as per the Sales Circular no. U-03/2012 as well as the affidavit signed by the Petitioner, the Petitioner is using the distribution network of the Respondent no. 1. Thus, it is liable to pay distribution wheeling charges to the Respondent no. 1 for availing long term open access facility for injection and drawl of power.

RE: System losses borne by the Respondent

l) Furthermore, the system losses, maintenance, repair etc. of the entire distribution system are borne by the respective consumer as per the OA Regulations over the independent feeders and this is over and above the wheeling charges payable by the respective HT consumer availing the open access facility for using the distribution network of the Respondent no. 1.

Re: Fixed charges being different from wheeling charges

li) It is further submitted that the contention of the Petitioner that since it is paying fixed charges, therefore, it is not liable to pay wheeling charges holds no ground in view of the fact that Fixed charges, which are levied to cover the fixed costs of the distribution licensees, are different from wheeling charges and are payable by the consumer even if no power is wheeled over the distribution network of the distribution licensee. Fixed Charges forms a part of the tariff, which is determined by this Commission in the ARR petition filed by the Respondent no. 1 every year, and thus, are payable by every HT consumer to the distribution licensee.

lii) It is submitted that the Petitioner is confusing between Fixed Demand Charges, Wheeling Charges and the Additional Surcharge. The basis of levying the charges by the Respondent

no. 1 has already been clarified being levied under the Regulations passed by this Commission, may it be fixed demand charges or the wheeling charges or any other charges. It is submitted that only those charges have been levied, which have been approved by the Commission and no action of the respondent no. 1 in levying such charges can be termed as ultra vires.

liii) Therefore, the Petitioner cannot deny its liability and refuse to pay wheeling charges to the Respondent no. 1, which are charged as per the agreement between the parties and the OA Regulations, for the reason of payment of fixed charges.

Re: Interest at the rate of 12% on Distribution Wheeling charges deducted from the bills of the Petitioner

liv) Since the Respondent no. 1 has rightly deducted distribution wheeling charges from the Petitioner in accordance with the HERC Regulations, it is neither liable to refund the wheeling charges deducted from the bills of the Petitioner since January 2019 nor liable to pay any interest to the Petitioner.

lv) It is submitted that in fact, the Petitioner is liable to honor the demand notice issued by the Respondent no. 1 for Rs. 83.55 lakhs towards payment of wheeling charges from August 2014 to December 2018 for use of distribution system of the Respondent.

lvi) However, the Petitioner has filed this frivolous petition before this Commission to escape from its liability to pay the distribution wheeling charges to the Respondent no. 1.

Re: Reasons for demand of Wheeling charges for the first time in January 2019

lvii) It is submitted that the captive power plant of the Petitioner is the first open access consumer availing the facility of Long-Term Open Access from the Respondent no. 1.

lviii) Apart from the Petitioner, all the open access consumers of the Respondent no.1 are either medium term or short-term open access consumers. For these consumers, the Respondent no. 2 is in the practice of charging transmission and distribution wheeling charges and thereafter, remitting the amount of distribution wheeling charges to the Respondent no. 1.

lix) However, in the case of the Petitioner, due to inattention on part of the Respondent no. 1 officials, coupled with the fact that the Petitioner is the first Long-Term Open Access Consumer of the Respondent no. 1, it inadvertently skipped to deduct distribution wheeling charge form the bills of the Petitioner.

lx) This fact came to the knowledge of the Respondent no. 1 vide memo dated 03.12.2018 sent by the CE/SO & Commercial, HVPNL to CE/Commercial, UHBVN regarding the applicability of wheeling charges and distribution losses on long term open access consumers as per the OA Regulations and informing the them that Respondent no. 2 is only charging transmission charges from the Petitioner and further requesting the Respondent no. 1 to ensure recovery of wheeling charges, losses and all other applicable

charges for the use of DISCOM system from the Petitioner, being the long term Open Access consumer.

lxi) Pursuant to this, the officials of the Respondent no. 1 verified the matter internally and found out that for the Petitioner, being a Long term Open Access consumer, only the transmission charges were being recovered by the Respondent no. 2 from the Petitioner and an amount of Rs. 83.55 lakhs were due from the Petitioner on account of wheeling charges for the period from August 2014 to December 2018.

lxii) Thus, the Petitioner raised a demand notice to the Petitioner in 2019 for recovery of Rs. 83.55 lakhs on account of wheeling charges for the period from August 2014 to December 2018.

Late Payment Surcharge

lxiii) It is submitted that the adjustment of Open Access Power is done by the Distribution Licensee in the electricity bill of the Open Access Consumer in accordance with the OA Regulations after a gap of one month.

lxiv) According to Regulation 19 of the RE Regulation, late payment surcharge is levied on a consumer for payment beyond a period of 60 days from the date of billing.

lxv) The total energy consumption of the open access consumer is billed to it regularly every month. However, due to administrative reasons and practical difficulties involved, the adjustment sheets of open access power are received by the Respondent no. 1 from HVPNL by the 3rd-4th week of next month. Thus, after receipt thereof, the adjustment of open access power is done, and regular energy bills are issued to the consumer by the Distribution licensee.

lxvi) However, many a times the adjustment data of the consumers was being received even after the aforementioned period, which was causing immense hardships to the consumers. Thus, to tackle this issue, the Respondent no. 1 issued a Sales Instruction no. U-07/2018 dated 16.08.2018 and decided that in case the Open Access adjustment sheets are received after the issuance of regular energy bills but prior to due date of payment, then the reduced amount may be accepted from the consumer, and upon payment of such reduced amount by the consumer on or before the due date, entry for refund of adjustment and surcharge be made in the SC & AR register and posted in the consumer account and incorporated in the energy bill for the next month.

lxvii) However, in case the consumer defaults in making any part of the payment by the due date, then the entry for refund of adjustment and its surcharge component is only made and posted in the next energy bill.

lxviii) Thus, the Respondent no. 1 is issuing bills to the Petitioner after adjustment of Open Access Power and applicable surcharge, if any, in accordance with the above Sales Instruction. However, the Petitioner, is only making part payment of the bills raised by the

Respondent no. 1 after self-adjustment of the open access power and thus, making reduced payment which entails a levy for surcharge to be incorporated in the bill for the next month.

lxix) It is submitted that the Petitioner is bound to make the payment of the entire bill raised by the Respondent no. 1 to save itself from payment of any late payment surcharge as per the Regulation 19 of the RE Regulations and the Sales Instruction no. U-07/2018 dated 16.08.2018. If the Petitioner defaults in making the full payment of the energy bill raised by the Respondent no. 1, it will be liable to pay late payment surcharge which will be incorporated in the bill of the succeeding month.

lxx) It is submitted that charging and refunding of open access amount is being done strictly as per the existing framework and mechanism duly approved by the Commission.

Thus, in view thereof, the Respondent no. 1 is not liable to refund any amount deducted by it from the Petitioner on account of surcharge for late payment or any interest thereon.

(E) Advance Consumption Deposit (ACD)

lxxi) It is submitted that the Respondent no. 1 is recovering ACD from the Petitioner as per the provisions of Section 47 of the Electricity Act, 2003 which empowers the distribution licensee to require reasonable security from its consumers to ensure proper payment for supply of electricity.

lxxii) Further, in terms of sub-Section (4) of Section 47 of the Electricity Act, 2003, a distribution licensee is to pay interest to the consumer equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the amount of security deposited with the distribution licensee.

lxxiii) It is submitted that the Respondent no. 1 is calculating and demanding ACD from the Petitioner as per Regulation 5.9 of the Duty to Supply Regulations in accordance with the consumption pattern of the Petitioner as per the average of the actual consumption in the financial year. Thus, there arises no occasion for the Respondent no. 1 to refund the alleged extra amount of ACD recovered by the Respondent no. 1.

lxxiv) Thus, Advance Consumption Deposit (ACD) is being calculated and updated strictly as per the existing framework and mechanism duly approved by the Commission. Further, assuming without admitting that the Respondent no. 1 has charged extra amount towards ACD from the Petitioner, the Respondent no.1 is paying interest on that amount to the Petitioner as per the Electricity Act as well as the Duty to Supply Regulations. Thus, the interests of the Petitioner are duly safeguarded as the amount charged towards ACD from the Petitioner is a refundable security and the Respondent no. 1 is paying interest thereon to the Petitioner.

lxxv) Further, the plea taken by the petitioner in his submissions that if he is made to pay the wheeling charges of Rs. 2.19 per unit, the landed cost of RE power to him would become

Rs. 13.19 per unit. It is neither tenable nor justified for the petitioner to say at this stage that they had not anticipated initially the total landed cost of the RE power and now to put blame on others for closure of plant. The petitioner is very well expected to know the cost at which the RE Power would land at the point of usage and this ground taken by the Petitioner can be of no avail.

In this view of above, UHBVNL has prayed to reject this petition.

6. In response to the Interim Order of the Commission, Respondent No. 2 i.e. HVPNL, filed its concluding submissions as under: -

i) It is submitted that the instant petition suffers from misjoinder of parties in as much as, though the answering Respondent has been arrayed as Respondent no. 2 in the instant petition however, no relief has been claimed qua the answering Respondent by the Petitioner.

ii) Adverting to the facts of the case, it is admitted that a connection agreement dated 11.10.2013 has been signed between the Petitioner and the answering Respondent. The Petitioner's bio-mass generating power plant is connected to the 66kV substation Mulana of HVPN for injection of power through 11 kV independent connectivity. Furthermore, the Petitioner has entered into a Long-Term Open Access agreement dated 09.04.2014 with Respondent no. 1 and the answering Respondent for evacuation of 740 kW power to its two industrial units. It is further admitted that the power generated by the Petitioner's power plant is wheeled over the transmission system of the answering Respondent.

iii) However, it is submitted that none of the reliefs as prayed for in the petition are qua the answering Respondent. It is further submitted that the answering Respondent is neither a necessary nor a proper party to the present proceedings since its presence is not required for effective adjudication of the present lis.

iv) It is submitted that it is settled law as laid down by the Hon'ble Supreme Court in the case of Mumba International Airport Pvt. Ltd. v. Regency Convention Centre and Hotels Private Limited and Ors. Reported in (2010) 7 5CC 417 that necessary parties are those persons in whose absence no decree can be passed by the court or those persons against whom there is a right to some relief in respect of the controversy involved in the proceedings; and that proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

v) The answering Respondent is a transmission company having a connection agreement and long-term open access agreement with the Petitioner and pursuant thereto, the power generated by the power plant of the Petitioner is wheeled through the transmission system of the answering Respondent.

vi) Thus, the present petition suffers from misjoinder of parties in as much as the answering respondent is not a necessary party since no relief has been claimed qua the answering respondent herein. Moreover, the answering Respondent is not even a proper party since the claims raised by the Petitioner herein are arising out of the agreement between the Petitioner and the Respondent no. 1 for distribution of electricity and, inter alia, disputes with respect to levy of distribution wheeling charges, purchase of surplus RE power, levy of late payment surcharge, calculation of ACD. Therefore, the answering Respondent, being a transmission utility, cannot admit or deny the claims made by the Petitioner against the Respondent no. 1 and is not necessary for effective adjudication of the issues involved herein.

vii) In this view of the matter, it is most respectfully prayed that this Commission may kindly be pleased to reject this petition qua Respondent no. 2.

7. In response to the Interim Order of the Commission, the Petitioner filed its concluding submissions as under: -

(i) FILING OF INSTANT PETITION BY THE PETITIONER IN THE CAPACITY OF A CAPTIVE GENERATOR:

That the instant Petition has been filed by Chandrapur Renewal Power Company Private Limited, the Petitioner Company as a Captive Generator and not the consumers. Hence the Petition rightly lies under the purview of the Commission and not the CGRF.

The arguments preferred through the reply filed by Respondent No.1 and judgments from Hon'ble APTEL and Hon'ble Supreme Court quoted and relied upon are purely irrelevant as those refer to the case relating to the grievances of consumers and not the Captive Generator.

(ii) CAPTIVE STATUS OF THE PETITIONER COMPANY:

Although there is no dispute to the captive status of the Petitioner Company but for the sake of abundant caution and clarity, it is being elaborated that the RE Power Generating Power Plant of the Petitioner Company i.e. Chandrapur Renewal Power Company Pvt. Ltd. is a captive power plant of M/s Chandrapur Works Pvt. Ltd. and M/s Chandrapur Industries Pvt. Ltd. as covered under the definition of 'Captive Power Plant' under Rule 3 of the Electricity Rules, 2005. All the three Companies/Captive Users fulfill the essential criteria of (i) hold more than 26% (rather 100%) of the ownership of the captive power plant and (ii) consume more than 51% (rather 100%) of the aggregate electricity generated in this plant on annual basis.

(iii) APPLICABILITY OF DISTRIBUTION WHEELING CHARGES FOR CAPTIVE GENERATORS HAVING DEDICATED TRANSMISSION LINES

Sub-section (1) of Section 9 of the Electricity Act, 2003, allows to construct, maintain or operate a captive generating plant and dedicated transmission lines. Further under Sub-

section (2) right has been given to open access for carrying electricity from captive generating plant to the destination of use. This reads as under:-

"9(1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:"

The term 'dedicated transmission lines' as used in S.9 of EA-2003 has been defined under subsection (16) of Section 2, which reads as under:-

2(16) "dedicated transmission lines" means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be;

The 11 kV lines laid by the Petitioner for evacuation of power from the generating plant to the load centres i.e. the destination of use, are the dedicated transmission lines as covered under the above provision of the Act.

Further it is important to take note of Clause 2.1 of the Connectivity Agreement which reads as under:-

"2.1 Agreement to Monthly Transmission Tariff:
The M/s Chanderpur Renewable Power Company Private Limited, Ambala declares that it shall pay the Monthly Transmission/Wheeling Tariff including SLDC charges, FERV, if applicable, income tax or other taxes, cess duties etc., for use of intra-State Transmission/Distribution System."

Thus, reference to the responsibility of payment of charges under this provision of the Agreement is clearly subjective that these would be paid if these are payable. The dedicated transmission lines were laid by the Petitioner and hence no wheeling charges are payable by the captive generating plant to the distribution licensee.

Further Regulation 19 of the Open Access Regulations (both pre-amended and post-amendment) makes the issue quite clear. The relevant extracts are reproduced hereunder:-

Reg. 19(3) of HERC/25/2012 of 11.01.2012

(*3) Open access consumer using intra-State distribution system shall pay wheeling charges to the distribution licensee (s) for usage of the distribution system as determined by the Commission for the relevant financial year.*

Provided further that where a dedicated distribution system has been constructed for exclusive use of an open access consumer, the wheeling charges for such dedicated system shall 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 persons or purposes after which these charges shall be shared in the ratio of the allotted capacities.

Reg. 19(3) of HERC/25/2012/1st Amendment of 03.12.2013

(3) Open access consumer using intra-State distribution system shall pay wheeling charges to the distribution licensee (s) for usage of the distribution system as determined by the Commission for the relevant financial year as per the provisions of Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012, or its statutory re-enactments, as amended from time to time.

Provided also that where a dedicated distribution system has been constructed for exclusive use of an open access consumer at the cost of the licensee, the wheeling charges for such dedicated system shall 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 persons or purposes after which these charges shall be shared in the ratio of the allotted capacities."

From plain reading of the above Reg. 19 (3) the following conclusions are apparent:-

(i) The payment of distribution wheeling charges is subjective to the use of the distribution system;
(ii) If it is a dedicated distribution system constructed by the licensee for exclusive use of an open access consumer the Licensee has to work out the wheeling charges and get these approved from the Commission.

In the instant case of the Petitioner, the distribution system of the licensee is not being used for injection or evacuation of the captive power. Moreover, the dedicated transmission system has been laid entirely at the cost of the Captive Generator. Had it been laid at the cost of the Licensee; the Licensee could determine the wheeling charges and recover from the Captive Generator after getting these approved from the Commission. Hence no distribution wheeling charges are payable by the Petitioner.

(iv) RAISING OF DEMAND FOR WHEELING CHARGES BY THE RESPONDENT ON THE PETITIONER COMPANY:

During the last hearing the Respondents tried to confuse the issue of levy of wheeling charges on the captive users. In fact, from the letter no. Ch.-67/CE/Comml./Billing/OA-105 dated 08.08.2019 of the Respondent Nigam it is clear that the demand of wheeling charges has been raised on the Petitioner Company in the capacity of the user of Long Term Open Access granted by HVPN. This is further certified from the Connectivity Agreement and the Long-Term Open Access Agreement signed by the Respondents with the Petitioner Company only. Rightly so, as the contractual liability to pay the open access charges, if applicable, rests with the Petitioner Company i.e. the Captive Generating Power Plant.

(v) PRACTICE BEING FOLLOWED IN MAHARASHTRA STATE:

The Petitioner had attempted to go through the Open Access Regulations and the Guidelines thereto as applicable in Maharashtra State. The relevant extracts from the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2016 and the Procedure for Distribution Open Access notified in June 2016 are being quoted hereunder:-

Reg. 14.6 Wheeling Charges:

a. Licensee, as the case may be, using a Distribution System shall pay to the Distribution Licensee such Wheeling Charges, on the basis of actual energy drawal at the consumption end, as may be determined under the Regulations of the Commission governing Multi-Year Tariff.

b. Wheeling charges shall not be applicable in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the Consumer or Generating Station.

Clause Q from Procedure for Distribution Open Access.

The charges for open access shall include the following (Regulation 14):

i. Wheeling Charges shall be payable on the basis of actual energy drawl at the consumption end i.e. Energy at T<>D interface and shall be as determined by MERC.

Wheeling charges shall not be applicable in case a consumer or a Generating station is connected to the transmission line directly or using dedicated lines owned by the consumer. (Regulation 14.6).

In these Regulations and the Guidelines issued by MSERC, the aspect of levy of wheeling charges has been clearly spelled out differentiating between the use of distribution system of the licensee and exemption from these charges for use of the dedicated lines.

(vi) Multiple charging of Wheeling Charges:

The Fixed Demand Charges being recovered by the Licensee from the captive users of the Petitioner Company include the distribution charges. Moreover, the Commission has clearly mentioned in the ARR & Distribution Retail Tariff Order of 07.03.2019 that distribution wheeling charges of 82 Ps/kWh comprise of two components i.e. (i) the network establishment & operation cost of the distribution system (55 Ps/kWh) and (ii) the distribution system losses (28 Ps/kWh). In the case of Petitioner these charges are already borne by it as the entire network cost of the dedicated transmission system and the total distribution losses on these dedicated transmission lines has been borne by the Petitioner.

(vii) Non-charging of Service Connection Charges from CRPL:

During the last hearing held on 27.01.20, an argument was preferred on behalf of the Respondent No. 1 (UHBVN) that Petitioner was given incentive to the extent that no Service Connection Charges were recovered from CRPL. This argument/statement is totally false. The Respondents are forgetting that before even the connectivity of the Captive Generator all the 3 Captive Users were industrial consumers of UHBVN and had paid the Service connection charges, as payable by any other industrial consumer and as demanded by the Nigam before the release of electricity connections.

(viii) SUSTAINABILITY OF THE PRESTIGIOUS DEMONSTRATION PROJECT OF THE STATE/COUNTRY:

As already brought out in the Petition as well as the Rejoinder and the oral submissions, this Project of the Petitioner Company was a prestigious project to promote use of Biomass for power generation through Gasifier Technology. 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 Company. 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. Hence the project deserves support from all quarters so that this venture survives and promote such usage of waste for gainful utilization.

Due to the illegal and exorbitant levy of charges, the Petitioner Company 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 findings recorded by the Commission.

8. The Commission heard the arguments of the parties at length as well as perused the application/reply filed in the matter. Before proceeding further on merits of the issues raised in the Petition, the Commission considers it appropriate to first examine the maintainability of the Petition before the Commission and in order to examine the same, the Commission has perused Section 86 (1)(f) of the Electricity Act which provides that the state commissions shall adjudicate upon the disputes between the licensees and the generating companies, Section 42 (5) and (6) of the Electricity Act, 2003 which mandate a distribution licensee is to establish a Consumer Redressal Forum in accordance with the guidelines issues by the respective State Commission to enable the consumers to seek redressal of their grievances. The Commission has also examined Regulation 53 of the HERC (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) (1st amendment) Regulations, 2013 ("HERC OA Regulations") which provides that *"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".

The Commission has examined the submission of the Respondents that the jurisdiction to settle the dispute between a consumer and a licensee lies with "CGRF/Electricity Ombudsman". Similarly, jurisdiction to settle a dispute between an open access consumer and a licensee lies with "Coordination Committee". The Respondents have argued that the Petitioner is aggrieved in the capacity of a Long Term Open Access consumer. Per-contra, the Petitioner has vehemently argued that the distribution wheeling charges has been deducted from the bills of the Petitioner since January, 2019. Further, the Respondent Nigam has raised demand on the Petitioner Company vide memo no. Ch.-67/CE/Comml./Billing/OA-105 dated 08.08.2019 on account of wheeling charges, in respect of the period August, 2014 to December, 2018.

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:

"19. Transmission charges and wheeling charges.-

(3) Open access consumer using intra-State distribution system shall pay wheeling charges to the distribution licensee (s) for usage of the distribution system as determined by the Commission for the relevant financial year as per the provisions of Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012, or its statutory re-enactments, as amended from time to time.

The wheeling charge payable to the distribution licensee by long-term & medium term open access consumers shall be in Rs./MW and shall be computed by dividing the approved ARR of the licensee for wheeling business by peak load demand in MW served by the licensee in the preceding year.

Provided that wheeling charges shall be payable by the long-term and medium-term open access consumer on the basis of contracted capacity in MW and by short-term open access consumers on the basis of scheduled energy transactions cleared by the relevant Load Despatch Centre.

Provided further that wheeling charges (Rs/kWh) payable by the short-term-open access consumers shall be as determined by the Commission in the ARR/ Tariff order for the relevant financial year.

Provided also that where a dedicated distribution system has been constructed for exclusive use of an open access consumer at the cost of the licensee, the wheeling charges for such dedicated system shall 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 persons or purposes after which these charges shall be shared in the ratio of the allotted capacities."

Regulation clause no. 62 (1) of HERC MYT Regulations, 2012:

"62. WHEELING CHARGES

62.1 The consumers availing wheeling services for 'open access', will be charged a wheeling tariff as determined under these regulations;

The wheeling charge payable to the distribution licensee by long-term & medium term open access consumers shall be in Rs. / MW and shall be computed by dividing the approved ARR of the licensee for wheeling business by peak load demand in MW served by the licensee in the preceding year.

Provided that wheeling charges shall be payable by the long-term and medium term open access consumers on the basis of contracted capacity in MW and by short-term open access consumers on the basis of scheduled energy transactions cleared by the relevant Load Despatch Centre.

Provided further that wheeling charges (Rs./kWh) payable by the short term open access consumers during a financial year shall be worked out by dividing the approved ARR (in Rs.) for wheeling business for that year by the total volume of energy sales (kWh) of the Discoms during the previous year."

The similar provision has been kept in the Regulation clause no. 62.1 of the HERC MYT Regulations, 2019.

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/non-disposal, 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?

In order to examine and decide the issue so framed, the Commission perused Regulation clause no. 55 & 59 of HERC OA Regulations, 2012, which provides as under:-

*"**55. Saving of inherent powers of the commission**. -Nothing contained in these regulations shall limit or otherwise affect the inherent powers of the Commission from adopting a procedure, which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstances of the matter or in public interest or class of matters and for reasons to be recorded in writing, deems it necessary or expedient to depart from the procedure specified in these regulations."*

***"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."*

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."

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"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.

11. In terms of the above Order, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 11.03.2020.

Date: 11.03.2020	(Naresh Sardana)	(Pravindra Singh Chauhan)	(D.S. Dhesi)
Place: Panchkula	Member	Member	Chairman