

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA**

**Case No.: Review Petition No. 11, 12, 13 & 14 of 2025  
(Remand Back Petition Nos.: HERC/Review Petition No. 9,  
10 & 11 of 2020 Along with RA-2 of 2016)**

**Date of Hearing : 17.04.2026  
Date of Order : 06.05.2026**

**In the Matter of  
Remand back in LPA no 2352-2025 (O&M) and connected cases by Hon'ble Punjab and  
Haryana High Court, vide order dated 15.09.2025 in the case of Jindal Stainless Ltd. Vs.  
State of Haryana & others.**

**Petitioner**

Haryana Vidyut Prasaran Nigam Limited (HVPNL)

**Respondent (s)**

1. Jindal Stainless Limited.
2. DCM Textile
3. Hisar Metal Industries
4. Punjab General Industries Pvt. Ltd.
5. Asahi India Glass Limited
6. BSL Casting Pvt. Ltd.
7. Neel Metal Products Ltd.
8. New Alle Berry Works
9. Star wire (India) Ltd.
10. Jai Bharat Maruti Ltd.
11. JBM Industries Ltd.
12. JBM Auto Ltd.
13. Sadhu Forging Ltd.
14. Munjal Kiri Industries Pvt. Ltd.

**Present on behalf of the Petitioner**

1. Shri Raheel Kohli, Advocate
2. Shri Ashok Mathuria, Xen/OA, HVPNL

**Present on behalf of the Respondents**

1. Shri Rose Gupta, Advocate
2. Shri Prateek Garg, Advocate

**Quorum**

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

**Chairman  
Member  
Member**

**ORDER**

**Brief Background of the case**

1. The present proceedings have arisen, consequent to the judgement of the Hon'ble Punjab and Haryana High court (LPA No. 2352-2025 (O&M) and connected cases), which was decided on 15.09.2025. The operative part of the order is as under: -

*“Further, the direction which is being given while disposing of the present appeals is that, only those appellant (s) who have raised grievance with regard to non-hearing while fixing STOA charges, may be given an opportunity of hearing by the respondent-H.E.R.C within a period of eight weeks from the date of receipt of certified copy of this order. The said hearing can be a joint hearing of all the concerned parties by the H.E.R.C and after conclusion of said hearing, the points which may be raised by the appellant (s), be taken into consideration so as to decide whether the STOA charges which have been enhanced, needs a reconsideration at the hands of H.E.R.C or not. In case, as per the argument raised by all the appellant (s), the H.E.R.C. reaches to a conclusion that the STOA charges fixed vide impugned order needs to be revised, an action be taken accordingly by the H.E.R.C. Further, in case the charges which have been fixed by the H.E.R.C., by the impugned order are in accordance with law, appropriate order be passed on the said issue. It is noticed that in case the enhanced STOA charges are upheld by the H.E.R.C even after hearing the appellant (s), the Distribution Licensee will be entitled to recover the amount for which the demand has already been raised against the appellant (s).*

*Till any such fresh order is passed by respondent- H.E.R.C, the Distribution Licensee will not pursue the demand of money from appellants qua revised and enhanced charges which has already been raised.”*

2. Consequently, the Commission took-up the issue suo-motu and decided that a public notice may also be given, so that any other stakeholder can also raise objection and file its comments, in the re-determination of STOA, under remand back from Hon'ble Punjab & Haryana High court, in review petition nos. RA-2 of 2016, RA-9 of 2020, RA-10 of 2020 and RA-11 of 2020. Fresh petition number to all the four review orders challenged before Hon'ble Punjab and Haryana High court, were given Review Petition No. 11, 12, 13 & 14 of 2025, respectively.
3. Accordingly, a public notice was given in two newspapers viz Dainik Tribune and Indian Express, both dated 18.10.2025, inviting comments/objections on or before 28.10.2025 and intimating the date of hearing as 07.11.2025. The hearing fixed for 07.11.2025 was later adjourned to 19.11.2025.
4. Notice of hearing as well as adjournment was hosted on the website of the Commission as well as notice through email was sent to all the appellants before Hon'ble Punjab & Haryana High court. However, no comments have been filed by any stakeholder in the Commission.
5. The Commission has also taken cognizance of the order passed by Hon'ble Punjab & Haryana High court, dated 05.12.2025, in the matter of M/s Munjal Kiriu Industries Pvt. Ltd.

6. During the hearing held on 19.11.2025, Shri Prateek Gupta, the learned counsel appearing for the respondent (s), sought further time to file their comments. In order to give a final opportunity to the appellants before Hon'ble Punjab & Haryana High court (respondents in the present lis), the Commission allowed the respondents to file their comments/ objections with an advance copy to the petitioner (HVPNL). The petitioner (HVNPL) was allowed to file its reply on the same.

7. Respondent's affidavit dated 25.12.2025 (R-1) and 15.12.2025 (Other respondents):-  
The respondents have submitted as under:-

7.1 That the dispute, in essence, arises out of the orders passed by this Hon'ble Commission determining the STOA charges, pursuant to which DHBVNL have chosen to file the present Review Petition instead of availing the appropriate statutory remedy of appeal prescribed u/s 111 of the Electricity act before the Appellate Authority of the Electricity (APTEL). It is submitted that the Respondents has approached this Hon'ble Commission by way of filing objections, broadly on the following grounds:

- *Firstly, that the present review petition is not maintainable in as much as the proper and only legally recognized remedy available to the petitioner is by way of an appeal and not review;*
- *Secondly, that a review cannot be sought on merits and such an exercise would amount to re-hearing and re-examination of the matter, which is clearly outside the scope of review jurisdiction;*

Further, objections are raised against the review orders dated 30.05.2017, 31.10.2018 and 07.03.2019, passed in HERC/ RA-9,10,11 of 2020 (New no. RA. 12, 13, 14 of 2025, on the following additional grounds:-

- *Thirdly, that the review petition is hopelessly barred by limitation and, therefore, is liable to be dismissed at the very threshold; and*
- *Fourthly, that a review cannot be entertained solely on the ground of an alleged subsequent change in law, as the same does not fall within the limited parameters governing the exercise of review jurisdiction.*

7.2 That the facts in brief leading to the present objections before the Hon'ble Commission are being enumerated herein after below:

- a. That the Respondents are consumers whose industry is located within the State of Haryana. The Respondents purchases electricity sourced through open access system, wherein electricity that has been generated outside the State of Haryana, is purchased in what is termed as an inter-State collective transaction.

- b. That this Hon'ble Commission vide its order dated 31.03.2016 passed interim order in Case No. HERC/PRO 31 of 2015 whereby the HERC did not considered certain elements of True-up of ARR for Transmission Business and SLDC for the FY 2014-15, Annual (Mid-Year) Performance Review for FY 2015-16 and determination of Transmission Tariff for the FY 2016-17. In this the Short Term Open Access Charges were fixed @0.33/KWH for the period 2015-16 after giving notice of public hearing in view of Regulation 22(2) of Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 (2019 Regulations) r/w Section 64 of Electricity Act, 2003 (2003 Act).
- c. Against the above order dated 31.03.2016, Petitioner filed Review Petition bearing Case No. HERC/RA-2 of 2016 before this Hon'ble Commission on 17.05.2016, which was partly allowed vide Order dated 08.11.2016. Thereafter an appeal was filed by Petitioner before APTEL having Appeal No.214 of 2017 under Section 111 of Electricity Act, 2003.
- d. That vide Judgment and Order dated 28.08.2019, APTEL allowed above mentioned the Appeal and set aside the Order dated 08.11.2016 to the extent only which was challenged in the Appeal and remitted the case back to this Hon'ble Commission for re-determining the STOA charges in accordance with law.
- e. That thereafter, this Hon'ble Commission vide Order dated 22.10.2019 decided HERC/RA-2 of 2016 without giving any opportunity of hearing to the respondent or Public at large and increased the STOA charges for short term open excess consumer @ Rs.0.43/KWH for the FY 2015-16 and this Hon'ble Commission issued Corrigendum dated 20.11.2019 stating that there was an error in the Financial Year and therefore, the rates were revised being applicable for the year 2016-17.
- f. That in the meanwhile petitioner filed petition before this Hon'ble Commission bearing case No. HERC/ PRO 15 of 2017 for determining transmission charges for the short –term open access consumers for the *FY 2017-2018*, which was disposed of vide order dated 30.05.2017.
- g. That similarly, petitioner filed another petition before this Hon'ble Commission bearing case No. HERC/PRO 08 of 2018 for determining transmission charges for the short –term open access consumers for the *FY 2018-2019*, which was disposed of vide order dated 31.10.2018.
- h. That similarly petitioner filed other petition before this Hon'ble Commission bearing case No. HERC/ PRO 60 of 2018 for determining transmission

charges for the short –term open access consumers for the *FY 2019-2020*, which was disposed of vide order dated 07.03.2019.

- i. That petitioner did not file any appeal against the orders dated 30.05.2017, 31.10.2018 and 07.03.2019.
- j. That petitioner thereafter, filed Review Petition challenging the orders dated 30.05.2017, 31.10.2018 and 07.03.2019 before this Hon'ble Commission bearing No. HERC/RA 9 of 2020, HERC/RA 10 of 2020 and HERC/RA 11 of 2020 respectively. Solely on the ground of subsequent change in law. Said Review Petitions were filed beyond limitation and with delay of following days:
  - i. 990 Days in HERC/RA 9 of 2020(New Review No. HERC/RA 12 of 2025)
  - ii. 445 Days in HERC/RA 10 of 2020(New Review No. HERC/RA 13 of 2025)
  - iii. 295 Days in HERC/RA 11 of 2020(New Review No. HERC/RA 14 of 2025)
- k. That no notice of Public hearing was given in respect of these Review Petitions as well.
- l. This Hon'ble Commission clubbed above mentioned 3 Review Petitions and vide Order dated 13.09.2021, allowed to recover the differential amount from the present Respondents with respect to STOA charges during the FY 2017-18 to the FY 2019-20.
- m. That in the meantime, while the above stated petitions were pending adjudication, DHBVNL vide Letter Memo No. 174/PF dated 26.07.2021 demanded recovery of Rs. 6,49,53,420/- from the Respondent no 1 based on the decision of the Review order dated 22.10.2019. The above said demand notice was rightly refuted by the Respondents by way of Reply dated 28.07.2021, highlighting that the acts of the DHBVNL in raising the said demand was illegal and the said demand was not payable as per the settled legal principles.
- n. That the Respondents received the Demand Notice dated 11.09.2023 on 11.09.2023.
- o. That as per the prevailing practice whenever any petition has been filed by the Petitioner and DHBVNL wherein the issue involved is of such a nature that the consumer of the electricity would be effected by the outcome of the said petition, in that eventuality all the consumers who are using the electricity supplied by the petitioner and DHBVNL are allowed to give their submission/ objections/ replies to the said petition. Similarly in the present case, the present Respondent no 1 also filed the objections to the petition filed by the petitioner and DHBVNL being the consumer of the electricity and as the result/order

- passed in the petition would have directly affected the present Respondent no 1 and other industries similarly placed as the present Respondent no 1.
- p. That Civil Writ Petition bearing no 22508 of 2023 filed by the Respondent no 1 against the review order dated 22.10.2019, corrigendum dated 20.11.2019 along with Order dated 13.09.2021 passed by this Hon'ble Commission, recovery notice dated 11.09.2023 which was listed for hearing on 06.10.2023 and notice of motion was issued and interim stay was granted.
- q. That thereafter Civil Writ Petition having CWP 22508 of 2023 filed by the Respondent no 1 was listed for final hearing on 29.07.2025, and on 29.07.2025, the Hon'ble Single Judge disposed the same with liberty to the Respondent no 1 to file an appeal against the Order dated 22.10.2019 corrigendum dated 20.11.2019 along with Order dated 13.09.2021 passed by this Hon'ble Commission, recovery notice dated 11.09.2023 issued by DHBVNL before the Appellate Authority/APTEL.
- r. That the order dated 29.07.2025 was challenged before the Hon'ble High Court by way of filing LPA bearing no 2352 of 2025 which was listed for final hearing on 15.09.2025 and on 15.09.2025 the Hon'ble Division Bench disposed of the same vide order dated 15.09.2025 giving a direction to this Hon'ble Commission to give an opportunity of hearing to the applicants within a period of 8 weeks from the date of certified copy of order.
- s. That in pursuant to the order passed by the Hon'ble High Court in LPA 2352 of 2025, this Hon'ble Commission issued public hearing notices scheduled for 07.11.2025. However the matter was adjourned on that date without any hearing taking place and was rescheduled to 19.11.2025 and on 19.11.2025 various stakeholders appeared and the proceedings was adjourned to 06.01.2026 for final arguments and order was passed vide order dated 20.11.2025.
- t. That vide order dated 20.11.2025 this Hon'ble Commission allows the respondents to file their comments /objections within 2 weeks from the date of this order under affidavit along with power of attorney from all the respondents, with an advance copy to the petitioner (HVPNL) and directed the registry to provide a fresh review No. to all the four review orders and the case was adjourned to 06.11.2025.
- u. That the order dated 20.11.2025 was circulated vide email dated 20.11.2025 by this Hon'ble Commission. However, the new review No. were circulated vide email dated 09.12.2025 which also specify that reply/written response/objection be filed at least 3 days before the date of hearing and therefore the

Respondent No. 1 is filing the present objection as per order dated 09.12.2025 within prescribed time period.

- 7.3 That the scope and ambit of review jurisdiction is extremely limited and cannot, in any manner, be equated with the powers exercised by an appellate forum. A review can be entertained only on narrowly defined grounds such as discovery of a material fact which was not within the knowledge of the party despite due diligence, or on account of a mistake or an error apparent on the face of the record. Mere re-argument or reconsideration of the matter on merits, or an attempt to substitute a different interpretation, does not fall within the permissible contours of review jurisdiction. The apex court has held that the Hon'ble Supreme Court in **Sivakami and Others v. State of Tamil Nadu and Others (2018) 4 SCC 587**:

*20. The scope of the appellate powers and the review powers are well defined. The power of review under Order 47, Rule 1 of the Code of Civil Procedure, 1908 is very limited and it may be exercised only if there is a mistake or an error apparent on the face of the record. The power of review is not to be confused with the appellate power. The review petition/application cannot be decided like a regular intra court appeal. On the other hand, the scope of appeal is much wider wherein all the issues raised by the parties are open for examination by the Appellate Court.*

- 7.4 That the present matter concerns the determination of the applicable Transmission Tariff payable by a Short-Term Open Access (STOA) consumer, which is recoverable by the State Transmission Utility, namely Haryana Vidyut Prasaran Nigam Limited (Petitioner). The petitioner undertakes the receipt of power at the Haryana periphery and is responsible for its onward transmission, sale and supply to the two State Distribution Licensees, i.e., Uttar Haryana Bijli Vitran Nigam Limited (UHBVN) serving the northern circles of Haryana, and Dakshin Haryana Bijli Vitran Nigam Limited (DHBVN) serving the southern circles of Haryana.
- 7.5 That the governing law, statute and regulatory framework applicable to the determination of Short-Term Open Access Charges comprises, inter alia, the following:
- (a) The Electricity Act, 2003 – Section 61 (Tariff Regulations), which mandates that the Appropriate Commission shall, subject to the provisions of the Act, specify the terms and conditions for the determination of tariff and, while doing so, shall be guided by, inter alia—
    - (a) \_\_\_\_\_
    - (b) \_\_\_\_\_
    - (c) \_\_\_\_\_
    - (d) Safeguarding of consumers' interest and at the same time recovery of the cost of electricity in a reasonable manner;

- (e) The principles rewarding efficiency in performance;
- (f) Multi-year tariff principles;
- (g) \_\_\_\_\_
- (h) \_\_\_\_\_
- (i) \_\_\_\_\_ . \*\*

- 7.6 That the Multi Year Tariff (MYT) Regulations, 2012, notified by this Hon'ble Commission on 5 December 2012 and made applicable for the control period commencing from 1 April 2014 to 31 March 2017, inter alia govern the methodology for determination of transmission charges. The second proviso to Regulation 50(b) of the MYT Regulations, 2012 stipulates that *'Provided also that the Transmission Charges (ATC) shall be payable by the Short Term Open Access Consumer for the scheduled energy drawl at a per kWh rate as worked out by dividing the Transmission Charge (ATC) by the total volume of energy sales by the Distribution Licensee(s) during the previous year.'* A plain reading of the above establishes that the denominator ought to be the energy sold by Discoms i.e. UHBVN and DHBVN to the electricity consumers during the previous year.
- 7.7 WHAT DID THE REGULATORS DO IN THE ORDER (UNDER REVIEW AND THAN SUBJECTED TO STATUARY APPEAL IN THE APTEL: - DIVIDED THE ATC BY Energy proposed to be drawn through the transmission system. Hence, deviated from the regulatory norms i.e. instead of energy sold by UHBVN and DHBVN handled by the Transmission used, as denominator, energy handled by the Transmission Company i.e. sale of UHBVN and DHBVN + Losses, consequently, a bigger number lowering the per unit rate thereby reducing the revenue of Transmission Licensee Viz. HVPN.
- 7.8 That the question which arises for consideration is whether the Regulatory Commission can, in exercise of its regulatory powers, permit a deviation from the Regulations framed by the Commission itself, which Regulations are required to operate strictly within the four corners of the parent statute, namely the Electricity Act, 2003, and are also subject to the binding effect of the judgments of the Hon'ble Supreme Court of India and of the Hon'ble Appellate Tribunal for Electricity (APTEL), once such judgments attains finality. The Electricity Act, 2003 does not prescribe any specific formula or methodology for determination of tariff; however, the Act expressly enumerates, as one of the statutory functions of the State Commission, the duty to protect the interests of consumers. It is on this premise that the Commission has, in the impugned dispensation, sought to protect consumer interest by reducing the financial incidence of transmission charges on Short-Term Open Access consumers.
- 7.9 That the MYT Regulations, 2012 contain explicit enabling provisions empowering the Commission to remove difficulties, relax the operation of the Regulations, interpret any provision thereof, and exercise its inherent regulatory jurisdiction. Regulation 78

(‘Powers to Remove Difficulties’) authorizes the Commission, by a general or special order, to undertake such acts as may appear necessary or expedient for removing any difficulty, provided the same are not inconsistent with the Act or the Regulations. Regulation 79 (‘Power to Relax’) further empowers the Commission, in public interest and for reasons to be recorded in writing, to relax any provision of the Regulations. Regulation 80 (‘Interpretation’) vests the Commission with final authority to determine any question relating to interpretation. In addition, Regulation 81 (‘Saving of Inherent Powers of the Commission’) preserves the Commission’s inherent jurisdiction to make such orders as may be necessary for the ends of justice, or to protect consumer interest, or to prevent abuse of process, including the adoption of a procedure at variance with the Regulations in view of special circumstances, for reasons recorded in writing. In this view of the matter, it is evident that this Hon’ble Commission was statutorily empowered to exercise regulatory discretion and, where justified, to depart from the strict letter of the MYT Regulations, 2012.”

- 7.10 The MYT 2012 period was extended till MYT Regulations 2019 superseded it. Regulations 2019 came into force with effect from 1st April 2020 and shall, unless otherwise directed by the Commission, remained in force up to 31st March 2025 for the duration of second control period. MYT 2019 was superseded by MYT 2023 (1-04-2025 to 31-03-2030 i.e. the Regulations currently in vogue. In both the MYT Regulations (2019 & 2023) after MYT 2012 - on the issue under review, the statutory provision was changed to:-

*“Provided also that the transmission charges shall be payable by the short-term open access consumers for the scheduled energy drawl at per kWh rate as worked out by dividing the annual transmission charges by the **total volume of energy transmitted by the transmission licensee** (Emphasis added) during the previous year.”*

- 7.11 That the present Review Petition Nos. HERC/RA 9 of 2020 (New Review No. HERC/RA 12 of 2025), HERC/RA 10 of 2020 (New Review No. HERC/RA 13 of 2025), and HERC/RA 11 of 2020 (New Review No. HERC/RA 14 of 2025), are not maintainable merely on the ground of a subsequent change in law. It is a settled legal position that a review cannot be sought merely because of a subsequent alteration in the legal position unless such change satisfies the requirements prescribed for review under law. It is further pertinent to point out that Regulation 57 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 clearly stipulates that all provisions relating to review contained in the Code of Civil Procedure, 1908 shall apply mutatis mutandis to the review of orders passed by this Hon’ble Commission. In view thereof, only those limited grounds which are recognized under Order XLVII of the CPC

can constitute a valid basis for invoking the review jurisdiction of this Hon'ble Commission.

*Regulation 57 (Conduct of Business Regulations, 2019)*

*57(1) All relevant provisions relating to review of the decisions, directions and orders as provided in the Code of Civil Procedure 1908, as amended from time to time, shall apply mutatis mutandi for review of the decisions, directions and order of the Commission.*

*Relevant Provisions of Order 43 CPC*

*Application for review of judgment.-(1) Any person considering himself aggrieved-*

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
- (b) by a decree or order from which no appeal is allowed, or*
- (c) by a decision on a reference from a Court of Small Causes,*  
*and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.*

*(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellants, or when, being Respondents, he can present to the Appellate Court the case on which he applied for the review.*

*Explanation. The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.*

XXXXXXXXXXXX

*4. Application where rejected- (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.*

*(2) Application where granted. Where the Court is of opinion that the application for review should be granted, it shall grant the same: Provided that-*

*(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and*

*(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be*

*adduced by him when the decree or order was passed or made, without strict proof of such allegation.”*

7.12 That a review petition is not maintainable merely on account of a subsequent change, reversal, or modification in the legal position by a superior court. It is a settled principle of law that review jurisdiction cannot be invoked on the basis of a subsequent judicial pronouncement or alteration in law and such grounds, even if arising later in time, do not furnish a permissible foundation for seeking review of an already concluded order and the same has been held by the Hon'ble Supreme Court in the case titled as Government of NCT of Delhi Through its Secretary, Land and Building Department and Another v. K.L. Rathi Steels Limited and Others (2024) 7 SCC 315. The paragraph of the judgment are reproduced for the ready references as under:

*“We thus, hold that no review is available upon a change or reversal or proposition of law by a superior court or by a larger bench of this Court overruling its earlier exposition of law whereon the judgement/order under review was based. We also hold that notwithstanding the fact that Pune Municipal Corporation, has since been wiped out of existence, the said decision being the law of the land when the civil appeals/special leave petitions were finally decided, the subsequent overruling of such decision and even its recall, for that matter, would not afford a ground for review within the parameters of Order 47 CPC.”*

7.13 It is further respectfully submitted that the Hon'ble Supreme Court has, in unequivocal terms, held that a subsequent change in the legal position cannot be relied upon as a legitimate or sufficient ground for seeking condonation of delay. The Apex Court has made it clear that the law prevailing at the time of cause of action and the period prescribed for limitation is required to be adhered to, and that a later development or alteration in the statutory or judicial position cannot be invoked to extend or enlarge the limitation period. Accordingly, any plea seeking condonation of delay on the basis of a subsequent change in law stands devoid of merit and is liable to be rejected. The same has been held by the Hon'ble Supreme Court in the case titled as Delhi Development Authority v. Tejpal & Ors. in SLP(C) No. 26697 of 2019. The paragraph of the judgment are reproduced for the ready references as under:

*“if subsequent change of law is allowed as a valid ground for condonation of delay, it would open a Pandora's Box where all the cases that were subsequently overruled, or the cases that had relied on the judgements that were subsequently overruled, would approach this Court and would seek a relief based on the new interpretation of law. There would be no finality to the proceedings and every time this Court would reach a different conclusion from its previous case, all such cases and the cases relying on it would be reopened”*

7.14 That once the prescribed period for filing a review petition has expired, the applicant is required to satisfactorily explain the delay for every single day. It is well settled that condonation of delay is not a matter of right, but an exception, to be exercised sparingly and only upon adequate justification. The liberal approach in condonation matters is intended to advance substantial justice; however, such liberal interpretation cannot be invoked to condone prolonged inaction or negligence on the part of the petitioner. In the present case, no plausible or bona fide explanation whatsoever has been furnished to justify the inordinate delay, and therefore the review petition deserves to be dismissed on this ground alone. The Hon'ble Apex court in the case titled as **SHIVAMMA( DEAD) BY LRS versus KARNATAKA HOUSING BOARD AND ORS** held as under:

*'within such period' under Section 5 of Limitation Act means the entire period from the date the cause of action accrued until the date of actual filing, not just the period after prescribed limitation expired - A party seeking condonation of delay must explain what prevented them from filing the appeal or application within the statutory period of limitation - If the period of limitation is 90 days, and the appeal is filed belatedly on the 100th day, then explanation has to be given for the entire 100 days - Total lethargy or utter negligence on the part of officers of the State and its agencies should not be given a premium - Condonation of delay is not a matter of right - while a liberal approach is preferred to achieve substantial justice, negligence and inaction cannot be ignored - A delay should not be condoned merely because doing so would benefit the State - the principle of 'public interest' cannot be used to justify the State's inaction and lethargy - The law of limitation is founded on public policy and is based on the maxims **interest reipublicae up sit finis litium and vigilantibus non dormientibus jura subveniunt.***

7.15 That this Hon'ble Commission has the power to clarify and decide upon the tariff and STOA rate, however DHBVNL does not have the jurisdiction to direct and effect recoveries from the consumers. This Hon'ble Commission previously vide the orders acted arbitrarily and went out of the way to facilitate recoveries for DHBVNL by passing a retrospective order for recovery. Such orders were clearly against settled provisions of law, which provide that recovery orders cannot be applied retrospectively as per the section 16 proviso of CERC (Open Access Inter-State Transmission) Regulations 2008, which clearly states that transmission charges shall not be revised with retrospective effect and the Hon'ble High Court therefore set aside the orders passed by this Hon'ble Commission. Reliance is placed on the decision in the case of **Steel Furnace Association of India v Punjab State Electricity Regulatory Commission & Others (decided on 12<sup>th</sup> September 2014) – 2014 SCC Online APTEL 146**, wherein it was held that:-

*“The transaction for short term Open Access is carried out based on the prevailing charges. These charges ought not to be revised retrospectively when the transactions have been concluded based on the prevailing charges and payments have been made against the transactions. The consumers of the distribution licensee have availed short term open access from 1.4.2012 till 16.7.2012, the date of the impugned order based on the then prevailing charges. These transactions have been concluded till the date of the impugned order. If the revised charges had been determined by the State Commission before 1.4.2012, the consumers would have taken a call for availing power through open access based on the revised charges. Therefore, the State Commission should not have revised the intra-State transmission and wheeling charges retrospectively for short term inter State Open Access transaction in contravention to the Inter State Open Access Regulations of the Central Commission. Accordingly, this issue is decided in favour of the appellants.”*

7.16 In view of aforesaid facts and circumstances, it is prayed that this Hon'ble Commission may dismiss the review petition no RA-2 of 2016, 9, 10, 11 of 2020 (New No. RA 11, 12,13,14 of 2025) as well as the application for the condonation of delay filed by Haryana Vidyt Prasaran Nigam Limited for the modification of tariff orders dated 30.05.2017, 31.10.2018 and 07.03.2019 in case HERC/ RA-9,10,11 of 2020 (New No. RA. 12,13,14 of 2025) for determining the transmission charges for the short term open access consumers for the FY- 2017-18, 2018-19 and 2019-20.

8. The petitioner (HVPNL) has filed its reply to the comments filed by the respondents under affidavit dated 12.02.2020:-.

The petitioner (HVPNL) has submitted as under:-

**Reg.: RA-2 of 2016 (New Petition No. RA-11 of 2025)**

8.1 That without prejudice to the settled position that this Hon'ble Commission is vested with the power to review its orders in cases of error apparent on the face of the record, it is submitted that, in the present matter, the re-determination of STOA charges has been carried out pursuant to the specific directions issued by the Hon'ble Appellate Tribunal for Electricity in its Order dated 28.08.2019. Significantly, the said APTEL Order has not been assailed by Respondent No. 1 till date. Consequently, the objections raised by Respondent No. 1 with respect to the scope and extent of the review jurisdiction of this Hon'ble Commission are wholly misconceived, irrelevant to the present proceedings, and liable to be rejected outright.

8.2 That the present proceedings are in pursuance of the directions issued by the Hon'ble Punjab and Haryana High Court vide the HC Order, in order to grant an opportunity to the Respondents to provide their objections on the merits of the case- i.e. re-

determination of the STOA charges. As stated hereinabove, inasmuch as the APTEL Order has not been assailed by Respondent No. 1, the directions issued therein concerning the re-determination of STOA charges have attained finality. Consequently, the said APTEL judgment constitutes the binding precedent with respect to the applicability of the proviso to Regulation 50 of the MYT Regulations, 2012 for the purpose of determination of STOA charges.

*Re: This Hon'ble Commission is bound by its own regulations*

- 8.3 That the Respondents have averred that this Hon'ble Commission may deviate from the regulations framed by the Commission itself, in order to protect consumer interest. It has thus been contended by the Respondents that this Hon'ble Commission had rightly deviated from the established procedure provided under the MYT Regulations for determining the STOA Charges in the Tariff Order. The said contention is denied as being incorrect. It is a settled and binding principle of law, consistently reiterated in a catena of judgments, that this Hon'ble Commission is statutorily bound by its own regulations and is not vested with any discretion to depart from the methodology expressly prescribed therein. The determination of STOA charges is, therefore, required to be undertaken strictly and mandatorily in accordance with the MYT Regulations. It is equally well settled that once regulations are framed under Section 178 of the Electricity Act, 2003, the tariff-determination exercise must conform in letter and spirit to such regulations and cannot be undertaken de hors the regulatory framework. Where the field is occupied by specific regulations, any determination in deviation thereof is ex facie illegal and unsustainable in law. In this regard, reliance is placed on the following judgments:

**A. PTC India Limited v. Central Electricity Regulatory Commission, (2010) 4 SCC 603:**

*"54. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide-ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that the Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licences, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading*

*margin in interState trading of electricity, if considered necessary, etc. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178.*

*55. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a precondition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the 2003 Act. An order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject-matter of challenge before the appellate authority under Section 111 as the levy is imposed by an order/decision-making process. Making of a regulation under Section 178 is not a precondition to passing of an order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the order levying fees under Section 79(1)(g) has to be in consonance with such regulation.*

*56. Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178. However, if a regulation is made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulations under Section 178.*

*57. One must keep in mind the dichotomy between the power to make a regulation under Section 178 on the one hand and the various enumerated areas in Section 79(1) in which the Central Commission is mandated to take such measures as it deems fit to fulfil the objects of the 2003 Act. Applying this test to the present controversy, it becomes clear that one such area enumerated in Section 79(1) refers to fixation of trading margin. Making of a regulation in that regard is not a precondition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central Commission in an appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures the Central*

*Commission takes under Section 79(1)(j) have to be in conformity with Section 178.”*

**B. Haryana Vidyut Prasaran Nigam Limited Vs. Haryana Electricity Regulatory Commission, 2012 SCC Online APTEL 83**

*“46. In this Case the Commission's decision to allow RoE @ 10% lacks transparency. In case the Commission had decided to allow RoE at less/higher rate than 14%, it should have declared before hand and sought comments on the same. In this case the Commission's decision to allow ROE @ 10% is contrary to the Regulations, and we must direct the Commission to allow Return on Equity @ 14% in accordance with Tariff regulations 2008. **Once the Regulations have been framed the Commission has to act in accordance therewith.**”*

(emphasis supplied)

8.4 That this Hon'ble Commission is bound to act strictly in accordance with its own regulations and is precluded from deviating from the methodology prescribed therein. Accordingly, this Hon'ble Commission has acted fully within the bounds of its jurisdiction and has rightly and necessarily rectified the error apparent on the face of the record an error expressly noted by the Hon'ble Appellate Tribunal for Electricity by re-determining the STOA charges in strict conformity with the proviso to Regulation 50 of the MYT Regulations. The relevant portion of the MYT Regulations is set out below for ease of reference:

*“Provided also that the transmission charges shall be payable by the short term open access consumers for the scheduled energy drawl at per kWh rate as worked out by dividing the annual transmission charges by the total volume of energy sales by the distribution licensee(s) during the previous year”.*

8.5 That the Respondents have thus failed to demonstrate any infirmity in the findings of this Hon'ble Commission in the Re-determination Order (along with corrigendum), more so on account of the fact that the APTEL Order has not been challenged as on date.

**Reg.: RA-9,10,11 of 2020 (New No. RA-12,13,14 of 2025)**

*Re: Review Petition is maintainable*

8.6 That the Respondents are attempting to re-argue the Review Petitions, which is expressly de hors the scope of the present remand. It is relevant to highlight that the present proceedings are in pursuance of the directions issued by the Hon'ble Punjab and Haryana High Court vide the HC Order, in order to grant an opportunity to the Respondents to provide their objections on the merits of the case i.e. re-determination of the STOA charges. As stated hereinabove, inasmuch as the APTEL Order has not been assailed by Respondents, the directions issued therein concerning the re-

determination of STOA charges have attained finality. Consequently, the said APTEL judgment constitutes the binding precedent with respect to the applicability of the proviso to Regulation 50 of the MYT Regulations, 2012 for the purpose of determination of STOA charges.

*Re: The delay in filing of the Review Petitions has been rightly condoned by this Hon'ble Commission*

- 8.7 That the Respondents have contended that the Petitioner has been unable to furnish adequate explanation for delay in filing of the Review Petitions, and as such, the Review Petitions are liable to be dismissed as being 'barred by limitation'. The said contention is denied as being incorrect and illogical. This Hon'ble Commission has already condoned the delay in filing of the Review Petitions, on account of the detailed submissions made by the Petitioner in this regard. The relevant portion of the Review Order is set out below for ease of reference:

*"11. At the onset, the Commission has considered the prayer of the petitioner for condonation of delay in filing the present review petitions i.e. RA-9, RA-10 and RA-11. Considering the detailed grounds for seeking condonation in all the three review petitions under consideration, already reproduced earlier in the present order, the Commission condones the delay."*

- 8.8 That the present proceedings are in pursuance of the directions issued by the Hon'ble Punjab and Haryana High Court vide the HC Order, in order to grant an opportunity to the Respondents to provide their objections on the merits of the case i.e. re-determination of the STOA charges. The Respondents cannot attempt to challenge findings of the Review Orders by way of the present remand proceedings, more so on account of the fact that the Review Orders have not been set aside by the Hon'ble Punjab and Haryana High Court. Pertinently, the Respondents have not even challenged the Review Orders before the APTEL on the aspect of condonation of delay. In light of the same, the Respondents cannot now seek to precipitate issues that have already been settled by this Hon'ble Commission.

*Re: The Review Petitions have been allowed by this Hon'ble Commission on account of error that is apparent on the face of record*

- 8.9 That it is trite law that this Hon'ble Commission is bound by its own regulations. Thus, in deviating from the established procedure provided under the MYT Regulations 2012, this Hon'ble Commission committed an error that is apparent on the face of record. Accordingly, APTEL in its order dated 28.08.2019 held that this Hon'ble Commission ought to have determined the STOA Charges as per its MYT regulations and not otherwise. It is relevant to highlight that the APTEL Order is not a change in law event

as averred by the Respondents. In this regard, this Hon'ble Commission, in the Review Orders, has rightly held as under:

*“17. ... A perusal of the aforesaid case laws makes it clear that sufficient grounds exist for the Commission to exercise review jurisdiction. Moreover, the basic premise of the present review petition is the order dated 28.08.2019 passed by the Hon'ble APTEL setting aside the Commission's order dated 31.03.2016 which was the basis of subsequent orders, now under review. Consequently, the Commission, in line with the HERC Regulations, 2012, occupying the field, orders that the methodology of calculating STOAC, in the present case, shall be reckoned with as per the judgement of the Hon'ble APTEL based on which the present review petitions have been preferred. In order to avoid any doubts, it is made clear that going forward the STOC calculations shall be governed by the MYT Regulations in vogue including its subsequent amendments and / or reenactments.”*

(emphasis supplied)

- 8.10 That a bare perusal of the findings of this Hon'ble Commission, as set out above, make it abundantly clear that in passing the Review Orders, this Hon'ble Commission has calculated the STOA Charges as per the methodology provided in the MYT Regulations 2012 (thereby rectifying the error apparent in the Impugned Orders), which regulations were subsisting at the time of passing of the Impugned Order as well. Thus, there is no change in law as contended by the Respondents.
- 8.11 That it is settled law that where the original order suffers from a jurisdictional or statutory infirmity existing at the time of its passing, and a subsequent judicial pronouncement merely declares or clarifies the correct legal position, the review is not founded on the subsequent decision per se, but on the pre-existing illegality. Moreover, several judicial precedents have held that a review is maintainable where decision is rendered in ignorance of binding statutory provisions/ regulations.
- 8.12 That the APTEL Order did not create a new legal position, it merely declared that this Hon'ble Commission could never have departed from the regulatory methodology; and affirmed the binding nature of the MYT Regulations, which existed and applied at the time the impugned tariff orders were passed. Therefore, the ground for review is not merely the APTEL Order as a subsequent event, but the continuing statutory illegality apparent from the face of the tariff orders themselves.
- 8.13 That since the Impugned Orders perpetuate a patent illegality arising from non-compliance with binding MYT Regulations, thus, this is not a case where a lawful order became incorrect due to a later change in law nor is it a case where the Petitioner is seeking a rehearing. On the contrary, this is a case where the Impugned Orders were illegal from inception, having been passed contrary to the MYT Regulations, and the

review jurisdiction was rightly exercised to align the tariff determination with the statutory framework.

*Re: This Hon'ble Commission is bound by its own regulations*

8.14 That it is a settled and binding principle of law, consistently reiterated in a catena of judgments, that this Hon'ble Commission is statutorily bound by its own regulations and is not vested with any discretion to depart from the methodology expressly prescribed therein. The determination of STOA charges is, therefore, required to be undertaken strictly and mandatorily in accordance with the MYT Regulations 2012. It is equally well settled that once regulations are framed under Section 178 of the Electricity Act, 2003, the tariff-determination exercise must conform in letter and spirit to such regulations and cannot be undertaken de hors the regulatory framework. Where the field is occupied by specific regulations, any determination in deviation thereof is ex facie illegal and unsustainable in law. In this regard, reliance is placed on the following judgments:

*PTC India Limited v. Central Electricity Regulatory Commission, (2010) 4 SCC 603:*

*"54. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide-ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that the Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licences, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in interState trading of electricity, if considered necessary, etc. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178.*

*55. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a precondition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the 2003 Act. An order imposing*

regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject-matter of challenge before the appellate authority under Section 111 as the levy is imposed by an order/decision-making process. Making of a regulation under Section 178 is not a precondition to passing of an order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the order levying fees under Section 79(1)(g) has to be in consonance with such regulation.

56. Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178. However, if a regulation is made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulations under Section 178.

57. One must keep in mind the dichotomy between the power to make a regulation under Section 178 on the one hand and the various enumerated areas in Section 79(1) in which the Central Commission is mandated to take such measures as it deems fit to fulfil the objects of the 2003 Act. Applying this test to the present controversy, it becomes clear that one such area enumerated in Section 79(1) refers to fixation of trading margin. Making of a regulation in that regard is not a precondition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central Commission in an appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures the Central Commission takes under Section 79(1)(j) have to be in conformity with Section 178.”

*Haryana Vidyut Prasaran Nigam Limited Vs. Haryana Electricity Regulatory Commission, 2012 SCC Online APTEL 83*

“46. In this Case the Commission's decision to allow RoE @ 10% lacks transparency. In case the Commission had decided to allow RoE at less/higher rate than 14%, it should have declared before hand and sought comments on the same. In this case the Commission's decision to allow ROE @ 10% is contrary to the Regulations, and we must direct the Commission to allow Return on Equity @ 14% in accordance with Tariff regulations 2008. **Once the Regulations have been framed the Commission has to act in accordance therewith.**”

(emphasis supplied)

- 8.15 That in view of the foregoing, it stands conclusively established that this Hon'ble Commission is bound to act strictly in accordance with its own regulations and is precluded from deviating from the methodology prescribed therein. Accordingly, this Hon'ble Commission has acted fully within the bounds of its jurisdiction and has rightly and necessarily rectified the error apparent on the face of the record an error expressly noted by the Hon'ble Appellate Tribunal for Electricity by re-determining the STOA charges in strict conformity with the proviso to Regulation 50 (b) of the MYT Regulations. The relevant portion of the MYT Regulations is set out below for ease of reference:  
*"Provided also that the transmission charges shall be payable by the short term open access consumers for the scheduled energy drawl at per kWh rate as worked out by dividing the annual transmission charges by the total volume of energy sales by the distribution licensee(s) during the previous year"*.
- 8.16 The Respondents have thus failed to demonstrate any infirmity in the findings of this Hon'ble Commission in the Re-determination Order (along with corrigendum), more so on account of the fact that the APTEL Order has not been challenged as on date.  
*Re: This Hon'ble Commission has not 'revised' transmission charges as contended by the Respondents*
- 8.17 That it is the contention of the Respondents that this Hon'ble Commission cannot retrospectively revise transmission charges. The said contention is denied as being completely incorrect and misplaced in the present facts and circumstances. It is reiterated that, in terms of the Review Orders, this Hon'ble Commission has merely computed STOA Charges as per the MYT Regulations 2012 pursuant to the APTEL Order. As set out in the preceding paragraphs, there is no 'revision' in charges, as the MYT Regulations were in force and binding even at the time of passing of the Impugned Orders.
- 8.18 That since this Hon'ble Commission had deviated from the prescribed regulatory methodology while determining STOA charges, the Review Orders only restores the determination of STOA Charges to what the MYT Regulations mandated at the relevant time. Therefore, applying the MYT methodology during review does not introduce a new basis of levy but merely enforces the law as it stood at the time of the Impugned Orders. The Review Orders merely give effect to the MYT Regulations which governed the field at the relevant time, and hence do not involve any retrospective revision of STOA charges.

**Proceedings of the Case:-**

9. The case was heard on 19.11.2025, 07.01.2026, 07.04.2026 and finally on 17.04.2026, in the court room of the Commission, wherein the parties mainly reiterated the contents

of their petition/reply/rejoinder, which for the sake of brevity are not being reproduced here.

### **Commission Analysis and Order:-**

10. The Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by the parties. The Commission observes that the present proceedings have been initiated pursuant to the decision of Hon'ble Punjab and Haryana High Court (PHHC), in its orders dated 15.09.2025 & 05.12.2025 in LPA No. 2352/2025 and LPA No. 3524 of 2025, respectively, granting opportunity of hearing to the appellants before Hon'ble PHHC, in respect of re-determination of STOA charges in its review orders dated 22.10.2019 read with corrigendum dated 20.11.2019 (RA-2 of 2016, fresh petition no. RA-11 of 2025) as well as dated 13.09.2021 (RA-9 of 2020, RA-10 of 2020 and RA-11 of 2020, fresh petition numbers RA-12, 13 & 14 of 2025).
11. During the course of hearing, Shri Rose Gupta, the learned counsel for the respondents emphasized isolation of issues in RA-2 of 2016 (new petition no. RA-11 of 2025) and other review petitions. Accordingly, the Commission has considered to carefully examine the submissions of petitioner (HVPNL) as well as respondents, as under:-

#### **11.1 Issue No. 1: Determination of Short-Term Open Access (STOA) Charges, in review orders dated 22.10.2019 read with corrigendum dated 20.11.2019 (RA-2 of 2016, new petition no. RA-11 of 2025).**

The Commission observes that the orders dated 22.10.2019 read with corrigendum dated 20.11.2019 in RA-2 of 2016 (fresh petition no. RA-11 of 2025), was passed in accordance with the provisions of the HERC MYT regulations, 2012 and in light of the judgement dated 28.08.2019 passed by Hon'ble Appellate Tribunal for Electricity (APTEL) in Appeal No 214 of 2017.

The relevant portion of the above referred judgement is reproduced as below:

*"8.4 In view of these facts, we are of the opinion that the State Commission ought to have determined the STOA charges for the year in question as per its MYT Regulations and not otherwise.*

*For the forgoing reasons, we are of the considered opinion that the issue pressed in the present appeal, being Appeal No. 214 of 2017, has merits and, hence, the Appeal is allowed. The impugned Order dated 08.11.2016 passed by the Haryana Electricity Regulatory Commission in Review Petition, being Case No. HERC/RA-2 of 2016 as merged in the Order dated 31.03.2016 in Case No. HERC/PRO -31 of 2015, is hereby set aside to the extent challenged in the appeal by the Appellant. The matter stands remitted back to the State Commission with a direction to re-determine the STOA*

*charges in accordance with law within a period of three months from the date of this judgment and order.”*

In the original Tariff Order, the Commission deviated from the methodology prescribed under HERC MYT Regulations, 2012 by using "energy drawl" instead of "energy sales" as the denominator, for determination of STOA charges. This was a patent illegality and an error apparent on the face of the record. The Hon'ble APTEL, in its order dated 28.08.2019, specifically set aside this methodology and directed a re-determination in accordance with the law. As the Respondents never challenged the APTEL order, it has attained finality. It is a settled proposition of law that the State Electricity Regulatory Commissions are bound by the orders of the Hon'ble Appellate Tribunal for Electricity (APTEL) and cannot sit in appeal over, re-adjudicate, or deviate from the directions issued therein, unless such orders are set aside or stayed by the Hon'ble Supreme Court of India. Any departure from the binding directions of APTEL would amount to non-compliance and is contrary to settled principles of judicial discipline.

Section 121 of the Electricity Act, 2003 empower Hon'ble APTEL to issue such orders, instructions, and directions, as it may deem fit, including supervisory directions to regulatory commissions, for the proper performance of their statutory functions under the Act. The relevant extract is reproduced hereunder:-

*“Power of Appellate Tribunal: The Appellate Tribunal may, after hearing the Appropriate Commission or other interested party, if any, from time to time, issue such orders, instructions or directions as it may deem fit, to any Appropriate Commission for the performance of its statutory functions under this Act.”*

**It is settled law that the findings of the Tribunal are binding upon the State Commission. The present remand proceedings are being undertaken consequent to the judgment of the Hon'ble Appellate Tribunal for Electricity (APTEL) dated 28.08.2019 in Appeal No 214 of 2017. It is a natural corollary of the remand order that the Commission is precluded from revisiting or relitigating the issues already adjudicated by the Hon'ble Tribunal, and must instead proceed with the consequential task of re-determination of STOA charges in strict compliance with the issued directions and regulations occupying the field.**

**The Respondents' contention that the Commission can freely deviate from its own Regulations to "protect consumer interest" is rejected. It is a settled principle of law, as held by the Hon'ble Supreme Court in PTC India Limited v. CERC (2010) and by APTEL in HVPNL v. HERC (2012), that once Regulations are framed, the Commission is statutorily bound to act strictly in accordance with them. While the**

MYT Regulations contain "Power to Relax" provisions, such powers cannot be used to pass orders that are inconsistent with the Act or the core methodology prescribed in the Regulations themselves along with the directions of Hon'ble APTEL. Protecting consumer interest does not provide a license to bypass the mandatory methodology of tariff determination. The respondents have failed to demonstrate any error or patent illegality in the determination of STOA charges. Accordingly, the objections raised by the respondents are rejected.

**11.2 Issue No. 2: Determination of Short-Term Open Access (STOA) Charges, in review orders dated 13.09.2021 (RA-9 of 2020, RA-10 of 2020 and RA-11 of 2020, new petition numbers RA-12, 13 & 14 of 2025).**

The present issue emanates from the Review Order dated 13.09.2021 passed by the Commission, whereby the Review Petitions bearing Nos. RA-09/2020, RA-10/2020 and RA-11/2020 (renumbered as RA-12, RA-13 and RA-14 of 2025), filed against the Commission's earlier Orders dated 30.05.2017, 31.10.2018 and 07.03.2019 respectively, concerning the re-determination of Short-Term Open Access (STOA) charges, came to be adjudicated. The relevant extract of the said Review Order dated 13.09.2021 is reproduced hereunder:

*"11. At the onset, the Commission has considered the prayer of the petitioner for condonation of delay in filing the present review petitions i.e. RA-9, RA-10 and RA-11. Considering the detailed grounds for seeking condonation in all the three review petitions under consideration, already reproduced earlier in the present order, **the Commission condones the delay.***

*12. The Commission observes that the very basis of determining STOA was the methodology adopted by the Commission in its order dated 31.03.2016 in case no. HERC/PRO – 31 of 2015. The said order, on an appeal preferred by the petitioner under section 111 of the Electricity Act, 2003 in the Hon'ble Appellate Tribunal for Electricity, was set aside by the Hon'ble APTEL vide judgement dated 28.08.2019. **Hence, the very premise of determining STOAC on the basis of energy drawn through the transmission system instead of energy sales by the Discoms, was set aside.** Further, against the ibid order of the Hon'ble APTEL, as informed by the petitioner, no appeal has either been preferred by any party in the Hon'ble Supreme Court under section 125 or a review petition u/s 120 (2) (C) of the Electricity Act, 2003 within the period prescribed for the purpose. Hence, the said judgement dated 28.08.2019 passed by the Hon'ble APTEL has reached a finality.*

.....

17. In order to examine the scope of review jurisdiction, the Commission has perused the provision of Regulation 57 & 58 of the HERC (Conduct of Business) Regulations, 2019, which empowers the Commission to exercise review jurisdiction. The relevant regulation is reproduced below: -

**“REVIEW OF THE DECISIONS, DIRECTIONS, AND ORDERS:**

57 (1) All relevant provisions relating to review of the decisions, directions and orders as provided in the Code of Civil Procedure 1908, as amended from time to time, shall apply *mutatis mutandi* for review of the decisions, directions and order of the Commission.

Provided that the Commission may on the application of any party or person concerned, filed within a period of 45 days of the receipt of such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission may deem fit

(2) No application for review shall be considered unless an undertaking has been given by the applicant that he has not preferred appeal against the decision, direction, or order, sought to be reviewed, in any Court of Law.

(3) No application for review shall be admitted/ considered unless an undertaking has been given by the applicant that in case he files an appeal of the decision, direction or order of which review is pending adjudication, he shall immediately inform the Commission regarding the fact of filing the appeal.

58 The Commission may on its own motion or on the application of any party correct any clerical or arithmetical errors in any order passed by the Commission.”

Further, the Commission has perused the case laws cited by the petitioner in support of the relief sought in the light of Hon'ble APTEL's judgement for the FY 2016-17. The crux of the citations is as under:

- *Tamil Nadu Electricity Board Vs. Tamil Nadu Electricity Regulatory Commission*, appeal no. 51 of 2008 decided on 02.04.2009, wherein it has been held that the failure to adhere to the procedure for passing a tariff order is an error apparent and can be set aside in review.
- *Board of Control for Cricket in India And Another Vs. Netaji Cricket Club and Others* in case No. (2005) 4 SCC 741, the Supreme Court.

An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words “sufficient reason” in order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an

advocate. An application for review may be necessitated by way of invoking the doctrine “actus curiae neminem gravabit”.

The Commission observes that review jurisdiction can be exercised if there exist sufficient reasons. However, the well-known maxim of “actus curiae neminem gravabit”, referred to in the *ibid* judgement, can be exercised only when the Court is legally satisfied and arrive at a valid finding that the order or the decree contains or omits something which was intended to be otherwise i.e. to say that while passing the decree the court must have in its mind that the order or the decree should be passed on a particular manner but that intention is not translated into the decree or order due to clerical, arithmetical error or accidental slip. In the present case the Commission was aware of the regulations as well as its own order dated 31.03.2016 (case no. HERC / PRO – 31 of 2015). Hence, the maxim *supra* is not squarely applicable in the present matter.

- Supreme Court of India (constitutional bench) *PTC India Limited Vs. Central Electricity Regulatory Commission* (2010)4 SCC 603

The measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178.

- Supreme Court of India - *Board of Control for Cricket, India and Ors. Vs. Netaji Cricket Club and Ors.* (2005) 4SCC741.

The court while exercising its review jurisdiction in any situation whatsoever can take into consideration a subsequent event.

**A perusal of the aforesaid case laws makes it clear that sufficient grounds exist for the Commission to exercise review jurisdiction. Moreover, the basic premise of the present review petition is the order dated 28.08.2019 passed by the Hon’ble APTEL setting aside the Commission’s order dated 31.03.2016 which was the basis of subsequent orders, now under review. Consequently, the Commission, in line with the HERC Regulations, 2012, occupying the field, orders that the methodology of calculating STOAC, in the present case, shall be reckoned with as per the judgement of the Hon’ble APTEL based on which the present review petitions have been preferred.**

*In order to avoid any doubts, it is made clear that going forward the STOC calculations shall be governed by the MYT Regulations in vogue including its subsequent amendments and / or re-enactments.*

*From the petitioner's response to the queries (reproduced earlier in the order) raised, the Commission is satisfied that the consumers who had availed Short Term Open Access during the period from the FY 2018 to FY 20 are identifiable and the quantum of power drawn by them individually is known. The petitioner has also quantified the year wise financial impact amounting to INR 33.16 Crore. Hence, the petitioner herein shall collect the differential amount from the short-term open access consumers so identified.*

*18. In view of the above discussions, the Commission allows the petition filed by HVPNL in case no RA 9 of 2020, RA 10 of 2020 and RA 11 of 2020. The petitioner shall recover the differential amount from the short-term open access consumers who had availed short – term open access during the FY 2017-18 to the FY 2019-20 worked out on the basis of their energy draws under Short Term Open Access mechanism i.e. for which they have already paid STOAC as per the impugned order(s). The petitioner shall treat the additional revenue so generated as per the relevant regulations.*

*In terms of the above findings, the review petitions preferred by the petitioners against the Commission's order dated 30.05.2017, 31.10.2018 and 07.03.2019 (case no. HERC/ RA 9 of 2020, case no. HERC/ RA 10 of 2020 and case no. HERC/ RA 11 of 2020) are allowed.*

**(Emphasis supplied)**

The principal contention advanced by the Respondents is that the Petitioner has failed to furnish a satisfactory explanation for the delay in filing the Review Petitions and, therefore, the same are liable to be dismissed as being barred by limitation. This contention, however, is devoid of merit. The Commission, in its Review Order dated 13.09.2021, reproduced herein above, has already examined the issue of limitation in detail and, upon being satisfied with the justification furnished by the Petitioner, condoned the delay. Notably, the said condonation was never assailed by the Respondents before the Hon'ble Appellate Tribunal for Electricity (APTEL) and has thus attained finality. The Respondents are, therefore, precluded from re-agitating the said issue in the present proceedings.

The Respondents have further questioned the maintainability of the Review Petitions. This issue also stands conclusively settled by the Commission in its Review Order dated 13.09.2021. The Commission categorically observed that it is bound by its own Regulations and that any deviation therefrom constitutes an error apparent on the face

of the record. In the present case, the Commission, while passing the original Tariff Orders, deviated from the methodology prescribed under the MYT Regulations, 2012, thereby committing a patent illegality. The Hon'ble APTEL, vide its judgment dated 28.08.2019, has expressly held that the STOA Charges ought to have been determined strictly in accordance with the MYT Regulations. The said judgment does not amount to a change in law but merely declares the correct legal position that existed at the time of passing of the original orders. It is a settled principle of law that where an order is passed in ignorance of binding statutory provisions or Regulations, the same constitutes an error apparent on the face of the record warranting exercise of review jurisdiction. The Review Order dated 13.09.2021, therefore, merely rectifies the pre-existing illegality arising from non-compliance with the MYT Regulations and aligns the determination of STOA Charges with the statutory framework governing the field.

**The contention of the Respondents that the Commission is empowered to deviate from its own Regulations in order to safeguard consumer interest is untenable in law. It is well settled, inter alia, by the Hon'ble Supreme Court in PTC India Limited v. CERC (2010) and by the Hon'ble APTEL in HVPNL v. HERC (2012), that once Regulations are framed, the Commission is statutorily bound to adhere to the same. Any deviation therefrom would render the order legally unsustainable. In the present case, the Commission had erroneously adopted "energy drawl" instead of "energy sales" as the denominator for computation of STOA Charges, which was contrary to the MYT Regulations, 2012 and thus constituted a patent error.**

**The Respondents have also contended that the re-determination of STOA Charges amounts to retrospective revision. This argument is misconceived. The Review Order dated 13.09.2021 does not introduce any new basis of levy but merely applies the methodology prescribed under the MYT Regulations, which were in force and binding at the time of passing of the original orders. The exercise undertaken in review proceedings is, therefore, corrective in nature and does not amount to retrospective revision, but rather enforcement of the law as it stood at the relevant time.**

**Further, the plea of "subsequent change in law" raised by the Respondents is without substance. The judgment of the Hon'ble APTEL does not constitute a change in law; it merely clarifies that the Commission had failed to apply the binding Regulations in the first instance. The review, therefore, is founded upon a pre-existing illegality and not on any subsequent development.**

In view of the foregoing, it is evident that the Commission is bound to act strictly in accordance with its own Regulations and is precluded from deviating therefrom. The Review Order dated 13.09.2021 has rightly exercised the review jurisdiction to rectify an error apparent on the face of the record, as also noted by the Hon'ble APTEL. Consequently, the re-determination of STOA Charges has been carried out in strict conformity with the proviso to Regulation 50(b) of the MYT Regulations, 2012.

The Respondents have failed to demonstrate any infirmity, much less any patent illegality, in the said re-determination. Accordingly, the objections raised by the Respondents are hereby rejected.

12. 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 06.05.2026.

Date: 06.05.2026  
Place: Panchkula

Sd/-  
(Shiv Kumar)  
Member

Sd/-  
(Mukesh Garg)  
Member

Sd/-  
(Nand Lal Sharma)  
Chairman