

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

Case No. HERC/PRO – 72 of 2020

**Date of Hearing : 29.09.2021
Date of Order : 11.10.2021**

IN THE MATTER OF:

Application Under Section 86(1) (e) Of Electricity Act, 2003 and Regulations 66 & 68 of the HERC/40/2018 RE Regulations, dated 27.08.2018 and amendments issued from time to time.

petitioner

Goodrich Carbohydrates Limited

Respondents

1. Haryana Vidyut Prasaran Nigam Ltd (HVPNL), Panchkula
2. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Panchkula
3. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Hisar
4. Haryana Renewable Energy Development Agency (HAREDA)

Present On behalf of the petitioner, through video Conferencing

1. Shri R.K. Jain

Present On behalf of the Respondents, through video Conferencing

1. Ms. Nikita Choukse, Advocate for respondent nos. 1 to 3
2. Shri Aditya Grover, Advocate for respondent no. 4

Quorum

**Shri R.K. Pachnanda
Shri Naresh Sardana**

**Chairman
Member**

ORDER

Brief Background of the case

1. The present petition has been filed by M/s. Goodrich Carbohydrates Limited, under Section 86(1) (e) of Electricity Act, 2003 and Reg. 66 & 68 of the HERC/40/2018 RE Regulations, seeking directions to the respondents to adjust solar power generated/injected during September 2019 – February 2020 from its captive solar power plants, refund of transmission and wheeling charges levied on the power injected from its captive solar power plant, and to allow execution of banking agreement with retrospective effect for the power injected into the grid from the date of commissioning of the captive power plants.
2. The petitioner has submitted as under: -
 - a) That M/s Goodrich Carbohydrates Ltd., Karnal is a large supply industrial consumer of the respondent Nigam with A/c No. 0402220000. The sanctioned contract demand of the

petitioner is 2850 kVA with connected load of 2565 kW under UHBVN and getting power supply on 11 kV level. The petitioner is in the business of manufacturing food products.

- b) That the petitioner has set up a captive solar power plant in the solar power park developed by M/s Rays Power Experts at Bhiwani and has created infrastructure to use open access facility. While it is primarily taking power from the respondent Nigam, but simultaneously, it is also using captive power generated from its captive solar power plant of 2.4 MW capacity, completed in March 2019 and commissioned in September 2019.
- c) That in addition to the captive solar power plant of the petitioner, 3 other following consumers have also set up their captive solar power plants in the same solar power park:

-

M/s G. S. Spinning Mills, Panipat	1.0 MW
M/s Garg Spinning Mills, Panipat	1.0 MW
M/s Bhartiya Spinners, Karnal	1.0 MW

These projects were also planned, executed, completed and commissioned along with that of the petitioner in the same solar power park on the same day.

- d) That Section 86 of the Electricity Act, 2003 casts responsibility on the State Electricity Regulatory Commission to promote generation of electricity from renewable sources of energy by providing suitable measures for connectivity with grid. Sub-Section 1(e) of Section 86 reads as under: -

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

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

- e) That Haryana Government, Renewable Energy Department, notified Haryana solar power Policy, 2016 on 14.03.2016. Clause 2.5 of this Policy provides for the development of solar parks and reads as under: -

“2.5 Development of solar parks:

To bring significant investment from project developers, to meet the solar Renewable Purchase Obligation (RPO) mandate, to achieve the targets fixed by the Government

and to boost the economy solar parks will be set up in the State. For that a Joint Venture company has been formed by HSIIDC and HPGCL named “Saur Urja Nigam Haryana Limited” (SUN Haryana). This company will aggregate lands in various parts of the State for setting up solar parks/solar power plants through Private power Producers.”

- f) That Chapter-II of this Policy deals with ‘Ground Mounted power projects’ and provides as under: -

“2.1 Ground mounted megawatt scale power plants:

solar power projects shall be set up by the independent power producers (IPP) for which Haryana Power Purchase Centre (HPPC) shall invite bids through open competitive bidding tenders. The Independent power producers shall meet with all the requirements, as per the State Grid Code, for setting up their projects.

For connectivity with grid, the IPPs shall connect the solar power plant with the nearest Sub-Station of transmission/ distribution licensee and inject the electricity at appropriate voltage of the Sub-Station.”

- g) That under Chapter-IV of this Policy various exemptions/benefits were assured to the developers of solar power plants in the State, as given hereunder: -

“4.3 Exemption of Electricity Duty & Electricity Taxes & Cess, wheeling, transmission & distribution, cross subsidy charges, surcharges and Reactive power charges:

All electricity taxes & cess, electricity duty, wheeling charges, cross subsidy charges, transmission & distribution charges and surcharges will be totally waived off for Ground mounted and Roof Top solar power projects.

4.1 power Evacuation Facility:

All expenses for power evacuation, transmission, distribution line and synchronizing equipment required for installation will be as per the orders of the Haryana Electricity Regulatory Commission for Electricity on Renewable energy Tariff & other issues, as modified from time to time.

The State transmission utility or the transmission/distribution licensee shall bear the cost of Extra High Voltage (EHV)/ High Voltage (HV) transmission line up to a distance of 10 km. from the inter-connection point. In case the distance between the inter connection point and point of grid connectivity is more than 10 kms then the cost of

transmission line for the distance beyond the 10 kms shall be borne equally between the Independent power Producer and the licensee.

The cost of any augmentation required after the interconnection point in the grid system of the transmission/distribution licensee shall also be borne by the concerned transmission/ distribution licensee.

4.2 power utilities will keep on upgrading the capacity of transformer/evacuation facility including the substation from time to time as per the generation requirement.

- h) That under Clause 6.3 of this Policy, Haryana Renewable Energy Development Authority (HAREDA) was declared as the Nodal Agency for the implementation of the Policy. This Clause reads as under: -

“6.3 Nodal Agency:

Renewable Energy Department is the nodal agency for the implementation of the Haryana Solar Power Policy-2016 on behalf of the Govt. of Haryana. All project developers shall be required to submit monthly reports with regard to parameter like energy generated, revenue earned, power factor and plant load factor achieved, reasons for non-achievement of full generation and any other information so called for by Renewable Energy Department/HAREDA so as to maintain and update data bank on solar power generation in the state and also for the purpose of monitoring of generation under RPO regulations.”

- i) That the New & Renewable Energy Department, Government of Haryana, issued directives under Section 108(1) of Electricity Act, 2003 regarding installation of solar power plants and associated issues concerning wheeling and banking of solar power dated 18.07.2017. Some of the important provisions under these directions were as under:

-

- *All wheeling charges, cross subsidy charges, transmission & distribution charges and surcharges will be totally waived off for ground mounted and rooftop power projects (Clause No. 4.3 of Haryana Solar Power Policy, 2016);*
- *Price preference will be given to the IPPs who set up the solar power plants in the State (Clause No. 4.5 of Haryana Solar Power Policy 2016).*
- *Haryana Vidyut Prasaran Nigam Ltd. (HVPNL) /Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVN)/ Utter Haryana Bijli Vitran Nigam Ltd. (UHBVN)/ licensee shall permit solar power generated by eligible producers to be banked. The banking facility shall be allowed for a period of one year by the licensees/utilities and IPP will pay the difference of Unscheduled Interchange charges (UI charges) at the time of injection*

and at the time of withdrawal. However, withdrawal of banked power should not be allowed during peak and Time of Day (ToD) hours. If banked energy is not utilized within a period of twelve months from the date of power banked with concerned power utilities/licensee, it will automatically lapse and no charges shall be paid in lieu of such power.

- j) That the New & Renewable Energy Department, Government of Haryana issued amendment to the Haryana Solar Power Policy, 2016 vide notification dated 08.03.2019 along with guidelines for approval of the solar power projects by HAREDA.
- k) That the Commission notified the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 on 24.07.2018. Thereafter 1st and 2nd Amendments to these Regulations were issued on 27.08.2018 and 13.05.2019, respectively.
- l) That the net impact of all these Regulations and subsequent amendments thereof is summarized as under: -
- i) Banking of RE power was permitted for all the RE based captive generating plants in the State on payment of the banking charges along with the transmission and distribution losses (Technical Loss) at the terms and conditions specified in the Banking Agreements.
 - ii) transmission/distribution licensee was to bear the cost of EHV/ HV transmission line upto a distance of 10 km.
 - iii) wheeling and transmission charges was exempted for the entire life of the project from the date of commissioning for all captive solar power projects
- m) That M/s Rays Power Experts Pvt. Ltd., Jaipur, the Solar Power Park Developer (hereinafter referred to as SPPD) submitted to HAREDA a proposal to set up a 50 MW solar power park in Village Rupani of Tehsil Siwani in Distt. Bhiwani. HAREDA issued 'No Objection' to this proposal vide letter dated 06.09.2018.
- n) That SPPD, vide letter dated 20.08.2018, simultaneously approached CE/Comml, HVPN (respondent No. 1) for seeking connectivity to the proposed solar power park at 33 kV substation, Kheda of respondent No. 2 (for 25 MW) and 132 kV substation, Miran of respondent No. 1 (at 33 kV level).
- o) That HAREDA, vide letter dated 08.03.2019, approved the proposal of SPPD for setting up of 10.1 MW captive power plants in solar park at Vill. Rupani, which included power plants of the following consumers: -

Name of Consumer	Capacity of captive solar power plant (MW)
M/s Goodrich Carbohydrates, (petitioner)	2.5
M/s Blow Packaging (India)	1.3

M/s Kamna Industries Pvt. Ltd., Kundli	0.3
M/s Dorset Industries, Gurugram	1.0
M/s KRBL Ltd.	2.0
M/s G. S. Spinning Mills, Panipat	1.0
M/s Garg Spinning Mills, Panipat	1.0
M/s Bhartiya Spinners, Karnal	1.0
Total	10.1

- p) That the SPPD approached respondent No. 1 for connectivity of the above 10.1 MW solar power plants vide letter dated 13.03.2019. respondent No. 1, vide letter dated 19.03.2019, conveyed in-principle feasibility to these captive power plants for connectivity through independent 33 kV line at 33 kV substation, Kheda of respondent No.2.
- q) That the construction of the captive power plant of the petitioner was completed on 30.03.2019 but could not be connected to the grid for want of final approval of connectivity from respondent No. 1, which was given vide letter dated 02.05.2019. The Chief Electrical Inspector to Govt. of Haryana approved the drawing of the solar project vide letter dated 04.06.2019.
- r) That finally a formal connection agreement was signed by the petitioner with 3 respondents and the Solar Power Park Developer (SPPD) on 29.07.2019. This Connection Agreement incorporated that the power to be generated from solar captive power plant at Vill. Rupani will be injected at drawal point of respondent No. 1 and made available to the petitioner and other embedded consumers from their captive power plants located in the above solar power park through distribution systems of respondent No. 2 & 3.
- s) That final inspection of the captive power plant was conducted on 09.08.2019. Pursuant to the signing of the Connection Agreement, power from the captive power plant of the petitioner started flowing to the state grid from 23.09.2019 onwards. A statement, giving details of the power generated from the captive solar power plants of the petitioner and other 3 consumers (who had set up captive solar power plants in the solar power park) injected in the State power Grid. This Statement shows that from 23.09.2019 to 19.05.2020, a total of 9,46,430 kWh of the solar energy was injected by the petitioner. The other 3 captive power plant owners mentioned above (who had their captive solar power plants in this solar park) also injected their generated solar power into the state grid during the same time period.
- t) That respondent No. 1 granted Long Term Open Access (LTOA) for the captive solar power plant of petitioner vide letter dated 13.12.2019. The petitioner conveyed acceptance to the terms and conditions of LTOA vide letter dated 22.01.2020. Finally, LTOA was signed by the petitioner with the respondents and SPPD on 27.02.2020. Similar LTOAs

were signed by the other 3 consumers (who owned captive power plants in the above solar power park) on the same date. Some of the relevant terms of these LTOAs are as under,

- i) Quantum of power to be transmitted – 2.4 MW (for others as per the capacity of the solar power plant commissioned);
 - ii) Point of injection of power (solar power plant located at Village Rupani, Tehsil-Siwani, Bhiwani, DHBVN, constructed by Rays Power Experts Pvt. Ltd., through 33 kV, Kheda);
 - iii) Point of drawl of power – through 11 kV Goodrich Feeder, 132 kV substation, Shakhpura Jagir at M/s Goodrich Carbohydrates Ltd., Village Nagla, Meerut Road, Karnal-132001 (for others as per the individual connecting line/feeder of the respective consumer);
 - iv) Date of grant of Open Access as 27.02.2020 for a period of 25 years;
 - v) The documents which were made an integral part of the agreement were mentioned under Clause 1 of the LTOA (these were similar for all the other 3 consumers who set up their captive power plants in the solar power park);
- u) Clause 3 of the LTOA provided for the 'charges for Open Access' applicable to the petitioner and others. These referred to contradictory regulations and the guidelines, such as,
- i) It is giving reference to all applicable regulations/ orders/ guidelines of HERC & CERC; [Clause 3(i) of LTOA]
 - ii) Further it mentions about the letter dated 08.03.2019 of HAREDA, thereby allowing exemption from payment of transmission charges/ wheeling charges for 10 years from the date of commissioning of the captive solar power project; [Clause 3(ii) of LTOA]
 - iii) It is also referring to Clause 4.3 of Haryana Solar Power Policy, 2016 as such; [Clause 3(ii) of LTOA]
 - iv) captive power generator not to inject power in the system in excess of the approved contract demand of the drawing premises in any of the 96 slots of the day; [Clause 3(iii(b)) of LTOA]
 - v) The intra-state open access charges would be applicable as per the transmission tariff approved by HERC from time to time; [Clause 3(iv) of LTOA]
 - vi) The applicant shall abide by the SLDC schedule and shall comply with all the directions issued by SLDC/ STU in respect of scheduling of kW & kVAR and control of net injection as per schedule approved by SLDC: [Clause 8 of LTOA]
 - vii) Settlement of disputes on LTOA to be dealt with as per clause 53 of the HERC Open Access Regulations, 2012.

- v) That some of the above provisions of the LTOA are self-contradictory and not even in line with the relevant Regulations on the subject. While HAREDA's letter dated 08.03.2019 talks of exemptions from wheeling & transmission charges for a period of 10 years from the date of commissioning of the captive solar power plant, HERC/40/2018/2nd Amendment/2019 Regulations dated 14.06.2019 provides for exemptions for the entire life of the captive solar power project and reads as under:-

“60 (1) Notwithstanding anything contained in any other Regulation(s) notified by the Commission, wheeling and transmission charges will be exempted for the entire life of the project from the date of commissioning for all captive solar power projects which have submitted applications to Haryana Renewable Energy Development Agency (HAREDA) for registration of project, purchased land or have taken land on lease for thirty years and have bought equipment & machinery or invested at least Rs. one crore per Mega Watt for purchase of equipment & machinery for setting up of such captive solar power projects till 13th February, 2019, while cross subsidy surcharges and additional surcharges are not applicable for captive solar power projects as per provisions of HERC Regulations (Electricity Act 2003). For determining the investment of Rs. One crore per MW, payment for equipment should be made into the bank accounts of equipment supplier before 13th February, 2019 and proof of the same is to be submitted.”

- w) That while the LTOA refers to the scheduling of power by the captive solar generator, the HERC/40/2018 RE Regulations notified on 24.07.2018 talks of 'Must Run' status of RE projects and reads as under:-

10. Despatch principles for electricity generated from Renewable Energy Sources. –

(1) All renewable energy power plants except for Biomass power plants of installed capacity 10 MW and above shall be treated as 'MUST RUN' power plants. Biomass power with installed capacity of 10 MW and above shall be subjected to scheduling and dispatch as specified under Haryana Grid Code and other relevant regulations including amendments thereto.

Therefore, the solar power plants come under the category of 'Must Run' projects and as such, scheduling is not applicable. Moreover, the solar power generation is totally unpredictable as it depends on the availability of sun during the day and its intensity thereof.

- x) That there is another important factor relating to the timing of the signing of the LTOA. The agreement recognized the fact that it took almost a year for execution of the LTOA after the submission of an application by the petitioner for grant of Long Term Open Access (in March 2019) and technical feasibility (reference drawn to Clause-1 of the LTOA). The fact is that the project was completed in March 2019 and the captive power plant of the petitioner was ready to generate power from the date of completion. Moreover, it needs to be appreciated that the 'Final Connectivity' to the project had also been granted by the respondent No. 1 in May 2019. Thus, the entire investment of the petitioner remained unproductive for almost one year.
- y) That it was only in September 2019 with the intervention of the Chairman & Managing Director of respondent Nos. 2 & 3 that the power generated from the captive power plants could be injected in the state grid. The following quantum of solar power was injected in the system from September 2019 (date of signing of LTOA) to 26.02.2020 and from 27.02.20 to 19.05.2020:-

Name of captive Generator/ consumer	solar power generated and injected in the system (in kWh)		
	23.09.19 to 26.02.20	27.02.20 to 19.05.20	Total
Goodrich Carbohydrates, Karnal	5,83,417	3,58,013	9,46,430

- z) That although the power generated from these captive solar power plants was allowed to be injected in the grid w.e.f. September 2019 but the respondents did not account for the above quantum of captive power generated/injected into the grid in the energy bills of the petitioner and other 3 captive generators.
- aa) That the petitioner had been pursuing with the respondents for adjustment of this power right from the date of signing of the LTOA. Some of the correspondence exchanged in this regard include: -
- i) Letter dated 15.05.2020 sent to SE/SO, UHBVN for adjustment of captive solar power;
 - ii) Letter dated 03.06.2020 addressed to CE/SO, UHBVN & DHBVN and CE/Comml., UHBVN for non-adjustment of captive solar power;
 - iii) Mail dated 25.06.2020 sent to HVPNL and others to get the power injected into the system adjusted in the bills from September 2019 to May 2020;
 - iv) Mail dated 11.08.2020 sent to HVPN and UHBVN and others with a request to get the solar power adjusted in the bills.
- bb) That the petitioner has already suffered huge financial loss on account of delay of over 6 months in allowing injection of captive power into the grid even though the project was completed in March 2019 and power allowed to be injected in September 2019. The complete investment made by the petitioner remained stranded and non-remunerative for these months. Even thereafter, the petitioner started injecting power in the system from

September 2019 but the same has not been adjusted in the bills so far in spite of repeated pursuance with the respondents.

- cc) That the respondents started adjusting the captive power since May 2020 but even while doing so, heavy wheeling charges to the tune of 23% are being loaded on this power of the petitioner. As already referred to in Para 23 of the petition, Clause 60 of HERC/40/2018/2nd Amendment/2019 Regulations dated 14.06.2019 clearly provide that these captive solar power projects are exempted from payment of transmission & wheeling charges. Even the State Government directions issued under S.108 (1) of Electricity Act, 2003 as referred to in Para 10 of the petition and Amendment to Haryana Solar Power Policy, 2016 notified on 08.03.2019 along with 'Guidelines for Approval of the solar power projects, referred to in Para 11 of the petition are very clear in this regard.
- dd) That the Commission has already adjudicated similar issues while considering the case of Marino Panel Products Ltd. vs HPPC & others, taken up as petition No. HERC/PRO-7 of 2019 decided on 16.04.2019 and HERC/PRO-48 of 2019 decided on 10.12.2019. Relevant extracts from these orders are reproduced hereunder:

petition No. HERC/PRO-7 of 2019 in the matter of 'petition seeking exemption of transmission & wheeling charges and execution of banking agreement with retrospective effect'

"9. The Commission has also considered the submission of HAREDA that it has registered the project for captive consumption of the petitioner for providing the waivers however it has not verified the commissioning of 5 MW solar power plant at Village Budak plant Distt. Hisar and if the captive solar power plant is commissioned during the control period then all the benefits provided under the RE Regulation 2017 are applicable. Further, even the amendment dated 08th March, 2019, made in the Haryana Solar Policy, 2016 by the New and Renewable Energy Department (HAREDA), has allowed waiver of wheeling and transmission charges for ten years from the date of commissioning for all captive solar power projects which have submitted applications to Haryana Renewable Energy Development Agency (HAREDA) for registration of project upto 13.02.2019. Admittedly, the project has been registered with HAREDA and although HAREDA has not verified the commissioning of 5 MW captive solar plant, the petitioner has submitted that the plant is already commissioning since 18th Jun 2018 and is injecting the solar power so generated into the grid.

10. The Commission further observes that banking is allowed to solar power producer under Regulation Clause No. 58 read with the amendment dated 08th March, 2019, made in the Haryana Solar Policy, 2016. The petitioner cannot be denied the banking

of solar power on the ground that the criteria for settlement of wheeled energy at Consumer end have not yet been formulated/approved.

11. In view of the above discussions, the Commission allows the petition subject to verification of the commissioning of the captive solar power plant of the petitioner by HAREDA. The petitioner shall be eligible for benefits in compliance of the HERC RE Regulations in vogue.”

Petition No. HERC/PRO-48 of 2019 in the matter of ‘petition for payment against the Units Injected by 05 MW solar power plant from 21st Jun 2018 to 30th Apr 2019 and Refund of transmission charges under protest.’

“The Commission observes that upon the submission of verification report by HAREDA dated 17.05.2019, verifying the commissioning of the captive solar power plant of the petitioner, the ibid Order of the Commission dated 16.04.2019 had reached finality. There is no plausible ground available with HVPNL for holding the refund of transmission charges paid under protest by the petitioner for the period from 18.06.2018 to February, 2019.

The Commission further observes that the adjustment on account of energy procured by the petitioner through its captive power plant has to be adjusted in the same month and the same cannot be allowed to be adjusted in future bills.

In view of the above, the Commission allows the petition. The respondents are directed to refund the amount due to the petitioner till date, along with interest calculated @ 8% from the date of verification report of HAREDA, within 10 days from the date of receipt of this Order.”

- ee) That the facts and circumstances in the case of the petitioner and other 3 similarly placed captive power plant owners/embedded consumers are similar to the case already decided by the Commission and as such, the petitioner and other 3 consumers are also eligible to similar relief, as granted to Marino Panel Products Ltd. in the aforesaid case.
- ff) That the following prayers have been made: -
- i) to accept the above petition in the present form;
 - ii) to give suitable directions to the respondents to adjust solar power generated/injected during September 2019 to February 2020 from the captive solar power plants located in solar power park of Rays Power Experts in Vil. Rupani, Tehsil Siwani, Distt. Bhiwani;
 - iii) to give directions to the respondents to refund the transmission charges and wheeling charges levied on the power injected from the captive solar power plant of the petitioner and other 3 consumers having captive solar plants in the solar power park;
 - iv) to allow execution of banking agreement with retrospective effect for the power injected into the grid from the date of commissioning of the captive power plants;

- v) to pass such other order(s) as may be deemed just and proper in the facts and circumstances of the case.

Reply filed by DHBVN (respondent no. 3)

3. DHBVN filed an affidavit dated 07.04.2021, containing a detailed reply on behalf of respondent Nos 1 to 3, praying to dismiss the petition. DHBVN has submitted as under:-
- a) The petitioner, by way of the present petition, is seeking relief for the petitioner along with the following three similarly placed captive power plant owners/embedded consumers located in solar power park of Rays Power Experts in Vil. Rupani, Tehsil Siwani, Distt. Bhiwani (“Other plant owners”).
- b) The dates of relevant events pertaining to approvals granted to the petitioner is encapsulated in the table below:

Date	Event
20.08.2018	SPPD submitted application seeking connectivity for its solar power park
19.03.2019	HVPNL granted In-Principle feasibility to the captive power plants including the plant of the petitioner situated in the solar power park developed by SPPD for connectivity through independent 33 kV line at 33 kV substation, Kheda of respondent No.2.
02.05.2019	HVPNL granted Final Connectivity to the captive power plants including the plant of the petitioner situated in the solar power park developed by SPPD
29.07.2019	Connection Agreement was signed by the petitioner, SPPD and the respondents
25.09.2019	Although the petitioner conveyed readiness of connectivity and power from the captive power plant of the petitioner started flowing to the State Grid. However, it is noteworthy that the petitioner submitted reports of ABT Metering System on 09.10.2019 (generator end) and 31.10.2019 (consumer end) through e-mail. The original test reports were submitted by petitioner on 04.11.2019 without signature of M&P Wing of HVPNL. In furtherance to this, M/s Rays Power Experts Pvt. Ltd. vide letter dated 16.01.2020 submitted to undertake that the metering equipment shall again be got tested duly witnessed by M&P Wing of DHBVN/HVPNL latest by 31.03.2020. Thus, it can be ascertained that a duly tested metering system was not in place until 31.03.2020.
13.12.2019	HVPNL granted Long Term Open Access (LTOA) for captive power plants including the plant of the petitioner situated in the solar power park developed by SPPD
07.01.2020	Submission of LTOA Agreement by Goodrich
16.01.2020	petitioner submitted acceptance to the terms and conditions of LTOA
27.02.2020	LTOA Agreement signed between the petitioner, respondents and the SPPD.
19.05.2020	The petitioner started submitting the day ahead schedule to the respondent in terms of Regulation 45 of HERC (Terms and conditions for grant of connectivity and open access for intra State transmission and distribution system) Regulations, 2012 (“HERC OA Regulations”)

Re: petition is premature as the petitioner has approached the Commission without referring the dispute to Coordination Committee as required under the HERC OA Regulations

- c) That connectivity, LTOA, scheduling for embedded open access consumer and adjustment of energy injected into the grid are subject to be dealt as per the HERC OA Regulations. HERC OA Regulations provide for a set procedure for redressal of disputes

arising under the Regulations which includes referring of disputes to the Coordination Committee and thereafter prefer appeal to the Commission. Accordingly, similar provisions for adjudication of disputes by Coordination Committee have been included in the Connection Agreement (Clause 9).

- d) That the Co-ordination Committee has been set up under Regulation 4 read with Regulation 53 of the OA Regulations. Regulations 53 provides special provisions for resolution of disputes under the OA Regulations by the Co-ordination Committee and provides that:-

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

- e) In the given facts and circumstances, since the petitioner has not referred the matter to the Coordination Committee, the petition is liable to be dismissed as premature.

Re: petitioner’s prayer seeking relief on behalf of other captive plant owners without any authorization from them is not maintainable.

- f) That the petitioner has sought relief on behalf of the three captive plant owners without placing on record any documents authorizing the petitioner to act for or on behalf of these three captive plant owners. Moreover, no documents or details in relation to injection of power or the alleged levy of wheeling and transmission charges on these three captive plant owners have been placed on record.

- g) Thus, the prayer of the petitioner seeking directions against the respondents in respect of the other three captive plant owners is outrightly not maintainable and ought to be rejected in limine with cost.

Re: Contention of the petitioner that the provisions of LTOA are self-contradictory.

- h) That the contentions of the petitioner that the provisions of the LTOA are self-contradictory or are not in line with the existing Regulations is clearly belated and an afterthought. The petitioner had unconditionally agreed to all the terms and conditions of the LTOA vide letter dated 16.01.2020 and thereafter signed the LTOA Agreement on 27.02.2020. No dispute was ever raised at that time by the petitioner. In fact, the petitioner is seeking adjustment of power injected under the same LTOA. Thus, it is erroneous for the petitioner to suggest that the LTOA provisions are contradictory.

Re: Adjustment of solar power generated/injected during September 2019 – February 2020 from the captive solar power plants located in the solar power park developed by SPPD.

- i) That the petitioner started injecting power into the grid from 25.09.2019 and not from 23.09.2019 as claimed by the petitioner in the petition. Although, in the prayer, in the petition, the petitioner is seeking adjustment of solar power injected during September 2019 to February 2020. However, in para 27 to 29 of the petitioner, the petitioner has

vaguely contended that the respondents did not account for the quantum of power injected from 23.09.2019 to 16.05.2020. Therefore, without prejudice to the argument that the petitioner has not sought relief for energy injected for the period from 27.02.2020 to 16.05.2020, the answering respondents are herewith responding on merits that the petitioner or the three other captive plant owners are not entitled to any adjustment for power injected from 25.09.2019 to 16.05.2020:-

A. power injected for the period from 25.09.2019 to 26.02.2020

- j) That although the petitioner claims that they were ready for connectivity from 25.09.2019 and started injecting power from that date, however, the reports of ABT Metering System were submitted by the petitioner only on 09.10.2019 (generator end) and 31.10.2019 (consumer end) through e-mail. The original test reports were submitted by petitioner on 04.11.2019 without signature of M&P Wing of HVPNL. In furtherance to this, M/s Rays Power Experts Pvt. Ltd. vide letter dated 16.01.2020 submitted to undertake that the metering equipment shall again be got tested and duly witnessed by M&P Wing of DHBVN/HVPNL latest by 31.03.2020. Thus, it is apparent that the duly tested metering equipment was not in place until 31.03.2020. Hence, it is difficult to fathom how the petitioner is claiming for adjustment of solar power injected from September 2019 onwards when the duly tested metering system which forms a part of the terms and condition of the LTOA granted [Refer (Clause a) 2. (iv), b(iv) and C (xi) of the LTOA dated 13.12.2019] was not in place until 31.03.2020.
- k) The LTOA Agreement with the petitioner was executed only on 27.02.2020 and the LTOA commences only from the date of execution of the LTOA Agreement. In this regards, Clause 10 of the LTOA Agreement states that it shall be valid and effective from the date of signing of this Agreement and meeting of conditions precedent as mentioned in Clause 2 of the Agreement, whichever is later.
- l) That Regulation 6 (13) and 6(14) of the HERC OA Regulations also provides that firm power cannot be injected into the grid prior to operationalization of Open Access and obtaining prior approval of SLDC. Further, operationalization of Open Access is subject to successful commercial operation of project. Relevant portion of the said Regulations is quoted as under:-

“6. Procedure for grant of connectivity. -...

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

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

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

- m) Thus, as such, any power injected into the grid by the petitioner prior to operationalization of Open Access cannot be considered as firm power and has to be dealt as per the extant Open Access Regulations.
- n) In view of foregoing facts and circumstances, no adjustment can be allowed to the petitioner for the power injected prior to the execution of the LTOA Agreement.

B. power injected for the period from 27.02.2020 to 16.05.2020

- o) The petitioner did not submit day ahead schedule for the period from 27.02.2020 to 16.05.2020 in terms of Regulation 42 and 45 of the HERC OA Regulation and the LTOA granted to them by the respondent. The petitioner has admitted to not sending the Day ahead schedule prior to May 2020 in its email dated 25.06.2020. The schedule has been received from the petitioner from 19.05.2020 for 20.05.2020 and onwards. Likewise, other 3 captive plants have also started submitting day ahead schedule from 19.05.2020 for 20.05.2020 and onwards.
- p) That the HERC OA Regulations were amended on 03.12.2013. By way of the said amendment, Regulation 42 was amended and a mandatory obligation was cast on the embedded consumer (who was willing to avail open access) to submit to the distribution licensee (the respondent herein) a schedule of power through open access for all 96 slots by 10:00 AM of the day preceding the day of transaction, as under: -

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

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

The total admissible drawl in different time – slots shall, however, be worked out based on slot-wise admissible drawl from the licensee as above and the slot-wise schedule of power through open access accepted / cleared by the power exchange and intimated to the SLDC and distribution licensee by the consumer in compliance of regulation 45. For

example if, as per the schedule for drawl of power through open access submitted by the consumer at 10 AM of the day preceding the day of transaction, 4 MW power was scheduled through open access in a time slot and as per the accepted schedule this gets reduced to 3 MW, then his admissible total drawl in that time slot shall be 9 MW. i.e. 6 MW from the licensee and 3 MW through open access.

In case recorded drawl of the consumer in any time slot exceeds his total admissible drawl but is within 105 % of his contract demand, he will be liable to pay charges for the excess drawl (beyond admissible drawl) at twice the applicable tariff including FSA. In case the recorded drawl exceeds the sanctioned contract demand by more than 5% at any time during the month as per his energy meter, demand surcharge as per relevant schedule of tariff approved by the Commission shall also be leviable. For the purpose of calculating demand surcharge in such cases, the total energy drawl during the month including the energy drawl through open access shall be considered. The consumption charges for the energy drawl through open access, for the purpose of levy of demand surcharge, will be worked out at the applicable tariff for the category to which the consumer belongs...”

- q) That the condition of intimating day-ahead scheduling to the respondent was introduced by way of an amendment as this Commission acknowledged the difficulties being faced by the respondent when the consumers were not intimating the schedule. The same is necessary for claiming adjustment under Regulation 43 of the OA Regulation. This Commission vide order dated 17.12.2019 passed in PRO 72 of 2017 and other similar matters has held that compliance of Regulation 42 is mandatory. Relevant portion of the Order dated 17.12.2019 is reiterated below for ease of reference: -

“The Commission observes that all the provisions of the Regulations notified by the Commission in its legislative capacity, have the force of law behind it. Hence a statute has to be construed according to the intent of the legislation, as the same, as reflected in the ‘objectives’ is to make the dispensation effective and workable.

...

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

- r) That Clause (ii) and (vii) of the LTOA approval categorically requires the petitioner to adhere to the OA Regulations and to provide the day ahead schedule:

“(ii) The firm will abide by the regulations framed by the Regulatory Authorities from time to time. Also, the consumer will adhere to clause 45 of HERC notification dated 11.01.2012 (Scheduling for Embedded Open Access Consumer)

...

vii) *The consumer/ firm will provide the confirmed open access schedule on day ahead basis for 96 time blocks to DISCOM by 10:00 am (email id: openaccessbid@gmail.com&stoabid@gmail.com), of the day preceding day of the transaction and shall be subject to the condition that the contract demand of the particular slots will be reduced by the extent of open access contract power”.*

In view of the above-mentioned violation of the HERC OA Regulation and the LTOA granted to the petitioner, the petitioner or any of the Other captive plant owner is not entitled/ eligible for settlement/adjustment of units injected from 27.02.2020 to 19.05.2020.

Re:Refund of transmission and wheeling charges

- s) It is vehemently denied that any transmission or wheeling charges have been deducted from the power injected from the plant of petitioner or the other captive plant owners. The petitioner has failed to place on record any document demonstrating deduction of such amount. The plant of the petitioner has been approved by HAREDA vide letter memo no. DNRE/2019/1556 dated 08.03.2019 for availing exemption of transmission & wheeling charges. Therefore, the transmission and wheeling charges have not been deducted by the respondents in view of the exemption provided to captive solar plants under the solar Policy. Accordingly, reliance placed on petition No. HERC/PRO-7 of 2019 decided on 16.04.2019 and HERC/PRO-48 of 2019 decided on 10.12.2019 is clearly misconceived. Hence, the petitioner may be put to strict proof for demonstrating this alleged deduction.

Re: Execution of banking agreement with retrospective effect for the power injected into the grid from date of commissioning of the captive power plants

- t) The petitioner is seeking execution of banking agreement with retrospective effect for the power injected from date of commissioning of power plant by placing reliance on HERC order dated 16.04.2019 (HERC/PRO-7 of 2019 in the matter of Merino Penal) wherein the Commission, inter alia, directed that banking facility was to be allowed in terms of Regulation 58 of the RE Banking Regulations, 2017, post-facto, for No-Banking Arrangement.
- u) That under Regulation 58 of the HERC RE Regulations, a generator or a captive power producer or a Consumer in the State of Haryana may bank power on payment of the banking charges along with the transmission and distribution losses (for availing the open access on the transmission or distribution network of the licensees) for banking and drawl of banked power from the DISCOMS after entering into the banking agreement with the concerned DISCOM at the terms and conditions specified in the agreement. The Regulation clause no. 58 of HERC RE Regulations is reproduced as under:

“58. Banking of RE power. – A generator or a captive power producer or a Consumer in the State may bank power on payment of the banking charges along with the transmission and distribution losses for availing the open access on the transmission or distribution network of the licensees for banking and drawl of banked power from the Discoms after entering into the

banking agreement with the concerned Discoms at the terms and condition specified in the agreement, as follows:

- v) That adjustment in calculation for banking for the No-banking Agreement Period or grant of banking from the date of commencement of generation has not been premised in any existing regulation or even in the Guidelines / Procedure provided by the Commission in order dated 13.05.2019 in case no. HERC/PRO-22 of 2019. Therefore, this prayer of the petitioner is invalid and not maintainable. It may not be out of place to state that allowing such a prayer leads to a lot of confusion and further in disputes in relation to adjustments and calculation.
- w) That the petitioner and the 3 other plants have not provided the day ahead banking schedule for the period from the date of commissioning of the captive power plants. Thus, in any case, benefits of banking cannot be extended to the petitioner. Reliance here is placed on recent order of this Commission dated 01.04.2021 (PRO 73 of 2020, in the matter of wherein the Commission has observed that “*obligation of the petitioner to submit day ahead banking schedule was not dependent upon the formal signing of banking agreement or communication of format by the respondents. The requirement of the same was enshrined in the Procedure/guidelines of banking of RE power approved in the Order of the Commission dated 13.05.2019 (HERC/PRO-22 of 2019). Further, the said procedure was been prepared in compliance to the HERC RE Regulations, 2017 and it has been specifically provided that this Procedure shall be read in conjunction with the said Regulations. The Commission observes that all the provisions of the Regulations notified by the Commission in its legislative capacity, have the force of law behind it.*”
- *The Commission further observes that the requirement of intimation of day ahead banking schedule by the petitioner came into existing, vide the Order of the Commission dated 13.05.2019 (HERC/PRO-22 of 2019).*”
- x) Pertinently, the Banking Agreement with the petitioner has been executed by the respondents on 26.02.2021.
- y) That in view of what has been stated hereinabove, the prayers sought for by the petitioner are denied and the instant petition is liable to be dismissed.

Reply filed by HAREDA (respondent No. 4)

4. HAREDA filed its reply dated 24.05.2021, submitting as under: -
- a) That the answering respondent – HAREDA on 08.03.2019 had approved the captive solar power project of the petitioner having 2.5 MW capacity under the provisions of Haryana Solar Power Policy, 2016, as amended on 08.03.2019, with waivers of wheeling and transmission charges, for entire life of the project i.e. 25 years.

- b) That the instant matter, the petitioner had claimed the date of commissioning of the project on 09.08.2019, which is supported by communication dated 09.08.2019 issued by Executive Engineer, Electrical Inspectorate, Haryana.
- c) That it is the case of the petitioner that the petitioner started injecting power from its project to the grid of the respondent-DISCOM with effect from 23.09.2019 and accordingly the petitioner has sought that the units so injected may be accounted in the account of the petitioner with the DISCOM.
- d) That the solar projects are 'Must Run projects', as per the Haryana Solar Power Policy as also the Regulations framed by this Commission. Thus, the power so injected by such projects is necessarily to be accepted and accounted for by the DISCOM.
- e) That further, since the project under reference happens to be a captive solar power project, thus Additional Surcharge and Cross Subsidy Surcharges as per Electricity Act, 2003 are not applicable.
- f) That further as per the provisions of Haryana Solar Power Policy, 2016, as amended on 08.03.2019 as also HERC Regulations, banking for the captive solar power projects is duly permissible.
- g) That in light of the facts and submissions made above, this Commission may pass appropriate orders as deemed fit.

Proceedings in the Case

5. The case was heard through video conferencing on 14.07.2021, in view of the Covid-19 pandemic. The Commission directed the petitioner to work out the details of the transmission and wheeling charges recovered from it, other than losses deductible as per the relevant provisions of HERC RE Regulation in vogue read with the procedure/guidelines for banking of Renewable Energy (RE) power, approved by the Commission vide order dated 13.05.2019. Pursuant to the same, the petitioner filed its reply dated 16.09.2021, submitting as under:-

That the petitioner has compiled actual data based on figures incorporated in monthly energy balance/adjustment sheets compiled by UHBVN and data compiled by HVPN on monthly basis. The data contains figures of actual energy injected at the injection point into the State Grid at 33 kV voltage and net energy adjusted by the DISCOMs at the ultimate consumption point. The grievances of the petitioner are as under:-

- i) Heavy deduction on account of transmission & distribution losses:-

Although the utility has not levied transmission & distribution charges but there are other open access charges being recovered which result in much truncated benefit of the delivered energy to the petitioner. It is immaterial whether the deduction is on account of transmission and distribution charges or the transmission & distribution

losses and deviation charges. Firstly, the energy generated and injected into the system has not been credited at the consumption end on flimsy grounds, and then a sizeable part of the captive energy is deducted on account of non-existent imaginary losses.

ii) Deduction of distribution losses separately for UHBVN and DHBVN:-

That both the DISCOMs are charging distribution losses as if the power is physically flowing from generating station to the consumption point. Fact is that the solar power generated/injected at generating point doesn't flow over the distribution systems of either of two power utilities. The power flow is more by way of displacement and consequent adjustment. The solar power of the petitioner, upon injection into the DHBVN system, gets consumed by the electricity consumers in the nearby distribution area/system. This injection, in effect, helps to reduce the transmission & distribution losses of the distribution utilities as in the absence of this power, distribution company would have to supply power to these consumers of the area from generating sources located far away from the consumption point. Thus, it is an additional power source right adjacent to the consumption point. Same applies to the point of consumption of the petitioner. There is no change in the pattern of power consumption of the petitioner as he continues to draw same power which he was drawing prior to the setting up of the solar power plant. It is only a book adjustment to be given for the solar power generated and consumed around generating station.

Had this concept been applied to power flow to the State from various power plants located far away from the State and transmission losses paid for all the intervening States, the net power drawn by Haryana would have been reduced by a drastic level. There also it is the adjustment by displacement and not physical transmission.

The two power distribution utilities of Haryana are still being treated as one unit for the matter of power purchase, tariff and other important parameters. The power purchased from different sources are pooled for the purpose of ARR irrespective of their individual location. Thus, although there are no distribution losses in such transaction of captive solar power and resultant reduction of transmission losses but the Commission may kindly decide as to the permissible deduction from the power injection figures.

iii) Levy of Deviation charges:

The Commission has notified HERC/43/2019 Regulations and HERC/44/2019 Regulations dated 29.04.2019 dealing with 'Deviation, Settlement Mechanism and related matters. The applicability of these Regulations is as provided under Clause 4 of these Regulations. While for projects, other than solar & Wind, the limit is 10 MW but for solar & wind projects, it is fixed as 1 MW.

Simultaneously, the RE Regulations notified by Hon'ble Commission in 2021 categorize power generated from renewable sources which are dependent upon nature's phenomenon as 'Non-firm power'. The Regulation reads as under,

(18) 'Non firm power' means the power generated from renewable sources, the hourly variation of which is dependent upon nature's phenomenon like sun, cloud, wind, etc., that cannot be accurately predicted;

Therefore, having accepted the nature of the solar power as non-firm power which cannot be accurately predicted, any levy of deviation charges is bound to be against the spirit of RE Regulations. Any scheduling/forecasting of solar power is bound to be factually wrong and purely a guess work.

6. The final hearing of the case was held on 29.09.2021 through video conferencing, in view of the Covid-19 pandemic, wherein the petitioner as well as the respondents, reiterated the contents of their written submissions, which for the sake of brevity have not been reproduced.

Commission's Analysis and Order

7. The Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by the parties. The prayers of the petitioner are threefold namely i) adjust solar power generated/injected during September 2019 – February 2020 from its captive solar power plants, ii) refund of transmission and wheeling charges levied on the power injected from its captive solar power plant, and iii) execution of banking agreement with retrospective effect for the power injected into the grid from the date of commissioning of the captive power plants. The Commission has not deliberated on the issue of levy of deviation charges, raised by the petitioner in its reply dated 16.09.2021, as the same was not covered in the original petition and hence, is beyond the scope of the present proceedings. Nonetheless, the settlement of deviations in case of solar power has to necessitated be within the four corners of the HERC (DSM) Regulations, in vogue.
8. Upon hearing the rival contentions and careful examination of the documents placed on record by the parties, the findings and order of the Commission on each issue raised by the petitioner are as follows: -

Issue (a):

Adjustment of solar power generated/injected during September 2019 – February 2020 from its captive solar power plants.

The petitioner has prayed for adjustment of solar power generated/injected during September 2019 to February 2020 from the captive solar power plants located in solar power park. The petitioner in its rejoinder dated 31.03.2021, has submitted that there was typographical error in the prayer part and the period may be referred to as 'Sept., 2019 to May, 2020'.

Per-contra, the respondent nos 1 to 3, have termed the petition as premature, since the petitioner has not followed the Dispute Resolution Mechanism prescribed in Regulation 53 of HERC (Terms & Conditions for grant of connectivity and open access for intra-state transmission and distribution system) Regulations, 2012 as amended from time to time (hereinafter referred to as "HERC OA Regulations") as well as the Long Term Open Access Agreement (LTOA) signed on 27.02.2020. Further, it has been submitted that the prayer of the petitioner to seek relief on behalf of other captive plant owners, without any authorization from them, is not maintainable. Although, the petitioner, in the petition, has stated that the respondents have started adjusting the captive power since May 2020, but, the main prayer is limited to the adjustment of such power up to February, 2020 only. The adjustment of captive power injected for the period from Sept., 2019 to Feb., 2020, was not granted due to the fact that the petitioner had not installed duly tested / witnessed metering equipment and most importantly the LTOA was signed on 27.02.2020. Further, the adjustment of captive power injected for the period from 27.02.2020 to 16.05.2020, was not granted due to the fact that the petitioner had not submitted day ahead schedule as envisaged in Regulations 42 and 45 of HERC OA Regulations as well as the Long Term Open Access Agreement (LTOA) signed on 27.02.2020. The respondents started receiving the schedule from the petitioner from 19.05.2020 for 20.05.2020.

At the onset, the Commission observes that the prayer of the petitioner to seek relief on behalf of other captive plant owners without any authorization from them is not maintainable. Shri R.K. Jain, Ld. Counsel for the petitioner, is strictly advised to refrain from advancing such arguments which do not stand to logic. Further, in order to examine the rival contentions, the Commission examined the Regulations of HERC OA Regulations, occupying the field, as reproduced hereunder:-

"6. Procedure for grant of connectivity. -...

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

(14) A generating station, including a captive generating plant, which has been granted connectivity to the intra-State grid, shall be allowed to inject infirm power into the grid during

testing including full load testing before commencing its commercial operation for a period not exceeding three months after obtaining prior permission of the State Load Despatch Centre. Provided that the State Load Despatch Centre while granting such permission shall keep the grid security in view and ensure that injection of such infirm power is only for the purpose of testing, prior to commencing of commercial operation of the generating station or a unit thereof.”

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

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

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

In case recorded drawl of the consumer in any time slot exceeds his total admissible drawl but is within 105 % of his contract demand, he will be liable to pay charges for the excess drawl (beyond admissible drawl) at twice the applicable tariff including FSA. In case the recorded drawl exceeds the sanctioned contract demand by more than 5% at any time during the month as per his energy meter, demand surcharge as per relevant schedule of tariff approved by the Commission shall also be leviable. For the purpose of calculating demand surcharge in such cases, the total energy drawl during the month including the energy drawl through open access shall be considered. The consumption charges for the energy drawl through open access, for the purpose of levy of demand surcharge, will be worked out at the applicable tariff for the category to which the consumer belongs...”

The reason behind such an amendment has been provided by this Commission in the above said Regulations itself, as under:-

“distribution licensees have often brought to the notice of the Commission the difficulties being faced by them in the planning / managing their drawl of power from the grid as also in the load control in a cost effective manner unless a confirmed schedule of power through open access tied up for the next day by the open access consumers is made available to them sufficiently in advance. The total quantum of open access power for the next day i.e. for 00.00 hours to 24.00 hours of the following day, against day ahead transactions is known by the distribution licensees only between 5 p.m to 6 p.m of the previous day. Thereafter the licensees have no time and are not in a position to take any corrective measures to affect alternations in their own schedule for surrendering any surplus power or for arranging more power in case of any shortfall as by that time distribution licensees’ own bids/schedule for energy drawl would have been approved by the power exchange / RLDC. The result is that they invariably are forced to under draw / over draw or impose avoidable cuts leading to financial losses and consequent additional burden for other consumers due to actions of the open access consumers.

The Commission feels that it would not be fair and justifiable if any losses of the distribution licensee on account of energy transactions by open access consumers get passed on, directly or indirectly, to other consumers. The Commission, to address these problems /difficulties, after a careful consideration of all these aspects, has prescribed certain additional conditions for grant of open access in case of day ahead transactions by open access consumers. The foremost among these additional conditions is that for day ahead transactions, the open access consumers shall submit a confirmed slot- wise schedule of power through open access and from the licensee for the next day at 10:00 hours of the previous day to the distribution licensee and SLDC.”

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

Regulation 6(13) and 6(14) of the HERC OA Regulations specifies that the grant of connectivity does not entitle the applicant to inject power into the grid, without obtaining open access, which is allowed only for testing purpose. Thus, the petitioner was entitled to inject power into the grid w.e.f. 26.02.2020 i.e. after signing of the LTOA and not upon the signing of connectivity agreement in July, 2019. Further, Regulation 42 specifies that the open access shall be granted subject to the condition that the consumer shall submit a schedule of power through open access for all the 96 slots by 10:00 AM of the day preceding the day of transaction. The purpose of imposing such a condition is to enable the DISCOMs to systematically plan the scheduling of power from various sources. There is no denial of the fact that solar

power is 'infirm power' and solar power plants are 'must-run' and not subject to scheduling or backing down by DISCOMs, however, the intimation of day ahead transaction of such power is imperative to enable DISCOMs to plan their power procurement.

The need for submission of the day ahead schedule has also been provided in the Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement and related matters for solar and Wind Generation) Regulations, 2019 (hereinafter referred to as "HERC Deviation Settlement Regulations, 2019"), notified w.e.f. 29.04.2019. The relevant provisions of the ibid Regulations are reproduced as under:-

"3 Objective

3.1. These Regulations are intended to facilitate Grid integration of Wind and solar energy generated in Haryana while maintaining Grid stability and security as envisaged under the Haryana Grid Code and the Act, through forecasting, scheduling and a mechanism for the settlement of deviations by such Generators.

3.2. In order to maintain system security, stability and reliability, the SLDC shall take into consideration the forecasts of Wind and solar generation for Week-Ahead, Day-Ahead and intra-Day operations and scheduling and long term forecasts for its planning.

(Emphasis supplied)

"4 Applicability

4.1 These Regulations shall apply to all Wind and solar Energy Generators in Haryana connected to the Intra-State transmission /distribution System, including those connected through Pooling Sub-Stations, and using the power generated for self-consumption or sale within or outside the State:

(Emphasis supplied)

"5 Forecasting and Scheduling Code

5.1. This Forecasting and Scheduling Code specifies the methodology for Day-Ahead scheduling of Wind and solar Energy Generators connected to the intra-State transmission /distribution Network, its revisions on a one and a half hourly basis, and the treatment of their deviations from such Schedules."

The Regulations occupying the field as reproduced herein leaves no iota of doubt that the petitioner was entitled to inject power into the grid w.e.f. 26.02.2020 i.e. after signing of the LTOA and was further required to provide day-ahead schedule in order to enable the DISCOMs to plan their power requirements. The generator/captive power consumer was even liable for levy of deviation charges for deviations from such schedule. Thus, the petitioner is not entitled to seek adjustment of solar power generated/injected during September 2019 to 16.05.2020 from its captive solar power plants, due to injection of power prior to signing of the LTOA agreement and thereafter not submitting the day ahead schedule of solar generation. The LTOA agreement was signed under the relevant provisions of HERC OA Regulations, 2012. The petitioner has not adopted the prescribed dispute resolution mechanism provided in the LTOA agreement signed on 26.02.2020 and Regulation clause no. 53 of HERC OA Regulations, 2012 and instead proceeded to file a petition in this Commission. Accordingly, the petitioner has contravened the provisions of the Regulations notified by the Commission in its legislative capacity, having the force of law behind it. The petitioner is also estopped from seeking relief for other captive plant owners without any authorization from them. The Commission is not imposing any penalty on the petitioner at this stage for such delinquent actions and non-compliance of the Regulations of the Commission. However, Shri R.K. Jain, counsel for the petitioner, is directed to take due care in future.

Issue (b):

Refund of transmission and wheeling charges levied on the power injected from its captive solar power plant.

The learned counsel for the petitioner has submitted that the respondents started adjusting the captive power from May 2020 but while doing so, heavy wheeling charges are being loaded on this power of the petitioner, although captive solar power projects are exempt from payment of transmission & wheeling charges, as per Regulation Clause 60 of HERC/40/2018/2nd Amendment/2019 Regulations dated 14.06.2019.

Per-contra, the respondent Nigam has vehemently denied levying transmission or wheeling charges on the power injected from the plant of petitioner and advanced the argument by stating that the petitioner may be put to strict proof for demonstrating this alleged deduction.

During the course of hearing, the Commission enquired from the petitioner about the details of the transmission and wheeling charges recovered from it, other than losses deductible as per the relevant provisions of HERC RE Regulation.

The petitioner conceded that the utilities have not levied any transmission & wheeling charges as prayed for in the main petition but transmission & distribution losses along with deviation charges are being recovered i.e. 23% of the power injected by the petitioner has been deducted towards transmission & distribution losses. **The Commission observes that the petitioner has admitted that transmission & wheeling charges have not been levied by the power utilities, other than losses deductible as per the relevant provisions of HERC RE Regulation in vogue, read with the procedure/guidelines for banking of Renewable Energy (RE) power, approved by the Commission vide order dated 13.05.2019. Therefore, the relief sought by the petitioner is rejected, being devoid of merit i.e. something that has not been charged and collected in the first place, cannot be refunded. Moreover, the learned counsel raised the issue of illegal levy of transmission and distribution losses by both the Discoms. The Commission has perused the Regulation 58 of the HERC RE Regulations, 2017, as amended from time to time, cited by the learned counsel for respondent nos 1 to 3, as well as the Commission's order dated 13.05.2019 in the matter and observes that the ibid Regulations provides for levy of transmission and distribution losses (technical loss) for availing the open access on the transmission and distribution network of the licensees for banking and drawl of banked power from the Discoms. Thus, the Regulations provides for levy of losses for availing open access on the network of the licensees i.e. power utilities and not the Discom(s) alone. The levy of losses of both the Discoms was also decided by the Commission in its order dated 13.05.2019.**

The learned counsel for the petitioner, Shri R.K. Jain, dwelt at length on the bills issued to them and the item-wise entry thereof. The Commission observes that the learned counsel who has been appearing before this Commission since long and has also been a part of the power utilities, ought to know that billing related issues are to be taken up with the CGRF set up for this purpose.

Issue (c):

Execution of banking agreement with retrospective effect for the power injected into the grid from the date of commissioning of the captive power plants.

The issue has been raised by the petitioner by way of prayer, without any requisite detail in the petition, except for the reference of two earlier order of the Commission viz. order dated 16.04.2019 (petition No. HERC/PRO-7 of 2019) and order dated 10.12.2019 (petition No. HERC/PRO-48 of 2019), in the matter of Marino Panel Products Ltd. vs HPPC & others.

The Commission's order dated 16.04.2019 (petition No. HERC/PRO-7 of 2019), was on different premise, facts & circumstances and limited to the observation of the Commission that banking is allowed. The relevant part of the order of the Commission dated 16.04.2019 is reproduced here under:-

“10. The Commission further observes that banking is allowed to solar power producer under Regulation Clause No. 58 read with the amendment dated 08th March, 2019, made in the Haryana Solar Policy, 2016. The petitioner cannot be denied the banking of solar power on the ground that the criteria for settlement of wheeled energy at Consumer end have not yet been formulated/approved.

11. In view of the above discussions, the Commission allows the petition subject to verification of the commissioning of the captive solar power plant of the petitioner by HAREDA. The petitioner shall be eligible for benefits in compliance of the HERC RE Regulations in vogue.”

Further, the procedure / guidelines for banking of RE power were not available at that time. The same was approved by the Commission in its order dated 13.05.2019 (HERC/PRO-22 of 2019), which includes, amongst others, the application for banking to be submitted along with the relevant documents prescribed therein, banking agreement, terms & conditions of banking etc.

The Commission's order dated 10.12.2019 (petition No. HERC/PRO-48 of 2019), was to uphold the decision in the order dated 16.04.2019, supra. The Commission, in its ibid order dated 10.12.2019, has held that upon verification of the commissioning of the captive solar power plant of the petitioner, the petitioner was entitled to the benefits provided under the Regulations in vogue. However, the issue of applicability of day ahead schedule or banking with retrospective effect, was not discussed in the ibid orders. The relevant part of the Order of the Commission dated 10.12.2019 is reproduced hereunder:-

“The Commission observes that upon the submission of verification report by HAREDA dated 17.05.2019, verifying the commissioning of the captive solar power plant of the petitioner, the ibid Order of the Commission dated 16.04.2019 had reached finality. There is no plausible ground available with HVPNL for holding the refund of transmission charges paid under protest by the petitioner for the period from 18.06.2018 to February, 2019.

The Commission further observes that the adjustment on account of energy procured by the petitioner through its captive power plant has to be adjusted in the same month and the same can not be allowed to be adjusted in future bills.”

In order to examine the issue further, the Commission referred to the procedure/guidelines of banking of RE power approved in the order of the Commission dated 13.05.2019 (HERC/PRO-22 of 2019), reproduced hereunder:-

“vii. As per Open Access Regulations 2012, by 10:00 hrs every day, the consumer shall submit slot wise schedule of power in MW to SLDC, Haryana on daily basis for the next day i.e. 00:00 hrs to 24:00 hrs showing his drawl from the following:-

- 1. Generation through solar plant.*
- 2. captive power plant.*
- 3. Banked power.*
- 4. Open Access power through Exchange.*
- 5. Discom power.*

Similarly, the generator shall also submit slot wise schedule of injection of power in MW to SLDC, Haryana on daily basis and power to be drawn at each of the drawl point.”

The Commission observes that the procedure/guidelines of banking clearly stipulate that a consumer is required to provide day ahead schedule incorporating his drawl of power from different sources including captive power plant. The day ahead schedule cannot be provided with retrospective effect. The respondent, in its reply has submitted that banking agreement with the petitioner herein has already been executed on 26.02.2021 and the adjustments are given as per the Regulations in vogue. Therefore, nothing remains for consideration of the Commission on this issue.

9. 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 11.10.2021.

Date: 11.10.2021
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman