

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of non-compliance of Retail Tariff Order by not allowing TOD rebate to the petitioner as per clause (b) Time of Day Surcharge/ Rebate and clause (d) Rebate for incremental consumption for existing HT connections as specified in General Terms and Conditions of High-Tension Tariff.

Petition No. 66 of 2020

ORDER
(Hearing through Video Conferencing)
(Date of Order: 29th June' 2021)

Porwal Auto Components Ltd. (Solar Division)

Plot No. 209, Sector-1, Pithampur
Distt. Dhar (MP) – 454 775

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Petitioner

Vs.

The Managing Director

M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd.
GPH Compound, Pologround, Indore – 452001

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Respondent

Shri Ajay Porwal appeared on behalf of the Petitioner.

Shri Vijay B. Sharma, Advocate and Shri Nirmal Sharma appeared on behalf of the Respondent.

The subject petition was filed by M/s Porwal Auto Components Ltd. (Solar Division) against non-compliance of Retail Supply Tariff Order by not allowing Time of Day Surcharge/ Rebate under clause (b) and the Rebate applicable for incremental consumption to the petitioner for its existing HT connections as specified in General Terms and Conditions of High-Tension Tariff. The petitioner also requested to direct the Respondent to allow TOD rebate.

2. The petitioner broadly submitted the following in the subject petition:

“(1) That Petitioner has established two solar PV power captive power plants for use of 100% power as captive use under GOMP Solar policy 2012 and under section 9 of The Electricity Act 2003 and have also availed open access under section 9 (2) of The Act for transmitting of power generated at Point A (at Village Karodia, Tehsil Tarana, Dist Ujjain to point B to its industrial unit at Pithampur sector 1 Pithampur. The plants were commissioned on dated 27/12/2013 and dated 08/11/2017.

(2) That Hon’ble Commission notified 8th amendment to Regulation 2010 on (Co generation and generation of electricity from renewable sources of energy) (Revision 1) dated 17th December 2019 with regard to “Renewable Energy Based Captive Generating Plants “

As per clause 12 D Processing of application and applicable fee(i) The renewable energy based captive generating plants intending to avail facility made

available under the provisions of this amendment shall have to submit an application and register with distribution licensee through specific application form as provided by the Distribution Licensee

Respondent was already imposing additional surcharge on wheeling of Petitioners solar CPP power and Petitioner had already filed a Petition no 50/2019 which is pending before Hon Commission for disposal.

Hence in order to avoid imposition of additional surcharge on wheeling, Petitioner vide its letter ref. ENP/PACL/Addl Surcharge/01 dated 15/02/2020 for 1.5 MW and 2.55 MW applied for 12D registration as per Format (Old format January 2020) provided on web site. After continuous follow up vide letter ref. ENP/PACL/Addl Surcharge/02 dated 11/03/2020 PROVISIONAL REGISTRATION UNDER 12D granted to Petitioner.

Nowhere in the application form and provisional registration granted there is any mention of with drawl of rebates like TOD, Incremental consumption to HT consumers under HV3.1 as per specific conditions mentioned in the retail tariff order.

Subsequently Respondent amended the said application form which has following difference:-

- i. In old form NRE registration details was not sought which is added under s.no.7(a),
 - ii. A note under s.no.(D)e is added: In case our plant being registered under REC mechanism, we shall not avail benefit in form of concessional transmission or wheeling charges etc.
 - iii. Note (D)6 is added: MP NRE registration letter (if applicable)
- Copy of old and new application format and 12D registration granted are enclosed herewith as **Annexure P-2, P-3, P-4 and P-5.**

- (3) That the Respondent has been allowing TOD rebate to Petitioner in its bills till July 2020 but without any notice stopped giving TOD rebate wef August 2020.

That the Petitioner humbly submits that not allowing TOD rebate as per specific terms and conditions given under Tariff schedule HV-3 with effect from August 2020 is non-compliance of tariff order.

- (4) That Petitioner had preferred a representation PACL/ENP/Elebill/09 Date: 26th September 2020 before the Respondent no1 clarifying that the only rebate which is not allowable to Petitioner is as per clause (f) of tariff order under HV 3 category. Copy of representation attached as **Annexure P-6.**

Relevant clause 12(B)(v) reproduced below:-

“The Captive consumer/user of such Renewable Energy based Captive Generating Plant shall not be eligible for any rebate for captive power plant consumer under

HV-3 category in applicable Retail Supply Tariff Order for Distribution Licensees issued by the Commission.”

Relevant clause in tariff order is also reproduced below:-

As per Specific Terms and Conditions Clause (f) Rebate for Captive power plant consumers: as specified in General Terms and Conditions of High Tension Tariff as per Tariff Schedule - HV - 3 INDUSTRIAL, NON-INDUSTRIAL AND SHOPPING MALL

Applicability: The rebate shall be applicable to consumers

- i. Who have been meeting their demand either fully or partially during FY2016-17 and/or FY 2017-18 and/or FY 2018-19 through their captive power plants located in Madhya Pradesh.*
 - ii. The rebate shall be applicable upto FY 2021-22 from the date of request submitted by the consumer to the Licensee during and after FY 2017-18. The consumer shall be required to apply to the Licensee for the rebate indicating that he would be willing to avail supply from Licensee by switching consumption from his existing captive power plant.*
 - iii. The **base year** shall be the financial year preceding the year during which the consumer has applied for switching consumption from his captive power plant to the licensee.
e.g., If a consumer applies for switching his consumption from captive power plant to Licensee in August, 2018, then his base year for calculation of incremental consumption would be FY 2017-18.*
 - iii. Who have recorded an incremental consumption i.e., an increase in the units consumed from the Licensee in any month of the current year (FY2019-20) compared to the same month in **base year**.*
 - iv. A rebate of Rs 2 per unit shall be applicable on incremental units of the consumer subject to reduction in captive generation as per the methodology given.*
- (5) That Respondent disagreed with the Petitioner’s contentions and turned down the representation filed by the petitioner vide letter ref 13039 dated 3rd October 2020 and continued its billing disallowing TOD rebate as envisaged under retail tariff order. Copy of letter attached as **Annexure P-7***
- (6) The Petitioner further submits that the respondent has failed to appreciate the provisions of Section 62 (3) of The Act which does not allow differentiation between two consumers of same category. In present case Respondent is giving different treatment to HV 3.1 consumer with solar CPP and one without solar CPP. Contrary to liberal provisions under section 9 of the Act with regard to Captive generation, Respondent is PENALIZING PETITIONER FOR HAVING ESTABLISHED a solar CPP “*

Section 62 (3) of The Act is reproduced below:-

“The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.”

- (7) *In order to understand the issue it is relevant to refer the important provisions under the Act and the policy governing the issue involved. The relevant definitions of Electricity Act 2003, to be considered for the purpose of this Petition, are as under:*

Section 2 (8) *“Captive generating plant” means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;”*

Section 2 (15) *“consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;”*

Section 2 (47) *“open access” means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;”*

Section 2 (76) *“wheeling” means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62;”*

Section 9: *“Captive Generation - (1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines: Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.*

[Provided further that no license shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in

accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under sub-section (2) of section 42.

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use: Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be: Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.”

Rule 3 of the Electricity Rules 2005:*(1) No power plant shall qualify as a ‘Captive Generating Plant’ under section 9 read with clause (8) of section 2 of the Act unless—*

(a) in case of a power plant—

(i) not less than twenty six per cent of the ownership is held by the captive user(s), and

(ii) not less than fifty one per cent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:

Provided that in case of power plant set up by registered co-operative society, the conditions mentioned under paragraphs (i) and (ii) above shall be satisfied collectively by the members of the co-operative society: Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty six per cent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty one per cent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten per cent; (b) in case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy(ies) the conditions contained in paragraphs (i) and (ii) of sub-clause (a) above including—

Explanation.—(1) The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to generating station as a whole; and (2) The equity shares to be held by the captive user(s) in the generating station shall not be less than twenty six per cent of the proportionate of the equity of the company related to the generating unit or

units identified as the captive generating plant. Illustration In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the Captive Generating Plant. The captive users shall hold not less than thirteen per cent of the equity shares in the company (being the twenty six per cent proportionate to Unit A of 50 MW) and not less than fifty one per cent of the electricity generated in Unit A determined on an annual basis is to be consumed by the captive users. (2) It shall be the obligation of the captive users to ensure that the consumption by the captive users at the percentages mentioned in sub-clauses (a) and (b) of subrule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company. Explanation.—(1) For the purpose of this rule,— (a) “annual basis” shall be determined based on a financial year; (b) “captive user” shall mean the end user of the electricity generated in a Captive Generating Plant and the term “captive use” shall be construed accordingly; (c) “ownership” in relation to a generating station or power plant set up by a company or any other body corporate shall mean the equity share capital with voting rights. In other cases ownership shall mean proprietary interest and control over the generating station or power plant; (d) “Special Purpose Vehicle” shall mean a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity.”

Statement of Objects and Reasons for the enactment of Electricity Act of 2003, i.e. Para 4, which reads as under:

4(i) Generation is being delicensed and captive generation is being freely permitted. Hydro projects would, however, need approval of the State Government and clearance from the Central Electricity Authority which would go into the issues of dam safety and optimal utilisation of water resources.”

National Electricity Policy :-This was in line with the National Electricity Policy of 2005 which intended to remove all controls over captive generators as well as to enable the captive generators to supply available surplus capacity to licensees and consumers (non captive users). Clauses 5.2.24, 5.2.25, 5.2.26, 5.7, 5.7.1 of National Electricity Policy 2005 are relevant which read as under:

“Captive Generation

5.2.24 The liberal provision in the Electricity Act, 2003 with respect to setting up of captive power plant has been made with a view to not only securing reliable, quality and cost effective power but also to facilitate creation of employment opportunities through speedy and efficient growth of industry.

(8) *That being aggrieved by the coercive action on the part of the Respondent and due to disallowing of TOD rebate despite provisions in the Act for not discriminating the same category consumers, Petitioner preferred this Petition.*

(9) **GROUND(S): -**

That the present Petition is filed on following amongst other grounds:

(i) *That not allowing TOD rebate by the respondent is in violation of the Section 62 (3) of the Electricity Act 2003 as respondent is discriminating between two HT consumer of same category (giving different treatment a HV 3.1 consumer with solar CPP and one without solar CPP by not giving TOD rebate to one with solar CPP and giving TOD rebate to one without solar CPP)*

(ii) *Respondent is also in violations and non-compliance of Terms and Conditions of High Tension Tariff as per Tariff Schedule - HV-3 INDUSTRIAL, NON-INDUSTRIAL AND SHOPPING MALL under retail tariff order, which requires grant of rebate as per clause*

(b) Time of Day Surcharge/ Rebate: *This surcharge/ rebate shall be as specified in General Terms and Conditions of High Tension Tariff.*

Therefore the Bills raised and the money recovered from the Petitioner should be refunded forth with.

(iii) *that the action on the part of the Respondent is completely arbitrary and in violation of the provisions of the Act and orders of Aptel. As in Appeal no **APPEAL NO. 107 OF 2018 Dated: 12th April, 2019 Hon APTEL has directed as under (relevant part reproduced below)***

ii) The Section 62(3) of the Electricity Act, 2003 provides for an exhaustive list of factors to the limited extent of which the State Commission can differentiate between consumers.

Section 62(3) of the Electricity Act, 2003 reads as follows:

“Section 62. (Determination of tariff): --- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –

....

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical

vi) In view of the above, the first Respondent/the State Commission committed a grave error in differentiating between consumers of the same category on the basis of new and existing consumers and therefore the Impugned Order passed by the first Respondent/the State Commission is hereby set aside so far as it relates to the

extent of providing differential incentives to the existing and new HT consumers. The first Respondent/the State Commission is hereby directed to reconsider the matter afresh in the light of the preceding paragraphs.

- (iv) that the impugned bill raised by the Respondent is bad in law and should be quashed.*
- (v) that the alleged bill is nothing but an arm twisting technique used by the Respondent to harass the Petitioner and discourage Petitioner and other similar HT consumers from establishing solar CPP*
- (vi) that the Petitioner craves leave to refer to other grounds at the time of the argument.”*

3. With above submissions, the petitioner prayed the following:

- (a) Admit the Present Petition;*
- (b) Direct Respondent No. 1 to allow TOD rebate.*
- (c) Declare that all actions being undertaken by the Respondent No. 1 in regard to not giving TOD rebate to Petitioner as void and further direct Respondent No. 1 for refund of all additional amount paid by the Petitioner.*
- (d) For such other and further relief as the Commission may in the facts and circumstances of the present case, may deem fit and proper.*

4. The subject petition was admitted on the 05.01.2021. The petitioner was directed to serve copy of petition to the Respondent within three days. The Respondent was directed to file reply to the subject petition within 10 days, thereafter and serve a copy of aforesaid reply to the petitioner simultaneously. The case was fixed for hearing on 23.02.2021.

5. At the hearing held on the 23.02.2021, the representative who appeared for the Respondent had sought two weeks' time to file reply to the subject petition due to illness of their Counsel. It was noted with concern that there has been a delay of more than a month in filing reply by the Respondent. Considering the request, the Respondent was given last opportunity to file reply to the subject petition within ten days and to serve the copy of aforesaid reply to the petitioner simultaneously. The petitioner was directed to file rejoinder within two weeks, thereafter.

6. At the hearing held on the 15.06.2021, the Commission observed the following:

- (i) By affidavit dated 25.02.2021, the Respondent filed reply to the subject petition.*
- (ii) Vide letter dated 06.04.2021, the petitioner filed rejoinder to the reply filed by the Respondent.*
- (iii) The parties concluded their arguments in this matter.*

7. The Respondent, vide letter dated 26.02.2021 submitted the following in its reply to the subject petition:

(1) *That, the Petitioner is a High Tension Consumer having present contract demand of 3000 KVA and connected on 33KV Supply voltage and entered in agreement with licensee on 18.06.1994.*

(2) *That, the clause 42 of electricity supply act 2003 allows consumer to avail electricity from Open Access with certain conditions, as mentioned therein. The condition for any plant to be a 'captive generating plant' is governed by Electricity Rule 2005. Any generating plant after submitting the evidence of mentioned conditions is declared as captive generating plant by the licensee.*

(3) *That, the petitioner has established such two number of RE Solar Power Generating Plants as 'Captive Generating Plants' at Village Kadodiya, Tehsil-Tarana, Dist-Ujjain of capacity 1.5 MW and 2.55 MW.*

(4) *That, Hon'ble MPERC vide notification dated 19.11.2010 has published Regulation for (Co-Generation and Generation of Electricity from Renewable Source of Energy) (Revision -I) Regulation , 2010, and as per Clause 8 of this regulation,-*

"Any person generating electricity from Co-generation and renewable source of energy shall have open access, subject to availability of adequate transmission capacity in the transmission licensee's system within the state as per open access regulations under section 42 of the act subject to the provisions of the Government of MP, incentive policy for encouraging generation of power in MP, through Non- Conventional Energy Sources notified on 17.10.2016."

(5) *That, Various amendments were made by Hon'ble commission from time to time and in seventh amendment of above regulation, clause 12.2 levy of Additional Charges along with other charges was made applicable. The clause is reproduced as follows,-*

"12.2 Wheeling charges, cross subsidy surcharge, additional surcharge on the wheeling charges and such other charges, if any, under section 42 of Electricity Act , 2003 shall be applicable at the rate as decided by the commission from time to time in its retail supply tariff order."

The discom commenced the levy of Additional Surcharge on consumers availing power from Open Access including from Captive Generating Plant (CPP). As the petitioner was availing power from its RE Solar CPP, therefore Additional Surcharges was also commenced from the petitioner.

(6) **That,** *Hon'ble MPERC notified 8th amendment to above regulation vide which the RE Captive Consumers of Renewable Energy based Captive Generating Plant were facilitated NOT to pay cross subsidy surcharge, wheeling charges and additional surcharge with certain conditions.*

" 12(B) Forecasting, Scheduling, Energy Accounting and Settlement:-

.....
(iv) The RE captive consumer of Renewable Energy based Captive Generating Plant shall not be liable to pay cross subsidy surcharge, wheeling charge and additional surcharge but it shall be liable to bear the losses for carrying the generating electricity from its plant to the destination for its own use or for the use as defined by the Act or the rules made there under.

Provided that the captive user shall not bear the losses in case the captive consumption is being done without using the distribution and/ or transmission system of the Distribution and/ or Transmission Licensee as the case may be;

Provided further that in case of supply of power to a consumer or to a person other than captive users, such consumer or person shall pay all open access charges including cross-subsidy surcharge, additional surcharge and wheeling charges as determined by the Commission and shall bear the losses.

(7) That, further to avail the facilities provided in 8TH Amendment, the CPP has to register itself as per process described in clause 12(D).

“ [12-D] (i) The Renewable Energy based Captive Generating Plants intending to avail the facility made available under the provisions of this Amendment shall have to submit an application and register with Distribution Licensee in the specified form as provided by the Distribution Licensee along with non-refundable registration fee of Rs. 1000 (One Thousand Only) at the office designated by the concerned Distribution Licensee. The Distribution Licensees shall provide the details of their respective designated offices on their web-site in this regard. The Distribution licensee shall make the form available on its website and at its designated office. The existing Captive RE Consumers who intend to avail the above facility shall also be required to submit the application and register their Renewable Energy based Captive Generating Plant with the concerned Distribution Licensee. No fee shall be levied on existing Renewable Energy based Captive Generating Plant.”

(8) That, the petitioner applied for registration of both the CPPs under Clause 12(D) of 8TH Amendment and was successfully registered vide registration number MPWZ/12D/01/0520 and MPWZ/12D/02/0520 by the west Discom.

(9) That, accordingly, the facilities provided in Clause 12(B)(iv) of 8th amendment were granted to the consumer and levy of Additional Surcharge on captive consumption from both the CPPs were stopped from billing month of Feb'2020 from the consumer. At the same time, as per clause 12(B) (v) other rebates given to the consumer, under HV-3 prior to registration under clause 12(D), were also stopped. The clause 12(B)(v) is reproduced as follows:-

“12(B) Forecasting, Scheduling, Energy Accounting and Settlement.

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- (v) **The captive consumer/user of such Renewable Energy based Captive Generating Plant shall not be eligible for any rebates for Captive power plant consumer under HV-3 category in applicable Retail Tariff Order for Distribution Licensees issued by the commission."**

Hence, in light of above rule, ToD Rebate of petitioner was stopped after Registration under 12 (D). The petitioner aggrieved from enactment of above regulation clause 12 (B)(v) has filed this petition before Hon'ble commission

- (10) That, the petitioner has wrongly perceived the meaning and sprit of clause 12 (B)(v),that in above clause 12(B)(v)only one rebate under HV-3 is disallowed to the Captive consumer on Registration under 12(D). According to the petitioner, the disallowed rebate is clause (f) of Specific term and condition of HV-3,- "Rebate for Captive Power Plant Consumer."
- (11) That, the careful perusal of the clause 12(B)(v) reveals that the term used is of "**not eligible for Any Rebates...."** which is clearly means that All Kinds of Rebates under HV-3 are included to disallow to a captive consumer /user once registered under clause 12(D) of the said amendment. For more clarification the Hindi Version of the same part of regulation may be referred which is as follows,-

" 12 (ख) पूर्वानुमान,अनुसूचीकरण,उर्जा लेखांकन,तथा व्यवस्थापन :-

.....

(पांच) ऐसे नवीकरणीय ऊर्जा आधारित आबद्ध विद्युत-उत्पादन संयन्त्र के आबद्ध उपभोक्ता/ उपयोगकर्ता को आयोग द्वारा वितरण अनुमतिधारी के लिये जारी किये गए खुदरा विद्युत प्रदाय टैरिफ आदेशमें लागू की गई एचवी-3 श्रेणी के अन्तर्गत किसी भी छूट की पात्रता नहीं होगी ।

The clause clearly explains that the captive consumer/user if it is registered under clause 12(D) of the said amendment, is not eligible for any rebates mentioned under HV-3 in applicable Retail Tariff Order for Distribution Licensees issued by the commission."

- (12) That, the grounds taken by the petitioner that the licensee is in violation of Section 62(3) of Electricity Act 2003 and non compliance of Terms and Condition of HT Tariff by NOT allowing petitioner to avail facility of ToD rebate after registration under Clause 12(D) of THE 8TH amendment, are misplaced. Similarly the Hon'ble APTEL's order in appeal no 107 of 2018 dated 12th April 2019 does not have relevance in present case. This can be understood by the fact that, as per proviso four of section (42) of The Electricity Act 2003,-

"where a state commission permits a consumer or class of consumers to receive supply of electricity from a person other than distribution licensee of his area of supply, such consumer shall be liable to

pay an additional surcharge on the charges of wheeling, as may be specified by the state commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.”

It is ample clear from the above clause that the levy of Additional Surcharge is meant to meet the fixed cost of distribution licensee arising out of his obligation to supply and therefore levy of Additional Surcharge is being done on all consumers availing power from open access including Captive Power Plants. Now, by the 8th amendment to MPERC (Cogeneration and Generation of electricity from Renewable source of Energy) (Revision-I) Regulation, 2010 [RG-33(I) of 2010, Clause 12(B)(iv), Hon’ble commission has given a facility to the RE Captive Power Generator/consumer that if it wants to avail relaxation in open access charges (including Additional Surcharge) then it can be granted with the condition that all Rebates under HV-3 category in applicable Retail Supply Tariff Order for Distribution Licensees issued by the Commission will not be applicable to such consumer.

(13) *That, as clear from the above provisions of 8th amendment, a rational balance has been made for the consumers availing supply from RE Captive Power Plant by giving relief from various open access charges, including Additional Surcharge, and at the same time depriving them from any rebates under HV-3. Further this facility to the consumer is also made optional as mentioned in section 12(D)(i) as under:-*

“[12-D] (i) The Renewable Energy based Captive Generating Plants intending to avail the facility made available under the provisions of this Amendment shall have to submit an application and register with Distribution Licensee in the specified form.....”

(14) *That, as evident from above facts, the prayer of the petitioner that ToD rebate under HV-3 be allowed after registration under 12(D) of 8th amendment to MPERC (Cogeneration and Generation of electricity from Renewable source of Energy) (Revision-I) Regulation ,2010 [RG-33(I) of 2010, is not tenable.”*

8. Vide letter dated 06.04.2021, the petitioner broadly submitted the following in its rejoinder to the reply filed by the Respondent:

“Petitioner has received reply of respondent and it is now filing its rejoinder as under :-

- (1) *Reply to para 1 of Respondent’s reply :- Accepted*
- (2) *Reply to para 2 of Respondent’s reply :- Accepted*
- (3) *Reply to para 3 of Respondent’s reply :- The clause 42(2) of The Act deals with open access however section 9 allowed captive power plants to carry power for its own use much before commission allowed open access and both clauses are reproduced below :*

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross

subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

.....

.....

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use

9. (1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines: Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use: Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be: Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.

Thus clause 9 (1) over powers all other provisions in the ACT and CPP were allowed much before open access U/S 42 permitted by Hon Commission

(4) Reply to para 4 of Respondent's reply :- Accepted

(5) Reply to para 5 of Respondent's reply: - Clause 8th is "Open Access for Co-generation and Renewable Sources of Energy" is with regard to all renewable generators including CPP.

Clause 12.2 distinguishes clearly between "Captive consumers" and "open access consumers". Thus they are two different categories are given separate treatment as per provisions of the ACT. Relevant par is reproduced below:-

“12.2. Wheeling charges, Cross subsidy surcharge and applicable surcharge on Wheeling charges shall be applicable as decided by the Commission from time to time. Captive consumers and Open Access Consumers shall be exempted from payment of Open Access charges in respect of energy procured from Renewable Sources of Energy”

- (6) *Reply to para 6 of Respondent's reply: - That imposition of additional surcharge on CPP was illegal and Hon'ble APTEL in APPEAL NO. 311 OF 2018 & IA Nos. 1531, 1468 & 1467 of 2018 IN APPEAL NO. 315 OF 2018 & IA Nos. 1523 & 1522 of 2018 Dated: 27th March, 2019 has directed that on CPP additional Surcharge can not be imposed. Hon Commission issued amendment 8th and disallowed imposition of additional surcharge, cross subsidy charge and wheeling charges on CPP.*
- (7) *Reply to para 7 of Respondent's reply :- It is denied that as per 8th amendment the REC Captive consumers were facilitated NOT to pay cross subsidy surcharge , wheeling charges and additional surcharge with certain conditions.*

These provisions were as per the provisions in the Electricity Act 2003 and as per Hon'ble APTEL order as mentioned in para 6 above.

*Further para (v) of said regulation also directs “The captive consumers /user of such renewable energy based **“captive generating plants”** shall not be eligible for any rebate for captive power plants consumers under HV 3 category in applicable retail supply tariff order for distribution licensee issued by the commission”.*

This it is clear that the rebate in retail tariff order shall not be available to “captive generating plants”

As per Specific Terms and Conditions Clause (f) Rebate for Captive power plant consumers: as specified in General Terms and Conditions of High Tension Tariff as per Tariff Schedule - HV - 3 INDUSTRIAL, NON-INDUSTRIAL AND SHOPPING MALL

Applicability: The rebate shall be applicable to consumers

- i. *Who have been meeting their demand either fully or partially during FY2016-17 and/or FY 2017-18 and/or FY 2018-19 through their captive power plants located in Madhya Pradesh.*
- ii. *The rebate shall be applicable upto FY 2021-22 from the date of request submitted by the consumer to the Licensee during and after FY 2017-18. The consumer shall be required to apply to the Licensee for the rebate indicating that he would be willing to avail supply from Licensee by switching consumption from his existing captive power plant.*

- iii. *The **base year** shall be the financial year preceding the year during which the consumer has applied for switching consumption from his captive power plant to the licensee.
e.g., If a consumer applies for switching his consumption from captive power plant to Licensee in August, 2018, then his base year for calculation of incremental consumption would be FY 2017-18. Who have recorded an incremental consumption i.e., an increase in the units consumed from the Licensee in any month of the current year (FY2019-20) compared to the same month in **base year**.*

A rebate of Rs 2 per unit shall be applicable on incremental units of the consumer subject to reduction in captive generation as per the methodology given.

- (8) *Reply to para 8 of Respondent's reply :- It is alleged that Respondent has intentionally not referred para 12 D(iv) of the regulation which directs that 12 D is for processing the applicable fee by Captive Generating plants intending to avail facilities under the regulation as para 12 (D) (iv) specifies that "**The Renewable energy captive power plants shall also fulfill all the obligations except those specified in regulation 12 (B) (iv) of these regulations as per MPERC open access regulations 2005 as amended from time to time.***
- (9) *Reply to para 9 of Respondent's reply :- Accepted*
- (10) *Reply to para 10 of Respondent's reply :- Respondent is misinterpreting rebates available for **SWITCHING OVER** power supply to respondent , by stopping /reducing sourcing power from renewable CPP as per Specific Terms and Conditions Clause (f) Rebate for Captive power plant consumers: as specified in General Terms and Conditions of High Tension Tariff as per Tariff Schedule - HV - 3 INDUSTRIAL, NON-INDUSTRIAL AND SHOPPING MALL and between rebate available to a HV consumer of HV 3.*

The Petitioner further submits that the respondent has failed to appreciate the provisions of Section 62 (3) of The Act which does not allow differentiation between two consumers of same category. In present case Respondent is giving different treatment a HV 3.1 consumer with solar CPP and one without solar CPP. Contrary to liberal provisions under the Act with regard to Captive generation, Respondent is PENALIZING PETITIONER FOR HAVING ESTABLISHED CPP "

Section 62 (3) of The Act is reproduced below:-

"The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may

differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required."

Thus Act does not provide for differential treatment to a HV3 consumer with renewable CPP and one without renewable CPP

- (11) Reply to para 11 of Respondent's reply: - Respondents argument is incorrect in lieu of reply above in para 10 above.
- (12) Reply to para 12 of Respondent's reply:- Same as above under para 10.
- (13) Reply to para 13, 14, 15 of Respondent's reply:- Same reply as under para 7 and 10 above."

Commission's Observations and Findings:

9. The Commission has observed the following from the petition and submissions made by both the parties in this matter:

- (i) The petitioner is a HT Consumer of the Respondent having contract demand of 3000 KVA and it is connected at 33KV Supply voltage. The petitioner entered into an agreement with the Respondent on 18.06.1994.
- (ii) The petitioner has two solar PV power captive power plants with capacity of 1.5 MW and 2.55 MW at Village Karodia, Tehsil Tarana, Dist Ujjain. These Solar captive power plants were commissioned on 27.12.2013 and 08.11.2017. The power generated from the aforesaid solar captive power plants is used for Petitioner's industrial unit at Pithampur through open access.
- (iii) Eighth Amendment to MPERC (Co-Generation and Generation of Electricity from Renewable Source of Energy) (Revision -I) Regulations, 2010 was notified on 17th December'2019. Regulation 12 (D)(i) of aforesaid Regulations provides as under:

"12-D (i) The Renewable Energy based Captive Generating Plants intending to avail the facility made available under the provisions of this Amendment shall have to submit an application and register with Distribution Licensee in the specified form as provided by the Distribution Licensee along with non-refundable registration fee of Rs. 1000 (One Thousand Only) at the office designated by the concerned Distribution Licensee. The Distribution Licensees shall provide the details of their respective designated offices on their web-site in this regard. The Distribution licensee shall make the form available on its website and at its designated office. The existing Captive RE Consumers who intend to avail the above facility shall also be required to submit

the application and register their Renewable Energy based Captive Generating Plant with the concerned Distribution Licensee. No fee shall be levied on existing Renewable Energy based Captive Generating Plant.”

- (iv) The petitioner vide letter dated 15/02/2020 applied for Registration of its solar captive power plants under Regulation 12 D of Eight Amendment to MPERC (Co-Generation and Generation of Electricity from Renewable Source of Energy) (Revision -I) Regulation. The above-mentioned solar captive power plants of the petitioner were registered by the Respondent accordingly.
- (v) After Registration under Regulation 12 D of Eight Amendment to MPERC (Co-Generation and Generation of Electricity from Renewable Source of Energy) (Revision -I) Regulations, 2010, the exemptions available under Regulation 12(B)(iv) of the aforesaid amendment were given by Respondent to petitioner. At the same time, the rebates applicable for incremental consumption to the petitioner for its existing HT connections and TOD have been stopped by the Respondent. Therefore, the petitioner has filed this petition against disallowance of Time of Day (TOD) Rebate (as specified in General Terms and Conditions of High-Tension Tariff in Retail Supply Tariff order) by the Respondent. The petitioner has requested to direct the Respondent to allow TOD rebate.
- (vi) The issue involved in the subject petition is confined to the provision under Regulation 12(B)(v) of Eighth Amendment to MPERC (Co-Generation and Generation of Electricity from Renewable Source of Energy) (Revision -I) Regulations, 2010 which provides as under:

“12(B) Forecasting, Scheduling, Energy Accounting and Settlement.

.....

(v) The captive consumer/user of such Renewable Energy based Captive Generating Plant shall not be eligible for any rebates for Captive power plant consumer under HV-3 category in applicable Retail Tariff Order for Distribution Licensees issued by the commission.”

- (vii) It is clearly provided in the above Regulation that the Renewable Energy based Captive Generating Plant, which is registered under Regulation 12 (D), shall not be eligible for any rebates for “Captive power plant consumers” under HV-3 category in applicable Retail Supply Tariff Order. Therefore, in terms of the aforesaid Regulation 12 (B) (v), after registration under Regulation 12(D) of Eighth Amendment to MPERC (Co-Generation and Generation of Electricity from Renewable Source of Energy) (Revision -I) Regulations, 2010, the petitioner shall not be eligible for rebate applicable under clause (f) with the heading “Rebate for Captive power plant consumers” under specific terms and conditions of Tariff Schedule HV-3 of Retail Supply Tariff Order issued by this Commission. It is however clarified in the letter and spirit of the aforesaid amendment

that even after having registered under Regulation 12(D) of Eighth Amendment to MPERC (Co-Generation and Generation of Electricity from Renewable Source of Energy) (Revision -I) Regulations, 2010, the petitioner is eligible for Time of Day (ToD) Rebate under General Terms and Conditions of High-Tension Tariff mentioned in Retail Supply Tariff Order.

With the aforesaid observations and directions, the subject petition is disposed of.

(Shashi Bhushan Pathak)
Member

(Mukul Dhariwal)
Member

(S.P.S. Parihar)
Chairman