

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of application under Section 86(1)(f) of the Electricity Act, 2003 read with Regulation 10 of the MPERC (Cogeneration and Generation of Electricity from Renewable Energy sources) (Revision-I) Regulations, 2010 read with Section 94(2) of the Electricity Act, 2003 read with MPERC (Conduct of Business) Regulations and Article 7.2.1 of the PPA dated 14.08.2014, seeking directions to the Respondents to discontinue the illegal and arbitrary levy of tariff charges applicable to HV 3.1 category upon the petitioner and application also for urgent hearing and also for seeking stay of the operation of impugned invoice dated 05.08.2020 issued by M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd. and direction to discontinue levy of bills under HV 3.1 (Industrial) category of consumers.

Petition No. 56 of 2020

ORDER

(Date of Daily Order: 05th January'2021)

M/s. Orange Mamatkhedha Wind (P) Ltd.

D-21, Corporate Park, 3rd Floor 301B
Sector-21, Dwarka Delhi – 110 075

- **Petitioner**

Vs.

(i) **M.P. Power Management Company Ltd.,**
Block No. 15, Shakti Bhawan, Rampur, Jabalpur – 482008

- **Respondents**

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

Shri Manu Maheshwari, Advocate appeared on behalf of the Petitioner.

Shri Shailendra Jain Dy. Director appeared on behalf of the Respondent No.2

The petitioner M/s. Orange Mamatkhedha Wind (P) Ltd., Indore has filed the subject petition under Section 86(1)(f) of the Electricity Act, 2003 read with Regulation 10 of the MPERC (Cogeneration and generation of electricity from renewable energy sources) (Revision-I) Regulations, 2010, Section 94(2) of the Electricity Act, 2003 read with MPERC (Conduct of Business) Regulations and Article 7.2.1 of the PPA dated 14.08.2014, seeking directions to the Respondents to discontinue the illegal and arbitrary levy of tariff charges applicable to HV 3.1 category upon the petitioner.

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

- (i) The present petition has been preferred by M/s Orange Mamatkhedha Wind Pvt. Ltd. (hereinafter referred to as the '**Petitioner**') against the Invoice dated 05.08.2020, (hereinafter referred to as the "**Impugned Invoice(s)**") issued by Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited (hereinafter referred to as "**Respondent No. 2**").

- (ii) *The Impugned Invoice has been issued by the Respondent No. 2 in utter disregard to the Madhya Pradesh Electricity Regulatory Commission (Aggregate Revenue Requirement and Retail Supply Tariff) Order for FY 2019-20 [hereinafter referred to as “MP Retail Supply Tariff Order 2019-20”]. The said invoice has also been issued in disregard to the Regulation 10 of the Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision I) Regulations, 2010 [hereinafter referred to as “MPERC RE Regulations, 2010”] also the amended provision to Regulation 10 brought in effect vide Seventh Amendment to the said MPERC RE Regulations, 2010 issued on 15.11.2017, which seeks to regularize those categories of consumers who are drawing/ availing power only for the purpose of synchronization with the grid. and is also not in consonance with the provisions of Electricity Act, 2003 which categorically provides for the levy of tariff on a consumer depending upon the nature and purpose of supply.*
- (iii) *The Respondent No. 2 has erroneously issued the Impugned Invoice dated 05.08.2020 upon the Petitioner without any justification and reasons, which renders the issuance of the said invoices illegal, arbitrary and de hors the Power Purchase Agreement dated 14.08.2014 approved by this Hon’ble Commission.*
- (iv) *The Petitioner is a Wind Energy Generating Company having an installed capacity of 100.5 MW in district Mandsaur and Ratlam of the State of Madhya Pradesh, having its registered office at D-21 Corporate Park, 3rd Floor 301 B, Sector - 21, Dwarka Delhi -110075.*
- (v) *It is submitted that in order to sell power generated from its unit having an installed capacity of 100.5 MW, the Petitioner set up wind power plant near villages Sagwali, Bhandariya, Dhandhoda, Chandakheri, Dehri, Garoda, behpur, Nandwel, Karju in Tehsil Daloda, District Mandsaur and at villages Ranihaon, Bagiya, Mawta, Thiriya Tehsil Piploda District Ratlam in the year 2014 and entered into a Wind Energy Power Purchase Agreement (hereinafter referred to as the “PPA”) dated 14.08.2014 with Madhya Pradesh Power Management Company Limited (hereinafter referred to as “Respondent No. 1”) and thereby the Petitioner agreed to sell the wind energy generated from its power to the Respondent no. 1 or its nominees at a levelized tariff of Rs. 5.92 per kWh for the PPA period of 25 years. A copy of the PPA dated 14.08.2014 is being attached hereto and marked as “Annexure -P/2. A copy of the commissioning certificate dated 20.08.2014, 06.04.2015 and 29.04.2015 has been attached hereto and marked as “Annexure - P/3 (Colly)”.*
- (vi) *The Respondent No. 1 is a holding company of all the Distribution Utilities in the State of Madhya Pradesh and has entered into aforesaid PPA dated 14.08.2014 with the Petitioner with the essential function to purchase power in bulk from the generating entities and sell it thereafter to the distribution utilities within the State of Madhya Pradesh.*
- (vii) *It is submitted that in order to promote generation from renewable energy-based sources, the Govt. of Madhya Pradesh vide notification dated 30.01.2012 introduced “Wind Power Project*

*Policy, 2012” for implementation of projects of power generation using wind energy in the State of Madhya Pradesh. In view of the considered stand of the policy makers reflected in various policy instruments including inter alia the National Electricity Policy, 2005 this Hon’ble Commission notified MPERC RE Regulations, 2010 specifying a minimum quantum of electricity to be procured by all the obligated entities including the Respondent(s). It is further submitted that this Hon’ble Commission in terms of Section 86(1)(e), issued a Tariff Order dated 26.03.2013 for procurement of power from Wind Energy Generators (WEGs) applicable to all the project within the State of Madhya Pradesh, commissioned on or after 01.04.2013 for sale of power to the DISCOMs providing for a levelized tariff @Rs. 5.92/ unit applicable to all the WEGs commissioned with the Control Period of 01.04.2013 to 31.03.2016, for a period of 25 years. It would be imperative to state herein that Regulation 10 of the said MPERC RE Regulations, 2010 provides for drawl of power by WEG during shutdown or during other emergencies to be billed at the temporary rate applicable to HT Industrial Category. It would however be pertinent to state that the MPERC RE Regulations, 2010 envisaged for a dispensation which was required to be created in favour of WEGs who seek to avail supply for synchronization with the grid of the DISCOM. A copy of the MPERC RE Regulations, 2010 is being attached hereto and marked as **Annexure – P/4**.*

- (viii) *It is submitted that the Petitioner, which is a WEG, has been paying charges for import of energy under a separate HT-Interconnection Agreement entered into with the Respondent No. 2, under the clause 19 of said HT connection Agreement it was prescribed that the Petitioner shall be billed in accordance with the HV-7 category under the Tariff Schedule issued by this Hon’ble Commission from time to time. A copy of the HT Agreement dated 26.06.2018 has been attached hereto and marked as **Annexure – P/5**.*
- (ix) *It is further submitted that this Hon’ble Commission vide Retail Supply Tariff Order for FY 2019-20 issued dated 08.08.2019 revised the tariff payable by HV-7 Category consumers to Rs. 9.35 per unit.*

In terms of this retail supply tariff order, the Petitioner is placed in HV-7 Category which reads as under:

“This Tariff shall apply to those generators who are already connected to the grid and seek to avail power for synchronization with the grid.”

It is also pertinent to note that the HV 3.1 which reads as under:

“The tariff HV-3.1(Industrial) shall apply to all HT industrial consumers including mines(other than coal mines) for power, light and fan etc. which shall mean and include all energy consumed for factory and lighting in the offices, main factory building, stores, canteen, residential colonies of industries, compound lighting, common and ancillary facilities such as Banks, General purpose shops, Water supply, Sewage pumps, Police Stations etc. in the premises of the industrial units and Dairy units where milk is processed (other than chilling, pasteurization etc.) to produce other end products of milk. This tariff shall also apply to cold storages.”

In this regard, a bare perusal of above two categories will make it abundantly clear that the Petitioner is a RE Generating Company, which would only require periodical

*synchronization and connectivity with Grid. Further, the Petitioner does not fall into any of the class / categories mentioned under HV 3.1. The Petitioner therefore would fairly and squarely fall under HV 7 category. A copy of the Retail Supply Tariff Schedule issued with the MPERC Retail Supply Tariff Order dated 08.08.2019 for the FY 2019-2020 is being attached hereto and marked as **Annexure –P/6**.*

- (x) *The Petitioner humbly submits that pursuant to the execution of the HT Agreement whereunder the Petitioner was kept under HV-7 (Synchronization of power for generators of the grid) in furtherance to the Tariff Schedule, the Petitioner has been consistently making payment under HV – 7 Category to Respondent No. 2. However, the Respondent No. 2 illegally and arbitrarily issued the present impugned invoice dated 05.08.2020 upon the Petitioner billing it under HV-7 as well as HV-3.1 Category. .The aforesaid levy of bill on the import of energy for the purpose of synchronization with the grid is in utter disregard to the provisions of the Electricity Act, 2003 which requires this Hon’ble Commission to pass tariff orders by taking into account the varying nature and purpose of supply of power to consumers. While the Petitioner is a WEG and falls in a distinct consumer category which is HV-7 as per the tariff schedule it would be impermissible under the law to arbitrarily change the category of the petitioner for the purposes of issuance of the impugned invoice. A copy of the Impugned Invoice dated 05.08.2020 is attached hereto and marked as **Annexure – P/7**.*
- (xi) *The Respondent No. 2, vide its invoice dated 05.08.2020, for the month of July, 2020 levied energy charges under category HV 3.1 as against HV-7 category. In terms of Tariff Order dated 08.08.2019 for the year 2020-21, the tariff prescribed for the HV 7 category under the heading – ‘Generator synchronisation with the grid’ is Rs. 9.35/ unit. However, the Respondent No.2, has issued the present invoice on the Petitioner to recover tariff under HV 3.1 category as well for the period of consumption beyond 2 hours. Further, in terms of the extant Regulations, Tariff Orders, and the PPA dated 14.08.2014 and the HT Connection Agreement dated 26.06.2018, the Petitioner being a Generating Company within the meaning of Section 2 (28) of the Electricity act, 2003 shall fall in the category of HV-7. This is also the understanding provided in the clause 19 of the HT Agreement dated 26.06.2018. As a matter of fact, the tariff schedule provided for category HV-7 in Retail Supply tariff Order for FY 2017-18 was annexed to the HT agreement meaning thereby, that for all subsequent years the HT power charges consumed by the Petitioner shall have to be levied at the tariff stipulated in HV-7 category for the subsequent tariff years. Accordingly, as per order dated 08.08.2019 for FY 2019-20, the Petitioner is only liable to pay HT power charges at the tariff provided in HV 7 category i.e. at Rs. 9.35/ unit. Therefore, the actions of Respondent No. 2 for raising impugned invoices under category 3.1. is clearly arbitrary and untenable.*
- (xii) *It is submitted that pursuant to an incorrect and arbitrary levy of tariff beyond what has been envisaged for a specific category under Retail Supply Tariff Order 2019-20, the Petitioner is being forced to make the payments under protest which is fundamentally and financially onerous to the Petitioner. It is reiterated that this commercial implication stands accentuated by the continuing imposition of bills by the Respondent No. 2 in the absence of any specific direction/ stay by this Hon’ble Commission. As such, the Respondent No. 2 has issued the impugned invoice in gross violation of the provisions of Retail Supply Tariff Order for FY 2019-*

20 and the commercial principles under Section 61 and 62 read with Section 86(1)(e) of the Electricity Act, 2003.

3. The petitioner has challenged the impugned invoice raised by the Respondent on the following grounds:

- (i) *The Petitioner has preferred the present petition under Section 86(1)(f) read with Regulation 10 of the MPERC RE Regulations, 2010, as amended, and Tariff orders passed thereunder for FY 2017-18 to 2019-20. The rights and obligations arising between the parties are governed specifically under the PPA dated 14.08.2014 and the HT Agreement entered pursuant thereto on 26.06.2018 supplements the said PPA. Further, the PPA and the HT agreement are consistent with the aforesaid regulations and tariff order. As such, the present dispute is a dispute between Respondent(s)/ licensees and Generating Company, is related to wrongful categorisation of the Petitioner for the levy of HT power charges. It is very much amendable to the jurisdiction of this Hon'ble Commission under Section 86(1)(f) of the Electricity Act, 2003.*
- (ii) *It is submitted that while the Retail Supply Tariff Order dated 08.08.2019 as well as the Tariff Schedules consistently issued by this Hon'ble Commission has clearly identified the Petitioner as a HV-7 category consumer for the purposes of synchronization with the grid. Therefore, the levy of tariff by the Respondent No. 2 under category HV 3.1 is not only arbitrary and unreasonable but illegal as it has been exercised without any authority of law.*
- (iii) *The Petitioner humbly submits that a perusal of the finalized HT Agreement (Annexure 5) under "HV - 7 Category" issued by the Respondent No. 2 on 26.06.2018 in pursuance of the PPA dated 14.08.2014 and the Tariff Schedule issued by this Hon'ble Commission along with the Retail Supply Tariff Order for FY 2017-18, clearly mentions that it is only HV-7 Category which is applicable to generator(s) who are already connected with the grid and seek to avail power only for synchronization with the grid. While the categorization under "HV - 3.1 Category" is for those Industrial Consumers who have sought to avail supply at 132 KV guaranteeing an annual minimum consumption of 1800 units per KVA of the Contract Demand.*

It is submitted that for the purposes of the synchronization with the grid at the time of emergencies as per the PPA dated 14.08.2014 and as per the mandate of the Regulation 10 of the MERC RE Regulations, 2010, the Petitioner has availed a Contract Demand of 1 KVA. Whereas, with regard to the applicability of HV 3.1 it is further submitted that apart from the consumption pattern of the consumers, load factor and other criteria are taken into account while determining the tariff.

Whereas, this specific criteria of a "minimum annual consumption" and that of the "production activity" is clearly absent for the consumers who are categorised under "HV-7 Category". It is further pertinent to note that for the purposes of "synchronization with the grid" under "HV-7 Category" it is essential that the consumer/ generator has commissioned its unit(s). The Petitioner achieved the commercial operation date of the Project on

20.08.2014. As such, the issuance of bills upon the Petitioner under "HV-3.1 Category" in exclusion of the conditionalities required to be fulfilled, sans merits and is therefore arbitrary, illegal and without any application of mind.

- (iv) The Petitioner humbly submits that on account of this wrongful categorization under "HV-3.1 Category" without meeting the "minimum annual consumption requirement" and the "production criteria", the Petitioner which is connected at 132 KV has been erroneously saddled with:
- a. Monthly Fixed Charge of Rs. 650/ KVA
 - b. Energy Charges @ Rs. 6.50/unit (for consumption upto 50% Load Factor)
 - c. Energy Charges @ Rs. 5.50/unit (for consumption in excess of 50% Load Factor)
- (v) It is submitted that while the HT Connection Agreement (Annexure P/6) was executed between the Petitioner and the Respondent No. 2 only for the limited purpose of synchronization with the grid, and as per which the Petitioner was required to pay only the Energy Charges at a rate determined by this Hon'ble Commission from time to time under Retail Supply Tariff Orders, , the Impugned Invoice has been issued erroneously and without any application of mind. . A bare perusal of the Invoice dated 05.08.2020 issued for the month of July, 2020 demonstrates that in addition to the Energy Charges @ Rs. 9.35/Unit, the Respondent No. 2 has also erroneously demanded the differential payment of the Fixed Charges on account of change in category to the tune of Rs. 2,50,758/- along with the other charges applicable to the consumers under the said category. The Petitioner humbly submits that while the Retail Supply Tariff Order for FY 2019-20 and the Tariff Schedule for the said period, never envisaged payment of "Fixed Charges" and "Energy Charges based on the Load Factor", the Impugned Bills issued with retrospective effect are clearly in contrast to "Tariff Schedule" as well as the spirit of Regulation 10 of the MPERC RE Regulations, 2010, as amended, and the provisions of Electricity Act, 2003. At the cost of repetition, it is submitted that the conditionalities envisaged under "HV-3.1 Category" are neither being fulfilled by the Petitioner nor the supply is being availed at 220KV for the said purpose. In both the eventualities whereby the Petitioner can neither avail supply for meeting the "minimum annual consumption criteria" nor "production activity" nor can act contrary to the terms and conditions imposed on "HV-7 Category" consumer/ generator under the Retail Supply Tariff Order for FY 2019-20, the issuance of the Impugned Bill has landed the Petitioner in a strange financial quagmire, which required immediate attention on the grounds of illegality, arbitrariness and non-application of mind.
- (vi) It is submitted that the issuance of Impugned Invoices are without any application of mind and neither do they provide a cogent reason or justification for the said arbitrary change in consumer category from HV-7 to HV3.1. It would be however imperative to state herein that the levy of tariff under HV-3.1 category has been put into applicability with retrospective effect which in the humble opinion of the Petitioner cannot withstand the test of legality in the absence of a cogent justification.
- (vii) It is submitted that HV 3.1 tariff schedule is applicable to those categories of the consumers who are availing power for the purpose other than synchronization i.e. lighting in the offices, main factory buildings, stores, canteen, residential colonies of industries, compound lighting,

common and ancillary facilities, water supply, sewage pumps, etc. in the premises of the industrial units which are dependent on the power drawn from the grid. However, in the present case, the drawl of power for the purpose of synchronization with the grid on account of the shut down of the wind power plant due to non-availability of wind power does not change the very nature and purpose of drawl of power from the grid by the Petitioner nor gives rise to any condition prescribed under HV-3.1 category so as to classify the Petitioner as a consumer under HV-3.1 Category. It is submitted that only during the shutdown or emergency periods, the plant is not able to generate any power and requires power to synchronize itself with the grid, for which the Petitioner requires to avail power and thus would be billed at temporary supply tariff as specified in the aforesaid Regulations and thus it cannot be considered drawl of power under HT industrial category-3.1.

- (viii) *It is submitted that as per Section 45 of the Electricity Act, 2003 the respondent No. 2 can recover charges only in accordance with the tariff fixed by this Hon'ble Commission from time to time. Thus, Respondent No.2 is obligated to bill the petitioner as per the schedule mentioned in the tariff order read with the HT Connection Agreement entered into stipulating the tariff applicable as per HV-7 Category. As such, neither the tariff order nor the RE Regulations contemplate application of HV-3.1 industrial category on renewable energy generators, drawing power for synchronization with grid.*
- (ix) *In view of the detailed facts stated in the petition, it is submitted that the entire issue pertains to the wrongful categorization of the Petitioner which is Wind Power Generating entity, as an Industrial Consumer falling under "HV-3.1 Category" while the Madhya Pradesh Electricity Regulatory Commission (Aggregate Revenue Requirement and Retail Supply Tariff) Order for FY2019-20 [hereinafter referred to as "MP Retail Supply Tariff 2019-20) and the "Tariff Schedule" issued thereto read with the Power Purchase Agreement (PPA) 10.02.2017 and the HT Connection Agreement executed between the Petitioner and the Respondent No. 2 recognizes the Petitioner as a consumer falling under "HV-7 Category" and availing supply only for the purpose of "synchronization with the grid".*
- (x) *It is humbly submitted that unlike conventional sources of energy, wind generation depends greatly on weather conditions during a particular time block which directly affects power generation. As such, the wind power plant/ wind turbines do not function perennially and are not active during the period when wind is not available. Thus, in order to keep itself synchronized with the grid, these WEGs require power frequently. The WEGs draw such power from the grid i.e., from the network of the distribution licensee to which they are connected and are thus, billed for the same accordingly. In this regard, it is pertinent to note that the Petitioner being a wind energy generator draws power from the distribution network of the Respondent No. 2.*
- (xi) *That the Ld. MPERC vide notification bearing ref. no. 1629-MPERC-2017 dated 15.11.2017 notified the Seventh Amendment to the Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 [ARG- 33(1)(vii) of 2017] ("Seventh Amendment") which inter alia*

provided for drawl of power for synchronization at the time of shut down or such other emergencies and further clarified that the tariff applicable for any other purpose i.e. purpose other than synchronization shall be billed at the rate applicable to HT-Industrial Category. In other words, the said Regulation 10 as amended is clear in terms of distinguishing the nature and purpose for which the power is availed by a RE Generator under HV-7 Category and had therefore made it abundantly clear that the rate applicable to HT-Industrial Category is applicable in other cases which are not for the purpose of synchronization with the grid. The amended Regulation 10 is reproduced hereinbelow:

"10. Drawing Power during shut down by Generator/ Co-generation from Renewable Sources. The generator Co-generation from Renewable Sources would be entitled to draw power exclusively for its own use from the Transmission/ Distribution Licensees' network for synchronization of plant with the grid or during shutdown period of its plant or during such other emergencies. The power availed during Synchronization of plant with the grid shall be billed for the period and at the rate as per the retail supply tariff order under tariff schedule for synchronization. In other case, it would be billed at the rate applicable to temporary connection under HT Industrial category. (emphasis supplied)

- (xii) As mentioned above para, in accordance with Regulation 10 of the MPERC RE Regulations, wind energy generators (such as the Petitioner) were billed under HV-3.1 Category for drawl of start-up power and had to pay both energy and fixed charges. However, the Ld. MPERC vide its Order dated 05.07.2016 in Petition No. 20 of 2016 ("MPERC Order"), held that power required by wind energy generators for start-up of their plants frequently cannot be considered as drawl of power during shutdown or emergency periods and directed the distribution companies, including the Respondent to make necessary changes to their billing mechanism. Accordingly, the billing mechanism was changed by the Respondent and drawl of start-up power by the wind power generators/IPPS started getting billed the Respondent under HV-7 tariff category. The aforesaid views have further been affirmed in this Hon'ble Commission's Order dated 25.10.2016 passed in Petition No. 50 of 2016 and Order dated 05.12.2016 passed in Petition No. 42 of 2016. Vide these order, the Hon'ble Commission categorically held and clarified that **if the power is required by the Petitioner for synchronization of WEGs frequently, the same cannot be considered under drawl of power during shut down or emergency periods and the provisions of the aforesaid Regulations shall not apply and therefore, shall be billed as per the provisions of Tariff Schedule HV-7. The Commission, therefore directs the respondents to take action accordingly as mentioned above and revise the impugned bills from November 2015 if found necessary. The Commission also directs the respondent no. 2 to make the payment of bills to the Petitioner for sale of energy from its WEGs as per the terms and conditions of the applicable tariff order/ PPAs after adjusting the revised bills.**

A Copy of the Ld. MPERC Order dated 05.07.2016, 25.10.2016 and 05.12.2016 has been passed in Petition No. 20, 50 and 42 of 2016 respectively are annexed hereto and marked as **Annexure -P/8 (Colly)**.

- (xiii) *It is submitted that the Hon'ble Supreme Court of India and Hon'ble Appellate Tribunal have time and again reiterated that the quasi-judicial body like the State Electricity Regulatory Commissions are vested with more liberal powers to adopt more flexible processes to fulfil their statutory objectives with purposeful efficiency.*
- (xiv) *In the light of the foregoing, the Petitioner seeks an immediate stay/ discontinuation of impugned invoices under "HV-3.1 Category" as it is manifestly illegal and without any application of mind.*
- (xv) *The Petitioner humbly submits that the balance of convenience lies prima facie in favour of the Petitioner and any order/ decree, if any, in favour of the Respondent No. 2 can be squarely met by the Petitioner as per the necessary directions issued by this Hon'ble Commission in terms of the Electricity Act, 2003 and regulations framed thereunder.*
- (xvi) *The Petitioner craves leave of this Hon'ble Commission to add, amend, delete or modify any of the grounds/ averments as and when necessary.*
- (xvii) *The Petitioner has not filed any other petition or initiated any proceedings before any other Court touching upon the instant subject matter except this humble petition.*
- (xviii) *The cause of action arose on 05.08.2020 when the Respondent No. 2 erroneously issued invoice/bill under "HV-3.1 Category" as against the "HV-7 Category" as stipulated by the Retail Supply Tariff Order for FY 2019-20, Tariff Schedule, and the HT Connection Agreement entered into by the Petitioner and the Respondent No. 2, for the purposes of synchronization with the grid alone.*

4. With the aforesaid submissions the petitioner prayed the following:

- (i) Direct the Respondent No. 2 to revise the impugned invoice dated 05.08.2020 and levy tariff as per HV-7 category as applicable in terms of the HT Connection Agreement dated 26.06.2018.
- (ii) Restrain the Respondent(s) from taking any coercive actions like disconnection of Service Connection No. 351 connected at 220 KV.
- (iii) Direct Respondent No. 2 to discontinue levying bills under "HV-3.1 Category.
- (iv) Pass ad-interim orders to suspend the operation of the Impugned Invoices dated 05.08.2020.
- (v) Pass any order or direction in the eyes of equity, justice and good conscience.

5. The petitioner also filed two application for the following

- (i) Urgent hearing in the subject matter (IA No. 20 of 2020)
- (ii) Seeking stay of the operation of impugned invoice dated 05.08.2020 issued by M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd. and direction to discontinue levy of bills under

HV 3.1 (Industrial) category of consumers and has prayed to pass an order allowing urgent hearing. (IA No. 21 of 2020)

6. The petition was admitted on the 15th September' 2020. The petitioner was directed to serve copy of the petition on all the Respondents at the earliest and report compliance to the Commission. The Respondents were directed to file their response on the subject petition latest by the 15th October' 2020.

7. The request of the petitioner in abovementioned application was examined and the petitioner was directed to clear all outstanding dues, up to date, under HV-7 tariff category in relation to disputed amount under impugned bills/invoices in the subject petition. The Respondent No. 2 was directed not to disconnect the Petitioner's connection in the subject matter till the next date of hearing subject to compliance by the petitioner with the aforesaid directions regarding payment of outstanding dues, With the aforesaid directions, the interlocutory applications filed in the subject petition were disposed of.

8. At the next hearing held on 02.11.2020, the following was observed by the Commission:

- (i) The Respondent No. 1 filed reply to the subject petition on 28.10. 2020.
- (ii) The Respondent No. 2 vide letter dated 17.10.2020 filed reply to the subject petition on 19.10.2020.
- (iii) Ld. Counsel who appeared for the petitioner had sought time to file rejoinder on the reply filed by the Respondents.
- (iv) The representative who appeared for the Respondent No. 2 stated that the arguments have already been concluded by Ld. Counsel for the petitioner and him in Petition No. 13 of 2020 in the matter of M/s. Orange Bercha V/s. MPPMCL & others, which was also having similar set of issues raised in the subject petition. With the aforesaid contention, the representative for the Respondent No.2 submitted that this matter may be decided by the Commission based on the arguments held in the aforesaid Petition No. 13 of 2020 and after filing rejoinder by the petitioner.
- (v) While agreeing with the above submission by representative of the Respondent No. 2, Ld. Counsel for the petitioner requested to extend the interim protection already granted by the Commission till disposal of the subject petition.

9. As agreed by both the parties, the petitioner was allowed to file rejoinder within 10 days and the case was reserved for order thereafter. As requested by Ld. Counsel for the petitioner, interim order passed by the Commission in Para 4 of the daily order dated 16th September' 2020 in this matter

was continued till the order is issued by the Commission in the subject matter.

10. The Respondent No. 1 (MPPMCL) vide letter dated 28.10.2020 submitted that the stand of MPPMCL (Respondent No.1) in the subject matter may be treated as same which has been filed by the Respondent No.2 on 17.10.2020 in this matter.

11. Vide letter dated 17.10.2020, the Respondent No. 2 (MPPKVVCL, Indore) submitted that the issues involved in the instant petition are similar to those involved in Petition No. 13 of 2020 hence, without going into the factual matrix of the instant petition, the Respondent No 2 adopted the same reply dated 04.05.2020 filed by it before the Commission in aforesaid petition. Accordingly, the reply filed by the Respondent No.2 in Petition No.13 of 2020 on 04.05.2020 is considered in this matter as given below:

- “(i) That, from the perusal of averment made in the petition along with relief claimed, it is apparent that the primary grievance raised by the petitioner is with respect to the billing as per rate of temporary Industrial category on the drawl of power over and above the ceiling of 2 hours.*
- (ii) At the outset, the respondent denies and disputes each and every allegation, averment and contention made in the petition, which is contrary to or inconsistent with what is stated herein, as if the same has been traversed in seriatim, save and except what has been specifically and expressly admitted hereinafter in writing. Any omission on the part of the answering respondent to deal with any specific contention or averment of the petitioner should not be construed as an admission of the same by the answering respondent. Further, all the submission made herein are without prejudice to one another and are to be treated in alternate to one another in case of conflict or contradiction.*

RE: Billing of power drawn continuously above Two Hours at each occasion

- (iii) That, this Hon’ble Commission vide Notification No. 3042/MPERC-2010, Dated: 09.11.2010, has issued the “Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 (Revision-I) {RG- 33(I) of 2010}” here in after referred as ‘Regulation’. Subsequently, 7 amendments have been made in the Regulations from time to time. The last and 7th amendment in the Regulation has been made on 17/11/2017.*
- (iv) Regulation 10 of the aforesaid regulation provides as under:*

10. Drawing Power by Generator/ Cogeneration from renewable Sources

*The Generator/ Co-generation from Renewable Sources would be entitled to draw power exclusively for its own use from the Transmission/ Distribution Licensees' network for synchronization of plant with the grid or during shutdown period of its plant or during such other emergencies. **The power availed during synchronization of plant with the grid shall be billed for the period and at the rate as per retail supply tariff order under tariff schedule for synchronization. In other cases, it would be billed at the rate applicable to temporary connection under HT Industrial Category.***

- (v) *Hon'ble Commission vide its tariff order has made provision for drawl of power by RE Generators for synchronization purpose under HV-7 tariff schedule and restricted the drawl from Grid for synchronization purpose only for a maximum period of 2 hours on each occasion. The relevant conditions of HV-7 tariff of tariff order 2019-20 are reproduced as under: -*

"This Tariff shall apply to those generators who are already connected to the grid and seek to avail power for synchronization with the grid.

(a) The supply for synchronization with the grid shall not exceed 15% of the capacity of unit of highest rating in the Power Plant.

(b) The condition for minimum consumption shall not be applicable to the generators including CPP. Billing shall be done for energy recorded on each occasion of availing supply during the billing month.

(c) _____

(d) _____

(e) For the synchronization with the grid, power shall be provided for a maximum period of 2 hours on each occasion."

- (vi) *That, in compliance of aforesaid provisions of Regulation and Tariff order, respondent Discom is required to apply 2 different sets of billing methodology for each occasion of drawl by RE Generators.*
- (vii) *Aforesaid Regulation 10 provides that the period and rate shall be considered as per tariff schedule for synchronization and in all other cases billing shall be done as per rate of temporary HT industrial category. It is submitted that under the HV 7 tariff category any generator can draw power for the purpose of synchronization maximum of 2 hours only. Thus, energy drawn over and above two hours falls under the residuary billing mechanism provided in the regulation 10. Accordingly, required to be billed as per rate prescribed for HT Temporary tariff under Schedule HV 3.1 (HT Industrial). It is stated that HT industrial tariff (Tariff Schedule HV 3.1) has provision for billing of Monthly Fixed Charges (based on billing demand), Energy Charges (as per units consumption).*
- (viii) *That, considering the aforesaid provision of regulation as well as tariff order billing of power drawn for 'synchronization' purpose (up to two hours only) is to be done under HV-7 tariff schedule. Such drawl can be computed for entire billing month considering that on each occasion of drawl initial 2 hours allowed for synchronization purpose.*

- (ix) *That, contention of the petitioner that even the power drawn continuously over and above the 2 hour should also be billed under HV-7 is without any substance as HV-7 tariff category doesn't permit use of power more than 2 hours. As per provision of the regulation read with the tariff order said power need to be billed **at the rate applicable to temporary connection under HT Industrial Category.***
- (x) *That, at present energy drawn upto 2 hour at each occasion is being billed under HV-7 tariff schedule. Further, following procedure is being adopted in the billing of power drawn over & above 2 hours:*
- a. **Energy charges:** *Energy drawn continuously over and above 2 hour is being billed at the rate of 1.25 times of energy charges prescribed for temporary connection under HT Industrial Category.*
 - b. **Fixed charges:** *Maximum recorded MD among all the occasion of above 2 hours is being considered as Billing Demand for the entire billing month. Further billing is being done on prorata basis considering only those number of days in which power is drawn over and above 2 hours in any occasion.*
 - c. *Power factor incentive/Surcharge and ToD rebate is being provided on the energy charges billed under temporary HT Industrial Category.*

*Thus, it may be seen that petitioner is not being treated as industrial consumer under HV 3.1 tariff category. For the purpose of billing of power drawn over and above 2 hour, rate of charges applicable to temporary connection under HT Industrial category are being considered in accordance with the provision of the Regulation. Detailed calculation sheet showing billing under temporary industrial category and day wise consumption summary is enclosed as **Annexure-1 (Colly).***

- (xi) *That, it is noteworthy to mention that aforesaid billing is being done by the Discom is subject to upwards revision depending upon the clarification/guideline/decision received from the Hon'ble Commission on the following issues:*
- a. *Billing Demand for calculation of Monthly Fixed Charges: In case of consumers, Billing Demand is considered as Recorded maximum demand (MD) or 90 % of Contract Demand (CD), whichever is higher. Since in case of Generators, there is no defined CD, the only parameter available is Recorded MD in each occasion. Whether the maximum recorded MD among all the occasion of non-synchronization period is to be considered as Billing MD for the entire billing month is not clear. The same needs to be clarified. Further, whether the Highest recorded MD during a period of drawl of power beyond 2 hours, is to be treated as the Billing Demand for all successive periods of drawl of power beyond two hours during whole year (as mentioned in clause 'c' of para 1.19 of 'General Terms and Conditions for HT Tariff above) is also not clear.*
 - b. *Calculation of Monthly Fixed Charges : As mentioned in clause 'a' of para 1.19 of 'General Terms and Conditions for HT Tariff above, the Monthly Fixed Charged are to be billed on pro-rata basis for the number of days the Temporary*

Connection has been availed during the month. However, in case of Grid Connected Generators, there is no specified period for which the Temporary Connection can be said to be availed. Neither there is any application of consumer, nor any subsisting agreement for availing Temporary Supply. As such, how the proportionality rule is to be applied for calculation of monthly fixed charges in case of grid connected generators is not clear.

- c. Calculation of Guaranteed Annual Minimum Consumption: The guaranteed annual minimum consumption depends upon contract demand. In case of grid connected generators, there is no subsisting contract demand. Hence how Guaranteed Annual Minimum Consumption is to be calculated is not clear. Further, as mentioned in clause 'b' of para 1.19 of 'General Terms and Conditions for HT Tariff above, the guaranteed annual minimum consumption is also required to be calculated on pro-rata basis for the number of days the connection has been availed during the year. Since there is no specified period during which the Temporary Connection has been availed in case of Grid Connected Generators, how the proportionality rule is to be applied for calculation of Guaranteed Annual Minimum Units in case of grid connected generators is not clear.
- d. Applicability of other terms and condition of tariff order: As mentioned in clause 'i' of para 1.19 of 'General Terms and Conditions for HT Tariff above, Power factor incentives/penalties and the condition for Time of Day Surcharge/rebate shall be applicable in case of Grid connected generators or not.
- e. Advance payment : As mentioned in clause 'd' of para 1.19 of 'General Terms and Conditions for HT Tariff above, condition of advance payment shall be applicable in case of Grid connected generators or not.
- f. Applicable Energy Charges: In the Tariff Schedule HV 3.1 differential energy charges provided depending upon the load factor upto 50% and above 50%. In the case of grid connected generator there is no contract demand, therefore how the load factor shall be calculated and which rate of energy charges shall be applicable is not clear.
- g. Power drawn under HV-7 Exceeds 15% limit: In case grid connected generator drawing power under HV-7 tariff schedule, exceeds drawl limit of 15% what shall be the manner of billing in such circumstances. Whether any action is required to be taken in terms of penal billing or otherwise, if recorded MD of such generators exceeds the 15 % limit prescribed in tariff.

The status of drawl of power is enclosed as **Annexure-2**. It may be seen from the perusal of the status that petitioner is continuously drawing power in excess of permissible 15% limit. Thus, to avoid any further dispute clarification is needed from this Hon'ble Commission in the matter.

- (xii) That, in view of above, instant petition filed by the petitioner is devoid of merit and is liable to be dismissed.

12. By affidavit dated 12.11.2020, the petitioner filed rejoinder to the reply filed by the Respondent

No.2. The petitioner broadly submitted the following in aforesaid rejoinder:

1. *That the Petitioner without prejudice to the above, submits before this Hon'ble Commission that the issues raised in the present petition are already covered by the decisions of this Hon'ble Commission in Petition No. 50 of 2016 vide Order dated 25.10.2016 and in Petition No. 42 of 2016 vide order dated 05.12.2016. Vide these orders, this Hon'ble Commission has already held that **if the power is required by the Petitioner for synchronization of WEGs frequently, the same cannot be considered under drawl of power during shut down or emergency periods and the provisions of the aforesaid Regulations shall not apply and therefore, shall be billed as per the provisions of Tariff Schedule HV-7. The Commission, therefore directs the respondents to take action accordingly as mentioned above and revise the impugned bills from November 2015 if found necessary. The Commission also directs the respondent no. 2 to make the payment of bills to the Petitioner for sale of energy from its WEGs as per the terms and conditions of the applicable tariff order/ PPAs after adjusting the revised bills. The respondents are also directed to report compliance by 15.11.2016.***

In the light of the aforesaid orders which have attained finality, it is respectfully prayed that this Hon'ble Commission may be pleased to pass the same order in the present case as well and direct the Respondent No. 2 to levy HT bills only under HV-7 Category and further direct the Respondent No. 2 to revise the past bills which were levied under HV-3.1 Category.

2. *Without prejudice to the above, the Petitioner denies and disputes each and every averment made in the reply filed by the Respondent No. 2 as well as reply filed in Petition No. 13/2020 and the averments made in there are wrong and misleading. Accordingly, the facts stated in the reply filed by the said Respondent that have not been traversed or denied are not deemed to have been admitted by the Petitioner.*
3. *That the Respondent No. 2 has misconstrued Regulation 10 of the MPERC RE Regulation, 2010 as amended while giving effect to the MPERC Tariff Order dated 08.08.2019. It is submitted that the MPERC RE Regulations, 2010, as amended, provides for synchronization of the RE Generators with the grid. It is further submitted that the said Regulation clearly distinguishes the nature and purpose of drawl of power by such RE Generators and clarified that the said drawl of power is only for the purpose of synchronization at the time of shut-down or such other emergencies. The said Regulation further stipulated that "in other cases", the RE Generators will be billed at the rate applicable to temporary connection under HT Industrial Category. In this regard it is submitted that the subject Tariff Order does not provide any specific tariff category within which the 'Temporary Connection under HT Industrial Category' would fall. In this regard, in the absence of any specific tariff category it can be seen that the Respondent DISCOM has been consistently treating the Petitioner under HV-7 Category, rightly so, taking into account the nature of the activity of the Petitioner and usage of the electricity by the Petitioner i.e. for synchronization and*

related activities. However, the Respondent no.2, by issuing impugned invoice resorted to erroneous interpretation of the Tariff Order dated 08.08.2019 and thereby erroneously placed the Petitioner in Category HV 3.1. The aforesaid actions of the Respondent no.2. to unilaterally categorize a RE Generator availing power for synchronization with the grid as a Consumer under HT-3.1 Category is completely arbitrary and contrary to the applicable Regulations and the EA, 2003. It would be pertinent to mention that the Ld. Commission has duly exempted the RE Generator(s) from the minimum consumption requirement under the general terms and conditions applicable to HV-7 Category. In accordance with the said terms and conditions applicable to HV-7 Category, the Petitioner is further not engaged in any "production activity" as well, thus fulfilling all the criterial envisaged under the Principal RE Regulation, 2010 as well as the Tariff Order dated 08.08.2019.

- 4. It is submitted that HV 3.1 tariff schedule is applicable to those categories of consumers who are availing power for the purpose other than synchronization i.e. lighting in the offices, main factory buildings, stores, canteen, residential colonies of industries, compound lighting, common and ancillary facilities, water supply, sewage pumps, etc. in the premises of the industrial units which are dependent on the power drawn from the grid. However, in the present case, the drawl of power for the purpose of synchronization with the grid on account of the shutdown of the wind power plant due to non-availability of wind power does not change the very nature and purpose of drawl of power from the grid by the Petitioner nor gives rise to any condition prescribed under HV-3.1 category so as to classify the Petitioner as a consumer under HV-3.1 Category. It is submitted that only during the shutdown or emergency periods, the plant is not able to generate any power and requires power to synchronize itself with the grid, for which the Petitioner requires to avail power and thus would be billed at temporary supply tariff as specified in the aforesaid Regulations and thus it cannot be considered drawl of power under HT industrial category-3.1.*
- 5. In view of the detailed facts stated in the petition, it is submitted that the entire issue pertains to the wrongful categorization of the Petitioner which is Wind Power Generating entity, as an Industrial Consumer falling under "HV-3.1 Category" while the Madhya Pradesh Electricity Regulatory Commission (Aggregate Revenue Requirement and Retail Supply Tariff) Order for FY2019-20 [hereinafter referred to as "MP Retail Supply Tariff 2019-20) and the "Tariff Schedule" issued thereto read with the Power Purchase Agreement (PPA) 14.08.2014 and the HT Connection Agreement executed between the Petitioner and the Respondents No. 2 recognizes the Petitioner as a consumer falling under "HV-7 Category" and availing supply only for the purpose of "synchronization with the grid".*
- 6. It is humbly submitted that unlike conventional sources of energy, wind generation depends greatly on weather conditions during a particular time block which directly affects power generation. As such, the wind power plant/ wind turbines do not function perennially and are not*

active during the period when wind is not available. Thus, in order to restart the wind turbines, power is required by the wind energy generators frequently. This power is known as start-up power. The wind energy generators draw such start-up power from the grid i.e., from the network of the distribution licensee to which they are connected and are thus, billed for the same accordingly. In this regard, it is pertinent to note that the Petitioner being a wind energy generator draws start-up power from the distribution network of the Respondent.

7. That the Ld. MPERC vide notification bearing ref. no. 1629-MPERC-2017 dated 15.11.2017 notified the Seventh Amendment to the Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 [ARG- 33(1)(vii) of 2017] ("Seventh Amendment") which inter alia provided for drawl of power for synchronization at the time of shut down or such other emergencies and further clarified that the tariff applicable for any other purpose i.e. purpose other than synchronization shall be billed at the rate applicable to HT-Industrial Category. In other words, the said Regulation 10 as amended is clear in terms of distinguishing the nature and purpose for which the power is availed by a RE Generator under HV-7 Category and had therefore made it abundantly clear that the rate applicable to HT-Industrial Category is applicable in other cases which are not for the purpose of synchronization with the grid. The amended Regulation 10 is reproduced hereinbelow:

"10. Drawing Power during shut down by Generator/ Co-generation from Renewable Sources. The generator Co-generation from Renewable Sources would be entitled to draw power exclusively for its own use from the Transmission/ Distribution Licensees' network for synchronization of plant with the grid or during shutdown period of its plant or during such other emergencies. The power availed during Synchronization of plant with the grid shall be billed for the period and at the rate as per the retail supply tariff order under tariff schedule for synchronization. In other case, it would be billed at the rate applicable to temporary connection under HT Industrial category. (emphasis supplied)

8. From a bare perusal of the above, it is evident that the Seventh Amendment to the Principal Regulation further formally reinforced the MPERC Order in terms of billing of start-up power under the HV-7 tariff category. The Seventh Amendment in line with the MPERC Order, stipulated that wind energy generators are liable to make payment of only energy charges as per HV-7 Tariff Category for drawl of power for the purposes of synchronization with the grid and further clarified that the said drawl for all other purposes shall be billed at the rate applicable to temporary connection under HT Industrial category.
9. It is submitted that in terms of Section 86(1)(1)(e) read with Section 62 of the Electricity Act, 2003, this Hon'ble Commission issued a Tariff Order dated

17.03.2016 for procurement of power from wind energy generating entities commissioned on or after 01.04.2016 for sale of electricity to Discoms within the State of Madhya Pradesh. Pursuant to the said Tariff Order, this Hon'ble Commission also determined the "Tariff Schedules for High Tension Consumers for FY 2018-19" categorising the Petitioner as a "High Voltage (HV) 7 Category" consumer. According to the aforesaid Schedule, the tariff applicable to those generators, who are already connected to the grid and seek to avail power for synchronization with the grid, was determined as Rs. 8.75 paise/ unit which has been increased to INR 9.35/unit. In terms of the said Tariff Order, the Petitioner has been paying the HT bills raised by Respondent DISCOM.

10. It is important to note that the previous tariff orders, passed by the Hon'ble Commission has also provided for billing generators, for power drawn for synchronization with the grid, at the rate given in HV-7 tariff category. However, the Respondent no. 2 billed the Petitioner, for the month of August, 2020, for the power drawn for synchronization, under two separate categories i.e. at the rate applicable to temporary industrial consumers under HV-3.1 industrial category and HV-7 tariff category. Thus, while the petitioner was already paying charges of INR 9.35/unit under HV-7, it was also asked to pay energy charges and fixed charges at the rate applicable to temporary industrial consumer i.e 1.25 times the rate prescribed under HV-3.1 category.
11. It is submitted that as per Section 45 of the Electricity Act, 2003 the MPPKVVNL can recover charges only in accordance with the tariff fixed by this Hon'ble Commission from time to time. Thus, MPPKVVNL is obligated to bill the petitioner as per the schedule mentioned in the tariff order read with the HT Connection Agreement entered into stipulating the tariff applicable as per HV-7 Category. As such, neither the tariff order nor the RE Regulations contemplate application of HV-3.1 industrial category on renewable energy generators, drawing power for synchronization with grid.
12. In above mentioned facts and circumstances, that Respondents have issued invoice in contravention of the provisions of the Electricity Act, 2003, the RE Regulation, 2010 and orders of this Hon'ble Commission. MPPKVVNL is incorrectly levying temporary supply tariff for industrial consumers on the petitioner. In any event, MPPKVVNL cannot apply two different categories of tariff on withdrawal of power by the same consumer (herein the generator) for the purpose of synchronization.
13. That the Petitioner reserves the right to file any other/further documents/additional affidavit at a subsequent stage, if the circumstances so warrant.

Para-wise Rejoinder to the Reply:

- A. That the contents of para 1 and 2 of reply are matter of record and need not be replied.

- B. *That the contents of para 3 of reply are admitted to the extent that the Hon'ble Commission vide order dated 16.09.2020 admitted the petition and directed to respondents to file the reply. It is further submitted that since the Respondent are admitting that they have received the copy of petition and in pursuance of which they have filed the present reply, therefore the contents of para 3 need not be replied.*
- C. *That the contents of para 4 of reply are matter of record and need not be replied.*
- D. *That the contents of para 5 of reply are matter of record and need not to replied. That the Respondents is relying on the reply filed by them in the Petition no. 13/2020 in the matter M/s Orange Bercha Wind Power Pvt. Ltd. v. Madhya Pradesh Power Power Management Co. Ltd. & Ors and the Petitioner has already filed its para-wise rejoinder in the aforesaid matter to Respondent's reply. A copy of rejoinder filed in Petition no. 13/2020 is annexed herewith and marked as **Annexure A/1**.*

It is submitted that all averments made therein as are contrary or suggestive of any variance from the submissions made hereinabove are generally and specifically denied. Thus, all such averments contrary to and as are at variance even if not specifically traversed may kindly be treated as having been traversed and denied in entirety of the context of the factual and legal aspects of the submission made herein above.

13. At the hearing held on 02nd November'2020, the representative of the Respondent No. 2 requested to consider the same arguments submitted by the Respondent No.2 before this Commission in Petition No. 13 of 2020 (M/s Orange Bercha V/s. MPPMCL & others) which was also having similar sets of issues raised in the subject petition. Considering the request, the arguments submitted by the Respondent No.2 in aforesaid petition to the extent of issues involved in this petition are considered while deciding the subject petition.

14. Observations and Findings:

The Commission's observations on the petition and submissions made by the Petitioner & Respondents in this matter are as under: -

- (i) The petitioner has mainly raised the following issues in the subject petition: -
- a) Billing methodology for power drawn for synchronization of the generator with the grid upto a period of 2 hours and after 2 hours in each instance/occasion.
 - b) Billing methodology for power availed by the generator from the grid for the purpose other than synchronization.

c) Supplementary demand raised by the Respondent No. 2 (M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd. Indore) for the past period.

(ii) Generation of power through Solar and Wind projects is possible only when natural resource i.e. sunlight/wind is available. If the sunlight/wind is not available though the project is operational, it cannot generate power. During such time, it draws power from the grid for auxiliary consumption and for synchronization with the grid when generation starts again. Sometimes, power is also required during the shutdown or other emergencies in the plant. The Commission has observed that for billing the generators, who avail power from the Distribution Licensees under such circumstances, appropriate provisions have been made in the Regulations and the Retail Supply Tariff Order. The Commission vide Notification No. 3042/MPERC-2010, dated 09.11.2010, had issued the “Madhya Pradesh Electricity Regulatory Commission (MPERC) (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 (Revision-I) (RG-33 (I) of 2010)”. Subsequently, several amendments have been made in the Regulations from time to time. The 7th amendment in the Regulations was made on 17.11.2017, wherein Clause 10 of the said Regulations provides as under:

10. Drawing power during shut down by Generator/Co-generation from Renewable Sources

The Generator/Co-generator would be entitled to draw power exclusively for its own use from the Transmission/Distribution Licensees’ network for synchronization of plant with the grid or during shutdown period of its plant or during such other emergencies. The power availed during synchronization of plant with the grid shall be billed for the period and at the rate as per the retail supply tariff order under tariff schedule for synchronization. In other cases, it would be billed at the rate applicable to temporary connection under HT Industry category.

(iii) The annual Retail Supply Tariff orders provide a Tariff Schedule HV-7, which is applicable for synchronization of power for generators connected to the Grid. The Retail Supply Tariff order for FY 2019-20, is having a special tariff schedule HV-7 for the generators connected to the

grid and availing power for synchronization with the grid from time to time. As per the terms and conditions under schedule HV-7, synchronization with the grid shall only be made available after commissioning of such generating plants. For synchronization with the grid, power shall be provided for a maximum period of 2 hours on each occasion. It has also been provided that the supply for synchronization with the grid shall not exceed 15% of the capacity of unit of highest rating in power plant. This tariff is a single part tariff provides for billing only on per unit energy charge basis and the condition of minimum consumption shall not be applicable to the generators. Billing has to be done for energy recorded on each occasion of availing supply for synchronization purpose during the billing month.

- (iv) Earlier vide petition No.29/2019, MPPMCL and all the three state Discoms approached the Commission submitting that because of two types of billing methodology for power drawn for synchronization purpose and “other-than –synchronization” purposes, they were facing difficulty to implement the same. They stated that it becomes difficult to ascertain the purpose of drawl of power by a Generator in each occasion. During the initial period of two hours also the power being drawn by a generator may or may not be utilized for synchronization purposes. They further stated that only way to implement the provisions of the Regulations and the Retail Supply Tariff Order is to assume that in first two hours power drawn is for synchronization purpose. They further stated that while carrying out billing at the rate applicable to temporary connection under HT Industrial category, it is not clear whether all terms and conditions prescribed in the Tariff Order for temporary consumer shall be applicable or tariff order shall be referred only to ascertain the rate of billing. Citing the difficulties being faced, they had prayed for amendment in the Regulations as well as in the Tariff Schedule HV-7.
- (v) The Commission disposed of the aforesaid petition No. 29/2019 vide order dated 16th December 2019 with the observation that the petitioners were seeking revision/ clarification in retail supply tariff order for FY 2018-19 issued on the 3rd May 2018. The Commission observed that the petition was filed after a period of more than a year. It was mentioned in the aforesaid order that the process for determination of ARR and retail tariff order for FY 2020-21 have already been started. In view of the background mentioned in the subject petition and

developments, the Commission directed the petitioners that with regard to their contention for HV-tariff, they may approach by way of appropriate proposal in their tariff petition for FY 2020-21. With regard to their other prayer seeking amendment in MPERC (Co-generation and Generation of Electricity for Renewable Source of Energy) (Revision-I) Regulations 2010, it was mentioned in the aforesaid order that the Commission shall examine the prayer of the petitioners and may come up with an appropriate draft amendment, if required, providing opportunity to all stakeholders to offer their comments/objections on the draft Regulations through the process of public hearing. The above-mentioned process for amendment in MPERC (Co-generation and Generation of Electricity for Renewable Source of Energy) (Revision-I) Regulations 2010 was taken up and has already been completed and further course of action is under consideration of the Commission. However, revision if any, in the Regulations shall be applicable prospectively only.

- (vi) With regard to the present and past period billing dispute about applicability of schedule HV-7 and HV-3.1, the Commission has examined the views and submissions made by the Petitioner and Respondents in light of the provisions under the Retail Supply Tariff orders and the applicable Regulations.

- (vii) Regulation 10 of Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Source of Energy) Regulations 2010 (Revision-I) (RG-33(I) of 2010) has specific provision for drawing power by Generator /Cogeneration from Renewable Sources. It entitles the Generator/Co-generation from Renewable Sources to draw power exclusively for its own use from the Transmission/Distribution Licensees' network for synchronization of plant with the grid or during shutdown period of its plant or during such other emergencies. Regarding billing for that period, it has clearly been specified that the power availed during synchronization of plant with the grid shall be billed for the period and at the rate as per Retail Supply Tariff order under tariff schedule for synchronization. Accordingly, for the previous years' Retail Supply Tariff orders including the Retail Supply Tariff order for FY 2019-20, a specific tariff schedule HV-7 was incorporated in these tariff orders.

- (viii) The Regulations provide that the power availed during synchronization of plant with the grid shall be billed for the period and at the rate as per retail supply tariff order under tariff schedule for synchronization. Accordingly, the Commission has fixed the maximum time period for billing the generator for synchronization purpose alongwith the applicable unit rate. Hence, the Respondent Distribution Companies are required to bill the generators for power drawl for synchronization purposes accordingly. The drawl of power by the generators during shutdown period of its plant or during such other emergencies, would be billed at the rate applicable to temporary connection under HT Industrial Category.
- (ix) In the matter of M/s Malwa Solar Power Generation Private Limited in Appeal no. 112/2017 against MPERC order dated 1/2/2017, Hon'ble APTEL upheld the order of the Commission. It has been held that the billing of the solar generator for power drawl from the Distribution Companies exclusively for its own use, at the rate applicable to temporary connection under HT Industrial Category under Regulation 10, is in order. Based on the prevailing Regulations and the order dated 12/2/2020 passed by the Hon'ble Appellate Tribunal for Electricity in aforesaid Appeal, the Commission reiterates that the maximum two hours' time limit for synchronization of power specified in HV-7 Schedule of Retail Supply Tariff order for FY 2019-20 was much more than normally the actual time required for synchronization of power by the generators. On conjoint reading of the provisions under aforesaid MPERC Regulations and HV-7 Schedule, the continuous drawl of power in every instance for over and above two hours shall be considered for the purposes other than synchronization. Therefore, the billing for such continuous drawl of power for over and above two hours in every instance has to be done at the rate applicable for temporary connection under HT Industrial Category which is HV 3.1 schedule in the Retail Supply Tariff order for FY 2019-20. Therefore, for every instance of power drawl for synchronization, upto two hours, tariff as per HV-7 schedule is applicable but thereafter for the period of continuous power drawl over and above two hours, temporary tariff at the rate of HV-3.1 (H.T. Industrial Category) would be applicable.
- (x) However, billing under tariff category HV-3.1 requires computation of Fixed as well as Energy charges. Fixed charges are billed based on billing demand during the month. As per clause 1.5 under "General Terms and Conditions of High-Tension Tariff" of the Retail Supply Tariff Order

for FY- 2019-20, the billing demand for the month shall be the actual maximum KVA demand recorded during the month or 90% of the contract demand, whichever is higher. In the present case, the generator does not have any specified contract demand with the Respondents. Therefore, the actual Maximum Demand recorded during the month, when power was drawn (excluding for synchronization), shall be considered on billing demand for computation of fixed charges for the purpose of billing under HV-3.1 Tariff Schedule applying temporary supply basis. It is also provided in the aforesaid Retail supply tariff order under clause 1.19(a) of “General Terms and Conditions of High-Tension Tariff” that the fixed charges in the case of temporary connection shall be recovered for the number of days for which the connection is availed during the month by prorating the monthly fixed charges. Accordingly, in the subject matter, the fixed charges on temporary supply basis, under HV 3.1 Tariff Schedule shall be prorated on the number of days during the month when the power is drawn for other than synchronization as mentioned above.

- (xi) For Computation of Energy Charges, rates for consumption up to 50% load factor under Tariff Schedule HV 3.1 would be applicable, as the power drawn by the generator from the grid is for a limited period as per its requirement. Further, the specific terms and conditions defined under the Tariff Schedule HV 3.1 and other terms and conditions for temporary supply in Retail Supply Tariff orders would not be applicable.

- (xii) Regarding the billing for previous years, the Commission has observed that the Respondent Distribution Company had wrongly billed at the rate applicable under HV-7 schedule for the power continuously drawn over and above two hours in contravention with the provisions under MPERC (Cogeneration and Generation of Electricity from Renewable Source of Energy) Regulations 2010 (Revision-I) (RG-33(I) of 2010) as amended and the applicable Retail Supply Tariff orders. This is a serious lapse committed by the Respondent Discom and later on, it has issued supplementary bills for difference of HV-3.1 (Temporary Supply) and HV-7 billing with regard to the usage by the generator. The Commission in the Retail Supply Tariff Orders has categorically directed the Respondent Discom that they can't change tariff or the tariff structure. Clause 1.26 of the General Terms and Conditions of High-Tension Tariff is reproduced below:

“No charges in the tariff or the tariff structure including minimum charges for any category of consumer are permitted except with prior written permission of the Commission. Any order without such written permission of the Commission will be treated as null and void and also shall be liable for action under relevant provisions of the Electricity Act, 2003”.

15. In view of the observations and findings in the foregoing paragraphs, the Respondent Discom is directed to bill the generators in the subject matter, in accordance with the provisions under MPERC (Cogeneration and Generation of Electricity from Renewable Source of Energy) Regulations 2010 (Revision-I) (RG-33(I) of 2010) as amended and the applicable Retail Supply Tariff orders issued by this Commission from time to time as clarified above. The Respondent Discom shall not be entitled to recover any carrying cost prior to the period when the supplementary demand was issued for the first time.

With the above directions, the subject petition is disposed of.

(Shashi Bhushan Pathak)
Member

(Mukul Dhariwal)
Member

(S.P.S. Parihar)
Chairman