

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION**  
**BHOPAL**

**Sub: In the matter of Petition under Section 86(1)(b) read with Section 86(1)(e) and Section 86(1)(f) of the Electricity Act, 2003 read with Article 8.1, 8.6 and 14.3 of the Power Purchase Agreement dated 07.12.2015 and Article 7.1, 7.6 and Article 13.3 of PPA dated 30.05.2016 for recovery of undisputed outstanding amounts along with Late Payment Surcharge ("LPS") legally due to Petitioner No. 1 and in the matter of Petition under Section 86(1)(b) read with Section 86(1)(e) and Section 86(1)(f) of the Electricity Act, 2003 read with Article 7.1, 7.6 and 13.3 of the Power Purchase Agreement for 30 MW dated 20.05.2015 ("PPA-1"), Article 7.1, 7.6 and Article 13.3 of the Power Purchase Agreement for 8 MW dated 30.12.2015 ("PPA-2"), and Article 7.1, 7.6 and 13.3 of the Power Purchase Agreement for 6MW dated 30.12.2015 ("PPA-3") for recovery of undisputed outstanding amounts along with Late Payment Surcharge ("LPS") legally due to Petitioner No. 2.**

**ORDER**

**Hearing through video conferencing  
(Date of order: 20<sup>th</sup> September' 2022)**

- 1) M/s Green Infra Wind Energy Ltd,**  
Building no 08 , Tower C, 5th Floor, - **Petitioner No. 1**  
DLF Cyber City, Gurgaon -122002, Haryana
- 2) M/s Green Infra Corporate Solar Ltd.,**  
Building No. 08, Tower C, 5<sup>th</sup> Floor, - **Petitioner No. 2**  
DLF Cyber City, Gurgaon – 122002, Haryana
- V/s
- The Managing Director**  
**Madhya Pradesh Power Management Company Ltd,** - **Respondent**  
Shakti Bhawan, Rampur, Jabalpur (MP) - 482008

Ms. Anukriti Jain, Advocate appeared on behalf of the petitioners.

Shri Deepak Awasthi, Advocate appeared on behalf of the Respondent.

The subject petitions are filed under Section 86(1)(b) read with Section 86(1)(e) and Section 86(1)(f) of the Electricity Act, 2003 read with Articles under Power Purchase Agreements for recovery of undisputed outstanding amounts along with Late Payment Surcharge ("LPS") due to the Petitioners.

**2.** Petitioners vide affidavit dated 10.01.2022 broadly submitted the following in the petition:

- "1. The instant **Petition No. 5** is being filed by **Petitioner No. 1** under Section 86 (1)(b) read with Section 86 (1)(e) and Section 86(1)(f) of the Electricity Act, 2003 read with Article 8.1,8.6 and 14.3 of the Power Purchase Agreement ("**PPA-1**") dated 07.12.2015 and Article 7.1, 7.6 and Article 13.3 of PPA dated 30.05.2016 ("**PPA-2**") for recovery of undisputed outstanding amounts along*

*with Late Payment Surcharge legally due to the Petitioner. PPA-1 and PPA-2 shall be collectively referred to as “PPAs” hereinafter.*

2. *The instant **Petition No. 6** is being filed by **Petitioner No. 2** under Section 86 (1)(b) read with Section 86 (1) (e) and Section 86(1)(f) of the Electricity Act, 2003 read with Article 7.1, 7.6 and 13.3 of the Power Purchase Agreement for 30MW dated 20.05.2015 (“**PPA-1**”), Article 7.1, 7.6 and 13.3 of the Power Purchase Agreement for 8MW dated 30.12.2015 (“**PPA-2**”) and Article 7.1, 7.6 and 13.3 of the Power Purchase Agreement for 6MW dated 30.12.2015 (“**PPA-3**”) for recovery of undisputed outstanding amounts along with Late Payment Surcharge (“**LPS**”) legally due to the Petitioner. PPA-1, PPA-1 and PPA-3 shall be collectively referred to as “PPAs” hereinafter.*
3. *The Petitioners are compelled to file the present petitions because the Respondent has been in consistent breach of its obligations arising out of the PPAs. Respondent has not made any payment towards the energy supplied invoices raised by the Petitioners since supply month August 2020. The applicable LPS (Late Payment Surcharge) thereon has also not been paid by the Respondent. Despite, repeated follow ups by the Petitioners and even offering to grant 100% LPS waiver and 1% rebate on the principal overdue amount for the months June 2020 to January 2021 in March 2021 and the months July 2020 to August 2020 in June 2021, the Respondent has not cleared the outstanding dues for the period August 2020 till November 2021 thus compelling the Petitioners to file these instant petition before the Hon’ble Commission for relief. Therefore, having incurred financial losses on account of the same, the Petitioners are constrained to approach this Hon’ble Commission.*
4. *It is pertinent to mention here that the **Petitioner No. 1** had filed a similar petition in 2018 against the Respondent for outstanding payments being Petition No. 52/ 2018 claiming outstanding dues for the period March 2016 till September 2018 and applicable outstanding LPS thereon. **Petitioner No. 2** had filed a similar petition in 2018 against the Respondent for outstanding payments being Petition 53/2018 claiming outstanding dues for the period April 2015 till September 2018 and applicable outstanding LPS thereon. This Hon’ble Commission passed an order dated 04.01.2021 in the said matter whereby the matter was referred for arbitration. The Petitioners have challenged this Hon’ble Commission’s said order dated 04.01.2021 in appeal before the Hon’ble APTEL and the said appeal being No. DFR No. 74 of 2021 (**by Petitioner No. 1**) and No DFR No 75 of 2021 (**by Petitioner No. 2**) is presently sub-judice. Therefore, the Petitioners are not including LPS claims raised in Petition No. 52/2018 and Petition No. 53/2018 in the present petitions, and the claims made in the present petitions are independent of the reliefs sought vide Petition No. 52/2018 and Petition No. 53/2018.*
5. *The petitioners are a ‘Generating Company’, as defined in Section 2(28) of the Act and are inter alia engaged in the business of generation and sale of wind energy. The petitioners have their registered offices at Fifth Floor, Tower C, Building No. 8, DLF Cyber City, Gurgaon-122002, Haryana. The **Petitioner***

*No. 1 has installed and operates a wind power-based generating plant 2x30MW capacity at Shajapur, Madhya Pradesh (“**Project**”). The entire energy from the Project is being supplied to the Madhya Pradesh Power Management Company Limited under the PPA-1 (30MW) and PPA-2 (30MW), respectively. The **Petitioner No. 2** owns and operates a wind power-based generating plant of 44 MW capacity in the State of Madhya Pradesh. The entire energy from the Project is being off-taken by the MPPMCL.*

6. *Respondent MPPMCL is a company registered under the Companies Act, 1956 having its registered office at Shakti Bhawan, Rampur, Jabalpur, Madhya Pradesh, 482008. MPPMCL is the holding company of the three distribution licensees within the state of Madhya Pradesh viz, Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited (“**East Discoms**”) and Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited (“**West Discoms**”) Madhya Kshetra Vidyut Vitaran Company Limited (“**Central Discoms**”). It is entrusted with the responsibilities of bulk purchase of electricity from generating companies and supplying of electricity to the three discoms.*
7. *This Hon’ble Commission has jurisdiction to adjudicate this dispute under Section 86 (1) (b), 86 (1) (e) and 86 (1) (f) of the Electricity Act, 2003 (“**Act**”). Section 86(1)(e) of the Act provides that this Hon’ble Commission shall discharge the function of promoting cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person. Further, this Hon’ble Commission is empowered under Section 86 (1) (f) of the Act to adjudicate disputes between the licensees and generating companies. Further, Article 14.3 of the PPA-1 and Article 13.3 of PPA-2 **in Petition No. 5 of 2022**; and Article 13.3 of the PPA-1, Article 13.3 of the PPA-2 and Article 13.3 of PPA-3 **in Petition No. 6 of 2022** refers adjudication of disputes arising out of the respective PPAs by this Hon’ble Commission only.*
8. *The petitioners are generating companies within the meaning of Section 2 (28) of the Act. **Petitioner No. 1** has established and operates 60 MW (20 x 1.5MW + 20 x 1.5MW) of wind energy generating station at Shajapur, Madhya Pradesh whereas **Petitioner No. 2** has established and operates 44 MW (30MW + 8MW + 6MW) of wind energy generating station, connected to Nipaniya, Madhya Pradesh.*
9. *That MPERC, Bhopal by its order dated 26.03.2013 in SMO 12/2013 issued the ‘Tariff Order for procurement of power from Wind Electric Generators’ (“**2013 Tariff Order**”). The tariff for supply of energy from the Petitioner’s Project is governed by the said order. A copy of the 2013 Tariff Order is annexed herewith and marked as **ANNEXURE P-1** in both the petitions.*
10. *That the **Petitioner No. 1** executed PPA-1 with MPPMCL before commissioning of the 1.5 MW x 20 Project and agreed to commission the Power Project as per the Scheduled COD. Similarly, the PPA-2 was executed after the commissioning of the remaining 1.5MW x 20 Project. The relevant terms of the one of the Phase -1 PPA, considering the terms are identical, are*

reproduced herein below:

**“2. ARTICLE 2: TERM OF THE AGREEMENT**

**2.2. Effective Date**

*This Agreement shall come into effect from the date of its Execution or date of commissioning of first Wind Electric Generator, whichever is earlier.*

**2.3. Expiry Date**

*Completion of 25 years from the COD of the Power Project.*

**4.2. Special Power to the Seller**

*The Seller has appointed M/s Sudheer Projects Private Limited, Hyderabad, for installation, operation and maintenance of the Power Project or any other responsibilities for dealing with the agencies connected with this Power Project. The Seller may change the Developer at any date during the Term of this Agreement in which case the Seller shall Inform the Procurer, the name of the new Developer along with its address and responsibilities that have been provided to the newly appointed Developer. For the clarification of doubt, assigning the responsibilities by the Seller to the Developer does not absolve the Seller of its obligations. Further, the change in the Developer by the Seller shall be followed by the Supplemental Agreement as per Article 15.1.*

**8. ARTICLE 8: TARIFF, BILLING AND PAYMENT**

**8.1. Tariff for the Sale of Power**

**8.1.1.** *Tariff as per the MPERC Tariff Order dated 26.03.2013, is INR 5.92/KWh for project life of 25 years from the date of COD. If the Effective Date is on or before 31.03.2015, the / The above Tariff will be applicable to the Power Project for the entire Contract Capacity, even in case part / full capacity is not commissioned in the control period (01.04.2013 to 31.03.2016), subject to Force Majeure.*

**8.1.2.** *For the Power Project, where the Effective Date is between 01.04.2015 and 31.03.2016, the Tariff for the Contract Capacity that is commissioned on or before 31.03.2016 will be INR 5.92/KWh, as per the MPERC Tariff Order dated 26.03.2013 for project life of 25 years from the date of COD.....*

**8.1.3.** *The Procurer shall pay to the Seller at the above Tariff for the energy received at the Delivery Point under this Agreement*

**8.1.4.** *The Tariff rates shall be firm for the project life and will not vary with fluctuation in exchange rate or on account of changes in taxes, or any other reason whatsoever.*

**8.6. Payment Mechanism**

**8.6.1.** *The settlement period of the bill of Seller for the energy supplied to Procurer shall be 30 days from the date of submission of the bill to the concerned DISCOM where the power is injected.*

**8.6.2.** *The bills favoring the Procurer, shall be submitted to the concerned SE/AGM (O&M) DISCOM in whose area the power is injected. The bill shall be verified by the officer not below the rank of EE/DGM. Then SE/AGM (O&M) DISCOM shall send the verified bill in triplicates (3 copy) along with Joint meter reading statement to the CGM Commercial, MPPMCL, Jabalpur within 7 days of receipt of bills for arranging payment to the Seller.*

- 8.6.3. *In case of delay beyond the 30 days payment period, the Procurer will pay delayed payment surcharge on outstanding amount at the rate of 2% p.a. over and above the short term lending rate of the State Bank of India (known as Prime Lending Rate) prevailing on the first day of the month when payment became due.*
- 8.6.4. *The delayed payment surcharge will be passed on to the DISCOM by the Procurer.*
- 8.6.5. *The Seller shall open a bank account at ("The Sellers Designated Account") for all Tariff payments to be made by MPPMCL to the Seller and notify MPPMCL of the details for such account at least 30 days before the dispatch of the first monthly bill. All the Tariff payments shall be made into the Sellers Designated Account. Instructions to change the Sellers Designated Account will be accepted by MPPMCL only if they are accompanied with a duly authorised written consent of the Lender and/or Lender's Representative consenting to such change."*
11. *That the **Petitioner No. 2** executed PPA-1 with MPPMCL before commissioning of the 30 MW Project, and agreed to commission the Power Project as per the Scheduled COD. Similarly, the PPA-2 (8MW) and PPA-3 (6MW) were executed by the Petitioner with MPPMCL. The relevant terms of the PPA-1 dated 20.05.2015, considering the terms are identical, are reproduced herein below:*
- 2. ARTICLE 2: TERM OF THE AGREEMENT**
- 2.2. Effective Date**  
*This Agreement shall come into effect from the date of commissioning of first WEG of the Contract Capacity of the Power Project.*
- 2.3. Expiry Date**  
*Completion of 25 years from the date of commissioning of the Power Project or any mutually agreed date.*
- 3. ARTICLE 3: CONSTRUCTION AND DEVELOPMENT OF THE PROJECT**
- 3.2 Special Power to the Seller**  
*The Seller has appointed M/s Marut-Shakti Energy India Limited for installation, operation and maintenance of the Power Project or any other responsibilities for dealing with the agencies connected with this Power Project. The Seller may change the Developer at any date during the Term of this Agreement in which case the Seller shall Inform the Procurer, the name of the new Developer along with its address and responsibilities that have been provided to the newly appointed Developer. For the clarification of doubt, assigning the responsibilities by the Seller to the Developer does not absolve the Seller of its obligations. Further, the change in the Developer by the Seller shall be followed by the Supplemental Agreement as per Article 14.1.*
- 3.3 Purchase and Sale of contract capacity**  
*Subject to the terms and conditions of this Agreement, the*

*Seller undertakes to sell to the Procurer and the Procurer undertakes to pay tariff for all the energy supplied at the delivery point corresponding to the contracted capacity.*

**ARTICLE 7: TARIFF, BILLING AND PAYMENT**

**7.1 Tariff for the Sale of Power**

7.1.1 Tariff for this Agreement is INR 5.92/KWh, as per the MPERC Tariff Order dated 26.03.13 applicable for Wind Energy projects commissioned from 01.04.2013 to 31.03.2016, for project life of 25 years from the date of COD.

7.1.2 The Procurer shall pay to the Seller at the above Tariff for the energy received at the Delivery Point under this Agreement.

7.1.3 The Tariff rates shall be firm for the project life and will not vary with fluctuation in exchange rate or on account of changes in taxes, or any other reason whatsoever.

**7.5 Energy Accounting and Billing**

7.5.1 Billing of the metered energy shall be carried out on a monthly basis.

...

**7.6 Payment Mechanism**

7.6.1 The settlement period of the bill of Seller for the energy supplied to Procurer shall be 30 days from the date of submission of the bill to the concerned DISCOM where the power is injected.

7.6.2 The bills favouring the Procurer, shall be submitted to the concerned SE/AGM (O&M) DISCOM in whose area the power is injected. The bill shall be verified by the officer not below the rank of EE/DGM. Then SE/AGM (O&M) DISCOM shall send the verified bill in triplicates (3 copy) along with joint meter reading statement to the CGM Commercial, MPPMCL, Jabalpur within 7 days of receipt of bills for arranging payment to the Seller.

7.6.3 In case of delay beyond the 30 days payment period, the Procurer will pay delayed payment surcharge on outstanding amount at the rate of 2% p.a. over and above the short term lending rate of the State Bank of India (known as Prime Lending Rate) prevailing on the first day of the month when payment became due.

7.6.4 The delayed payment surcharge will be passed on to the DISCOM by the Procurer.

**7.7 Disputed Bill**

7.7.1 If the party does not dispute a Monthly Bill raised by the other Party by the Due Date, such Bill shall be taken as conclusive.

*A bare perusal of the provisions of aforementioned PPA's of Petitioner No. 1 and Petitioner No. 2 makes the following abundantly clear –*

*(i) The **Petitioner No. 1** is obliged to sell the 2 x 30 MW i.e. 60 MW of*

- energy generated to MPPMCL and MPPMCL is obliged to pay tariff for the energy supplied at the Delivery Point (Article 8.1.3)
- (ii) The **Petitioner No. 2** is obliged to sell the 44MW (30MW+8MW+6MW) of energy generated to MPPMCL and MPPMCL is obliged to pay tariff for the energy supplied at the Delivery Point (Article 3.3)
  - (iii) The Tariff rate i.e., INR 5.92/KWh will be firm for the entire term of the PPA i.e. for 25 years and will not vary (Article 8.1.1) for **Petitioner No. 1** and Tariff rate i.e., INR 5.92/KWh shall be firm for the entire term of the PPA(s) and will not vary. (Article 7.1.1) for **Petitioner No. 2**.
  - (iv) The billing has to be carried out on a monthly basis (Article 8.5.1 for **Petitioner No. 1**) and Article 7.1.1 for **Petitioner No. 2**).
  - (v) The settlement period of the bill of the Petitioners for the energy supplied to MPPMCL be 30 days from the date of submission of the invoice (Article 8.6.1 for **Petitioner No. 1** and Article 7.5.1 for **Petitioner No. 2**)
  - (vi) If MPPMCL has any dispute in relation to an invoice raised by the Petitioner, it shall pay 100% of the disputed amount and it is under an obligation to notify the Petitioner of such dispute within 15 days of receiving such invoice (Article 8.7.2 for **Petitioner No. 1** and Article 7.6.1 for **Petitioner No. 2**)
  - (vii) In case payment of bill is delayed beyond the 30 days of the submission of the invoice, MPPMCL is obligated to pay late payment surcharge on an outstanding amount at the rate of 2% p.a. over and above the short-term lending rate of the State Bank of India (Article 8.6.3 for **Petitioner No. 1** and Article 7.6.3 for **Petitioner No. 2**)
12. The **Petitioner No. 1** commissioned PPA-2 project on 30.03.2016 and PPA-1 project on 31.03.2016. The **Petitioner No. 2** commissioned the total project of capacity 44 MW in 2 phases i.e. 40 MW commissioned on 31-Mar-2015 and 4 MW on 02-Oct-2015.
13. The MPPMCL has thus been acting in an arbitrary, unfair and illegal manner and misusing its dominant position. MPPMCL, in view of the monopolistic nature of business being undertaken by them and being instrumentalities of the State, is obligated to operate in a fair and transparent manner within the mandate of the Article 14 of the Constitution of India.
14. That since the commissioning of the 60MW Project (2 X 30MW) for **Petitioner No. 1** and commissioning of the 44MW Project (30MW + 8MW + 6MW) for **Petitioner No. 2**, the entire electricity generated by the Projects are supplied to MPPMCL in terms of the PPAs. Till the date of filing of the instant Petitions, entire electricity generated from the Projects have been supplied and billed by the Petitioners and further sold to the consumers by the distribution companies of Madhya Pradesh, through the Respondent. While the Petitioners have been fulfilling its obligations under the PPAs, MPPMCL as highlighted above has repeatedly acted against the mandate of the Act, the objectives of the and in contravention of the provisions of the PPAs.
15. The Petitioners have been, in terms of the provisions of the PPAs, issuing

monthly invoices to MPPMCL for the energy supplied. As per Article 8.6.1 of the PPA-1 and Article 7.6.1 of the PPA-2 for **Petitioner No. 1** and Article 7.6.1 of the PPA-1, Article 7.6.1 of the PPA-2 and Article 7.6.1 of the PPA-3 for **Petitioner No. 2**, MPPMCL is mandated to pay for the energy purchased from the Petitioner within 30 days from the date of submission of the invoice to the concerned DISCOM.

16. Further, the **Petitioner No. 1** is entitled to LPS in terms of Article 8.6.3 of the PPA dated 07.12.2015 and Article 7.6.3 of the PPA dated 30.05.2016 and **Petitioner No. 2** is entitled to LPS in terms of Article 7.6.3 of PPA-1, Article 7.6.3 of PPA-2 and Article 7.6.3 of PPA-3, which provides that in case of delay in payment for the energy purchased by MPPMCL beyond the 30 days, MPPMCL shall pay interest at prevailing SBI bank rate on the outstanding amount. MPPMCL is therefore, liable to pay LPS on the outstanding invoices to the Petitioner. While the Petitioners have time and again requested MPPMCL to comply with its contractual obligation to clear outstanding invoices including LPS payable thereon, MPPMCL has, acting in a high-handed manner, completely ignored such requests.
17. It is submitted that the Petitioners have even offered to grant 100% LPS waiver and 1% rebate on the principal overdue amount on various occasions including for the months June 2020 to January 2021 in March 2021 and the months July 2020 to August 2020 in June 2021 and for the month July, 2020 in August, 2021. The Respondent availed the benefit of the offer for the months of June and July, 2020, however, still failed to clear the outstanding dues for the period August 2020 till November 2021.
18. It is submitted by **Petitioner No. 1** that the details of the monthly bills for the period from August, 2020 till date raised under PPA-1 and for the period August, 2020 till date raised under PPA-2 and are currently overdue and unpaid, and the LPS applicable are set out below. A copy of details of the invoices raised since August, 2020 under the respective PPAs are annexed herewith and marked as **ANNEXURE-P-5 (Colly.)**

**PPA-1**

S.No.	Invoice No.	Supply month	Principle due amount	Delay in making payment	Late payment surcharge (as on 31.12.2021)
1.	GIWEL/20-21/05	Aug-20	4,11,21,208	446	7,109,913
2.	GIWEL/20-21/06	Sep-20	1,66,78,187	414	26,76,780
3.	GIWEL/20-21/07	Oct-20	1,57,46,273	384	23,27,515
4.	GIWEL/20-21/08	Nov-20	1,36,81,902	348	18,32,775
5.	GIWEL/20-21/09	Dec-20	1,27,95,013	330	16,25,317
6.	GIWEL/20-21/10	Jan-21	1,73,91,786	296	19,95,719
7.	GIWEL/20-21/11	Feb-21	1,28,97,210	270	13,49,967
8.	GIWEL/20-21/12	Mar-21	2,78,96,268	238	25,73,870
9.	GIWEL/21-22/01	Apr-21	2,83,75,083	208	22,88,042
10.	GIWEL/21-22/02	May-21	3,75,31,814	177	25,93,551
11.	GIWEL/21-22/03	Jun-21	4,03,59,600	140	22,05,956



**Petition No. 05 of 2022 & IA No. 03 of 2022  
Clubbed with Petition No. 06 of 2022 & IA No. 04 of 2022**

<b>12.</b>	GIWEL/PI/21-22/04	Jul-21	4,54,09,064	104	18,37,263
<b>13.</b>	GIWEL/PI/21-22/05	Aug-21	4,18,68,312	85	13,84,522
<b>14.</b>	GIWEL/PI/21-22/06	Sep-21	1,97,60,368	57	4,38,193
<b>15.</b>	GIWEL/PI/21-22/07	Oct-21	1,05,40,856	21	86,117
<b>16.</b>	GIWEL/PI/21-22/08	Nov-21	1,54,57,120	0	-
	<b>Total</b>		<b>39,75,10,064</b>		<b>3,23,25,502</b>

**PPA-2**

<b>S.No.</b>	<b>Invoice No.</b>	<b>Supply month</b>	<b>Principle due amount</b>	<b>Delay in making payment</b>	<b>Late payment surcharge (as on 31.12.2021)</b>
<b>1.</b>	WEL/P-II/20-21/05	Aug-20	4,05,54,072	447	70,27,576
<b>2.</b>	WEL/P-II/20-21/06	Sep-20	1,49,05,376	403	23,28,689
<b>3.</b>	WEL/P-II/20-21/07	Oct-20	1,45,45,093	384	21,49,964
<b>4.</b>	WEL/P-II/20-21/08	Nov-20	1,47,96,289	349	19,87,750
<b>5.</b>	WEL/P-II/20-21/09	Dec-20	1,36,70,349	320	16,83,887
<b>6.</b>	WEL/P-II/20-21/10	Jan-21	1,80,38,735	293	20,48,978
<b>7.</b>	WEL/P-II/20-21/11	Feb-21	1,26,03,950	258	12,60,637
<b>8.</b>	WEL/P-II/20-21/12	Mar-21	2,79,17,009	215	23,26,864
<b>9.</b>	WEL/P-II/21-22/01	Apr-21	2,58,33,752	204	20,43,061
<b>10.</b>	WEL/P-II/21-22/02	May-21	3,52,56,557	174	23,95,031
<b>11.</b>	WEL/P-II/21-22/03	Jun-21	4,04,46,328	140	22,10,697
<b>12.</b>	WEL/P-II/21-22/04	Jul-21	4,63,77,576	90	16,23,850
<b>13.</b>	WEL/P-II/21-22/05	Aug-21	4,06,87,864	78	12,34,682
<b>14.</b>	WEL/P-II/21-22/06	Sep-21	1,94,99,000	50	3,79,296
<b>15.</b>	WEL/P-II/21-22/07	Oct-21	1,03,91,080	8	32,568
<b>16.</b>	WEL/P-II/21-22/08	Nov-21	1,86,23,136	0	-
	<b>Total</b>		<b>39,41,46,166</b>		<b>3,07,33,529</b>

19. It is submitted by **Petitioner No. 2** that the details of the monthly bills raised for the period August, 2020 till date, under the PPAs that are currently overdue and unpaid, and the LPS applicable are set out below.

**PPA-1 (30MW) & PPA-2 (8MW)**

<b>S.No.</b>	<b>Invoice No.</b>	<b>Supply month</b>	<b>Principle due amount</b>	<b>Delay in making payment</b>	<b>Late payment surcharge (as on 31.12.2021)</b>
<b>1.</b>	GICSL/20-21/10	Aug-20	2,52,45,597	439	42,96,489
<b>2.</b>	GICSL/20-21/11	Aug-20	51,65,585	439	8,79,119
<b>3.</b>	GICSL/20-21/13	Sep-20	1,18,06,775	408	18,67,476
<b>4.</b>	GICSL/20-21/14	Sep-20	22,43,526	408	3,54,858
<b>5.</b>	GICSL/20-21/16	Oct-20	1,29,09,497	377	18,73,416
<b>6.</b>	GICSL/20-21/17	Oct-20	26,10,753	377	3,78,870
<b>7.</b>	GICSL/20-21/19	Nov-20	1,50,07,904	343	19,81,516
<b>8.</b>	GICSL/20-21/20	Nov-20	27,76,684	343	3,66,610
<b>9.</b>	GICSL/20-21/22	Dec-20	1,37,99,934	316	16,78,601
<b>10.</b>	GICSL/20-21/23	Dec-20	29,54,323	316	3,59,359

**Petition No. 05 of 2022 & IA No. 03 of 2022  
Clubbed with Petition No. 06 of 2022 & IA No. 04 of 2022**

11.	GICSL/20-21/25	Jan-21	1,66,14,973	292	18,80,815
12.	GICSL/20-21/26	Jan-21	34,76,124	292	3,93,497
13.	GICSL/20-21/28	Feb-21	1,35,84,717	258	13,58,732
14.	GICSL/20-21/29	Feb-21	26,41,832	258	2,64,234
15.	GICSL/20-21/31	Mar-21	2,56,06,890	229	22,73,296
16.	GICSL/20-21/32	Mar-21	51,49,299	229	4,57,138
17.	GICSL/21-22/01	Apr-21	2,19,99,818	195	16,74,849
18.	GICSL/21-22/02	Apr-21	43,33,720	195	3,29,927
19.	GICSL/21-22/04	May-21	3,31,86,349	161	20,85,967
20.	GICSL/21-22/05	May-21	69,71,661	161	4,38,212
21.	GICSL/21-22/07	Jun-21	3,69,25,118	128	18,45,244
22.	GICSL/21-22/08	Jun-21	78,08,036	128	3,90,188
23.	GICSL/21-22/10	Jul-21	3,75,51,537	105	15,33,955
24.	GICSL/21-22/11	Jul-21	66,63,724	105	2,72,209
25.	GICSL/21-22/13	Aug-21	3,20,28,946	71	8,84,701
26.	GICSL/21-22/14	Aug-21	64,62,479	71	1,78,506
27.	GICSL/21-22/16	Sep-21	1,34,95,273	37	1,94,258
28.	GICSL/21-22/17	Sep-21	27,08,027	37	38,981
29.	GICSL/21-22/19	Oct-21	63,17,374	1	2,475
30.	GICSL/21-22/20	Oct-21	11,33,289	1	444
31.	GICSL/21-22/22	Nov-21	1,57,21,774	0	-
32.	GICSL/21-22/23	Nov-21	32,56,989	0	-
	<i>Total</i>		<b>39,81,58,527</b>		<b>3,05,33,941</b>

**PPA-3 (6MW)**

S.No.	Invoice No.	Supply month	Principle due amount	Delay in making payment	Late payment surcharge (as on 30.11.2021)
1.	GICSL/20-21/12	Aug-20	44,98,040	439	7,65,511
2.	GICSL/20-21/15	Sep-20	20,47,558	408	3,23,862
3.	GICSL/20-21/18	Oct-20	21,82,848	377	3,16,773
4.	GICSL/20-21/21	Nov-20	23,63,899	343	3,12,109
5.	GICSL/20-21/24	Dec-20	24,23,641	316	2,94,808
6.	GICSL/20-21/27	Jan-21	29,44,115	292	3,33,274
7.	GICSL/20-21/30	Feb-21	22,23,365	258	2,22,379
8.	GICSL/20-21/33	Mar-21	44,10,994	229	3,91,594
9.	GICSL/21-22/03	Apr-21	36,39,042	194	2,75,620
10.	GICSL/21-22/06	May-21	50,21,174	161	3,15,612
11.	GICSL/21-22/09	Jun-21	65,13,344	128	3,25,489
12.	GICSL/21-22/12	Jul-21	78,71,167	105	3,21,532
13.	GICSL/21-22/15	Aug-21	58,12,753	71	1,60,559
14.	GICSL/21-22/18	Sep-21	22,88,968	37	32,949
15.	GICSL/21-22/21	Oct-21	10,40,328	1	408
16.	GICSL/21-22/24	Nov-21	26,63,520	0	-
	<i>Total</i>		<b>5,79,44,756</b>		<b>43,92,477</b>

20. The Petitioner No. 1 and Petitioner No. 2 have been raising monthly

*invoices towards the energy supplied to the Respondent since August 2020. However, the Respondent has regularly and blatantly flouted its payment obligations under the PPAs and has consistently and deliberately defaulted in making timely payments towards energy charges. In fact, the Respondent has provided no justifiable reason for such non-payment. Due to such delay in payment of energy charges, LPS as defined under the PPAs also became applicable and was due to be paid to the Petitioners by the Respondent which it has completely failed to pay. The Petitioners wrote several communications to the Respondent requesting for timely payments of energy charges but it has been to no avail. In these letters the Petitioners have also been seeking the outstanding Tax Collected at Source (TCS) which is collected from the buyer. The total amount of TCS which has fallen due for payment by the Respondent, and which the **Petitioner No. 1** has already deposited with the Government of India is Rs. 3,33,763 (Rupees Three Lac Thirty Three Thousand Seven Hundred Sixty Three) (PPA-1 Rs. 1,68,704/- [Rupees One Lac Sixty Eight Thousand Seven Hundred Four] and PPA-2 Rs. 1,65,059 [ Rupees One Lac Sixty Five Thousand Fifty Nine]) and Rs. 2,08,610/- (Rupees Two Lac Eight Thousand Six Hundred Ten) by **Petitioner No. 2**. The Respondent is liable to reimburse the said amount of TCS to the Petitioners.*

#### **GROUND**

*In view of the factual scenario detailed hereinabove, the Petitioner respectfully submits as follows:*

21. *That the action of the Respondent in withholding payments for energy supplied from the 60MW Project (for **Petitioner No. 1**) and 44MW Project (30MW + 8MW + 6MW) (for **Petitioner No. 2**) and significantly delaying payments on invoices raised from August 2020 is a gross violation of the provisions of the PPA(s) which is a statutory document and binding on both parties. The PPAs, in order to protect the rights of the parties, stipulate a cut-off date by which MPPMCL must make payments for the energy supplied from the Project. Additionally, in case payments are not made in a timely manner as per the provisions of the PPA, Respondent is required to pay LPS on delayed payments in accordance with Article 8.6.3 of the PPA dated 07.12.2015 and Article 7.6.3 of the PPA dated 30.05.2016 for **Petitioner No. 1** and LPS on delayed payments in accordance with Article 7.6.3 of PPA-1, Article 7.6.3 of the PPA dated 30.12.2015 and Article 7.6.3 of PPA-3 for **Petitioner No. 2**. However, in total disregard of the said provisions, and despite repeated requests and communications issued by the Petitioner, the Respondent, arbitrarily and illegally, continue to withhold payments for the invoices. It is also pertinent to state that the Respondent has till date not disputed any invoice raised by the Petitioners. As such, the invoices have become conclusive and MPPMCL is bound to make payments for the said invoices. In the present case, MPPMCL is misusing its dominant position in withholding payments legally admitted and due to the Petitioners without any basis whatsoever.*
  
22. *The Petitioners submit that MPPMCL entered into the PPAs, on its own volition, knowing fully well the obligations it entailed, to meet its energy requirement and also to fulfil its mandatory renewable purchase obligation. The parties have since acted upon the PPAs and have taken respective burden*

*and benefit thereof. The Petitioners have been providing uninterrupted supply of power from its 2x30 MW power project to MPPMCL and raising invoices against such supply while MPPMCL has been off-taking the power for supply to its consumers. It is settled law that once a contract has been executed, acted upon and taken benefit of by the parties, the same is binding in law on the parties. For instance, the Supreme Court in the matter The Workmen and Ors. vs. Hindustan Lever Ltd. AIR 1984 SC 516 has held that a valid agreement is binding upon the parties to it.*

*“26. Having examined all the dimensions of the matter, it is crystal clear and is indisputably established that the agreement relied upon by the union is a valid subsisting agreement. It is in force. It is neither repudiated nor terminated. It is binding upon both the parties. Once the agreement is held to be binding, the employer is estopped from contending that the workmen involved in the dispute who were salesmen were not workmen within the meaning of the expression under the Act. Therefore, the Tribunal was in error in undertaking to examine that contention and answer it. That part of the order/award of the Tribunal is unsustainable and must be quashed and set aside.”*

*In view thereof, Respondent must be pinned to its obligations under the PPAs. MPPMCL's conduct is not only arbitrary and unfair but also demonstrates its high handedness. The Respondent's actions are clearly in breach of its obligations under the Tariff Order and the PPAs both of which are binding on the parties, and the Respondent on previous occasion has denied/ disputed the invoices raised by the Petitioners, and therefore the amounts in the invoices are admitted, and due and payable by the Respondent.*

- 23. That as a party to the contract, MPPMCL is bound to discharge its functions as per the contract that it has entered into till the same is varied, modified, or set aside, for the agreement which has neither been repudiated nor terminated is binding on the parties to it. A party to a contract cannot state that it will not follow the terms of the contract as it is bound by the same. In this case, MPPMCL being “State” under Article 12 of the Constitution is expected to behave as a model employer, however, unfortunately, it has acted completely contrary to the said standards.*
- 24. It is further submitted that the intent behind a Article of ‘Late Payment Surcharge’ is essentially to compensate the non-defaulting party as per the ‘time value of money’ whereby, it becomes an obligation of the defaulting party to put the non-defaulting party in a position where the defaulting party would have made timely payments to the non-defaulting party for the bills raised by the non-defaulting party. The concept of ‘Time Value of Money’ states that money that is available at present time is worth more than the same amount in the future, due to its potential earning capacity or the inflation that decreases the value of the money. The actual time value of money gets lost if the payment of LPS is delayed or not paid at all. In order to do justice to the intention of LPS, and the concept of ‘Time Value of Money’, in case of delay in the payments of LPS, the same should be paid along with an*

*interest so as to put the non-defaulting party in a position had the LPS payment was received by it on time.*

25. *It is pertinent to mention here that the Hon'ble APTEL in its judgment in Chairman, TNEB & Anr. vs. Indian Wind Power Association and Ors. in Appeal No. 11 of 2012 dated 17-04-2012 held that power generators are entitled for payment of interest on delayed payment made by the Discom for the purchase of the power from the generators. Relevant extract of the judgment is reproduced below :-*

*"13. It is settled law, when a certain time limit has been prescribed within which payments have to be made, it would mean that any payments made after the said time period would be subject to payment of interest as indicated above.*

*17. In any power project, one of the important aspects is the promptitude in payment since the delays would seriously affect the viability of the project. All these projects are substantially funded through finances obtained from various funding organizations require regular repayment of principal loan amount with interest by the generators. Only if regular payments are made for the power generated and supplied the loans can be serviced long with the promised return of investment.*

*The wind power generators are entitled for payment of interest on delayed payment made by the appellant for the purchase of the power from the generators."*

26. *It is submitted in **Petition No. 5 of 2022** that Article 8.6.3 of PPA-1 and Article 7.6.3 of PPA-2 and in **Petition No. 6 of 2022** that Article 7.6.3 of PPA-1, Article 7.6.3 of the PPA- and Article 7.6.3 Of PPA-3 provide that in case of delay in payment for the energy purchased by MPPMCL beyond the time period specified in the respective PPAs, MPPMCL shall pay interest at prevailing SBI bank rate on the outstanding amount. However, despite the Petitioner's repeated requests, MPPMCL has failed to comply with its contractual obligation of paying LPS on delayed payments.*
27. *It is further submitted by **Petitioner No. 1** that the Respondent has been discriminating in making payments to the generators between those where rebate or LPS waiver granted, and also first paying off conventional generators while discriminating against RE generators.*
28. *It is submitted that MPPMCL, which is an instrumentality of State under Article 12 of the Constitution of India, is duty bound to act in a fair and reasonable manner and within the four walls of the powers and functions conferred on them. That while on one hand the GoMP has invited private investments into the state for development of the renewable energy sector, on the other hand, the MPPMCL, by the aforestated actions, has clearly and consistently been acting in complete disregard of the aim and objective of the GoMP as well as its own responsibilities in the capacity of being a 'State*

*Instrumentality'. Its aforesaid high-handed actions have resulted in a destabilized regulatory environment. The Petitioners submits that it has hitherto patiently and amicably engaged with MPPMCL in an attempt to resolve the aforesaid issues.*

29. *It is pertinent to note that the Hon'ble Commission has repeatedly allocated thousands of crores of rupees to the Respondent for purchase of Non-Solar RE power in the Aggregate Revenue Requirement ("ARR") and retail tariff orders of the Respondent and passed the cost to the consumers via retail tariff. This Hon'ble Commission has passed the order dated 30.06.2021 in Petition No. 5/2021 (Determination of Aggregate Revenue Requirement (ARR) and Retail Supply Tariff for FY 2021-22 based on the ARR & Tariff Petition filed by the Distribution Licensees namely Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited (East DISCOM), Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited (West DISCOM), Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited (Central DISCOM), and M.P. Power Management Company Limited (MPPMCL). Table 32 of the said order provides for the purchase against RPO for FY 2021-2022 approved by the Hon'ble Commission and the amount approved for non-solar purchase is Rs. 3,965.68 crores from existing sources to fulfil RPO and Rs. 656.06 crores towards additional cost due to RPO obligation to be met through purchase of non-solar power from new/other sources. Similar allocations have been made towards purchase of non-solar renewable energy in preceding years and also for subsequent years in the same Control Period. It is germane to mention that the Respondent having collected the tariff and thus having collected the sum allocated to it for purchase of non-solar RE power is refusing to utilise such collected funds to pay the Petitioners, thereby failing to comply with the directions of the Hon'ble Commission and not correctly using the collected funds.*
30. *The Respondent is in clear breach of its obligation to incentivize renewable source of power. The discriminatory practice of non-payment to the Petitioner is clearly contrary- to the mandate of the Electricity Act, 2003 to promote power generation from renewable sources of energy. Section 86(4) of the Electricity Act, 2003 provides that the State Electricity Commissions in discharge of their functions shall be guided by the National Electricity Policy and Tariff Policy. The National Electricity Policy provides for promotion of non-conventional energy sources. The Tariff Policy also provides for specification of a percentage of total energy consumption in the area of distribution licensee from purchase of energy from renewable energy sources. The Union Government also has the National Action Plan for Climate Change which envisages several measures to address global warming. One of the important measures identified involves increasing the share of renewable energy in the total energy consumption of the country. The increase in utilization of renewable sources of energy is important for energy security of the country and meeting the challenge of climate changes. The development of renewable energy sources is greatly dependent on the regulatory framework under the Act. Thus, strict enforcement of the terms of the PPAs is material to encourage generation of power from renewable sources.*

31. *In fact, the Respondent has financially strangled the Petitioners from all sides. The non-payment/ delayed payment of dues by the Respondent has a cascading effect which not only adversely impacts the Wind Energy Project of the Petitioners, thereby causing tremendous loss to the investors for no fault of theirs, but also the banks and financial institutions which have financed the wind energy Project, including through public money. It is pertinent to note that financing documents have strict payment schedules which the Petitioners are bound to abide by. Due to the non-payment of the outstanding amount by MPPMCL including LPS, even the operational expenditure of the Petitioners are not realized sufficiently, and the Petitioner faces challenges in keeping the Wind Project afloat. Therefore, in order to continue smooth operations of the power projects under the PPAs, it is absolutely imperative that the Respondent make, timely and complete payment towards energy charges. It is further submitted that in event that the Petitioners commits a default on payment to its lenders in terms of the loan agreements, the same would have a cascading impact on other projects also which would be against the provisions of the Government of India's Wind Policy, provisions of the Electricity Act, 2003, and the orders of this Hon'ble Commission, which are aimed at promoting and incentivizing renewable energy.*
32. *Further the Respondent cannot be allowed to unjustly enrich itself. The Respondent is taking power from the Petitioners in terms of the PPAs without upholding its end of the bargain of making payments for the same. Such act of non-payment clearly amounts unjust enrichment which cannot be allowed by this Hon'ble Commission. Also, the liability to pay interest is not just a contractual provision but also an equitable right of the person deprived of the use of money legitimately due to such party. This must also be given effect to act as a deterrent for future delayed payment and ensuring discipline in enforcement of the PPA.*
33. *The Petitioners while entering into the PPAs had a legitimate expectation that the, terms and conditions set forth in the PPAs would be adhered to strictly, fairly and in a non-arbitrary manner. However, by not making payments towards the legitimate dues to the Petitioners, the Respondent has acted against such reasonable and justified expectation and such action is therefore unfair and discriminatory, and must be corrected.*
34. *In addition to the payment of outstanding principal amount as well as LPS, the Respondent is further liable to compensate the Petitioners for the delay in payment of the LPS. The Respondent being required to pay the LPS for payment of the principal amount with substantial delay, ought to pay the carrying cost till the time the entire amount due and payable are fully paid to the Petitioners. The amounts due and payable to the Petitioners have never been disputed by the Respondent as the same are in terms of the mutual agreements between the parties. Furthermore, the Respondent has also not disputed the liability to pay LPS to the Petitioners but have only failed to pay the same. Therefore, the Petitioners have been subjected to non-payment of not only the principal amount but also the LPS payable under the PPAs. It*

*may be appreciated that provision for LPS is created under a contract for two (2) purposes. Firstly, to compensate the receiver through payment of LPS by imposing interest, so that the person making payment makes payment towards a price for retaining the principal amount. Secondly, it acts as a deterrent. However, when a party defaults in making payment towards both the principal as well as the LPS, the payee is entitled to compensation alongwith the payment of principal and LPS, due to its failure to make available the said amount even after lapse of time, with payment of surcharge. It is a kin to restituting the payee to the same condition, had it received the principal and LPS amount when it had become due.*

35. *It is submitted that the principle of carrying cost has been well established in various judgments of this Hon'ble Commission and the Hon'ble Appellate Tribunal. The carrying cost much like LPS is the compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time. It is to be noted herein that the carrying cost is not equivalent to the interest but for time value of money which is different from interest. The carrying cost is not a penal charge if the interest rate is fixed according to commercial principles. It is only a compensation for the money denied at the appropriate time and the person entitled to such carrying cost stands compensated so far as its opportunity cost is concerned. The Petitioners reserves its right to prove the basis on which the Petitioners are entitled to carrying cost and the factors contributing towards ascertainment of carrying cost, with the leave of this Hon'ble Commission, as and when the need arises.*
36. *In view of the above, the Petitioners seek the indulgence of this Hon'ble Commission. The Petitioners further craves leave of this Ld. Commission to add/ alter/ modify its submissions and to furnish additional data/ documents in support of its averments, if required.*
37. *The present Petitions are being filed without prejudice and the Petitioners reserves its right to claim such other relief as may be available to it under law."*
3. With the aforesaid submissions the petitioners prayed the following:
- a. Direct the Respondent to strictly comply and abide with the provisions of the PPA dated 07.12.2015 and the PPA dated 30.05.2016 executed between **Petitioner No. 1** and the Respondent.
  - b. Direct the Respondent to strictly comply and abide with the provisions of PPA dated 20.05.2015, PPA dated 30.12.2015 and PPA dated 30.12.2015 entered into between the **Petitioner No. 2** and the Respondent.
  - c. Direct the Respondent to immediately, and in no event later than 4 weeks from date of the Order, release payments due, amounting to INR **39,75,10,064/-** ( Rupees Thirty Nine Crore Seventy Five Lac Ten Thousand Sixty Four) under PPA-1 and INR **39,41,46,166/-** (Rupees Thirty Nine



Crore Forty One Lac Forty Six Thousand One Hundred Sixty Six) under PPA-2 to the **Petitioner No. 1** which have been outstanding for an unduly extended period along with the applicable interest for late payment, thereon. Also release payments due, amounting to Rs. 39,81,58,527/- (Thirty Nine Crores Eighty One Lacs Fifty Eight Thousand Five Hundred Twenty Rupees) under PPA-1& PPA-2 and Rs. 5,79,44,756/- (Five Crores Seventy Nine Forty Four Thousand Seven Hundred Fifty Six Lacs Rupees) under PPA-3, to the **Petitioner No. 2** which have been outstanding for an unduly extended period since August, 2020.

- d. Direct the Respondent to pay forthwith the Late Payment Surcharge, amounting to INR 3,23,25,502/- (Rupees Three Crore Twenty-Three Lacs Twenty-Five Thousand Five Hundred Two) under PPA-1 and INR 3,07,33,529/- (Rupees Three Crore Seven Lac Thirty-Three Thousand Five Hundred Twenty-Nine) under PPA-2, as on 31.12.2021 to **Petitioner No. 1** and to pay the due Late Payment Surcharge, amounting to Rs. 3,05,33,941/- (Rupees Three Crores Five Lacs Thirty Three Thousand Nine Hundred Forty One) under PPA-1, and PPA-2 and Rs. 43,92,477/- (Rupees Forty Three Lacs Ninety Two Thousand Four Hundred Seventy Seven) under PPA-3, for the energy invoices raised since August, 2020 onwards to **Petitioner No. 2**.
- e. Direct the Respondent to pay carrying cost to the Petitioners as determined.
- f. Direct the Respondent to make all future payments of valid invoices in a timely manner as per the provisions of the PPA.
- g. Direct the Respondent to open an irrevocable letter of credit in favour of the Petitioners in terms of the Tariff Order.
- h. Allow the petitioner to file any updated/ revised details of outstanding dues/ claims against the respondent as and when required and file any other additional document if required for the purpose of the present petition.
- i. Direct the respondent to bear the cost incurred by the petitioner in the present proceedings.

4. At the motion hearing held on 29.03.2022, the petitions were admitted and petitioners were directed to serve copy of the petitions to Respondent within seven days and report compliance of service to the Commission. The Respondent was directed to file reply to the subject petitions within two weeks and serve a copy of aforesaid reply to petitioners simultaneously. The petitioners were directed to file rejoinder within two weeks, thereafter.

Both the parties were directed to ensure filing of reply/ rejoinder within the aforesaid timeline. Since both the petitions were filed by the same petitioner on similar issues Petition No. 05 of 2022 and Petition No. 06 of 2022 were clubbed together. Case was fixed for hearing on the 10<sup>th</sup> May' 2022.

5. At the hearing held on 10.05.2022, Ld. Counsel for the Respondent submitted that since they received copy of petitions late, therefore, they required two weeks' time to file reply to the petitions. The Respondent was granted two weeks' time to file reply and the petitioners were directed to file rejoinder within a week, thereafter. Next date for hearing was fixed on the 14<sup>th</sup> June' 2022.

6. Respondent (MPPMCL) by affidavits dated 08.06.2022 and 10.06.2022 filed its replies for Petition No. 5/2022 and Petition No. 6/2022, respectively.

7. At the hearing held on 14.06.2022, petitioners were given one week's time to file rejoinder due to late receipt of reply from Respondent. Both the parties were asked, if they are aware about notification of Rules issued by Government of India related to outstanding dues of generating companies and other licensees and late payment surcharge related matters. These rules were notified on June 3, 2022. Both the parties expressed their ignorance in this matter. Therefore, both parties were asked to give their views in relation to the aforesaid Rules notified by the Government of India and their applicability in the subject petitions through a written note within a week. The case was fixed for arguments on 19.07.2022.

8. Subsequently, vide letter dated 01.07.2022 Respondent (M.P. Power Management Co. Ltd.) submitted the following on the issue related to notification of Ministry of Power dated 03.06.2022:

*"MoP have issued the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 vide notification dated 03-06-2022 Vide above notification it has been notified that the total outstanding dues including Late Payment Surcharge upto the date of the notification of these rules shall be rescheduled and the due dates re determined for payment by a distribution licensee in the form of equated monthly instalments.*

*As the total outstanding dues beyond due date of MPPMCL as on 03-06-2022 is greater than Rs 4000 crs but less than Rs 10000 crs thus as per the MoP notification outstanding dues of MPPMCL are to be converted into 40 EMI's*

*Accordingly, MPPMCL has opted to avail the liquidation plan and the intimation notice is hereby issued regarding the outstanding as on 03-06-2022 towards your company which is Rs 65.69 crs & surcharge (Before deduction of TDS) of Rs 22.64 crs. The same is being converted into 40 EMI's with no further surcharge being applicable on this amount From 03-06-2022 onwards.*

*The above amount is provisionally admitted and the above stated dues are subject to reconciliation. The stated outstanding amount will be paid by MPPMCL*

*in 40 installments as per MoP notification and the first instalment will commence from 5th August 2022."*

9. At the hearing held on 19.07.2022, Ld. Counsel for the petitioners requested for adjournment which was granted. None appeared for the Respondent (MPPMCL). The petitioners were directed to file response to the reply filed by the Respondent by its affidavit dated 8<sup>th</sup> June' 2022 and its additional submission regarding Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 notified on June 3' 2022, within a week. The case was fixed for arguments on 16.08.2022.

10. Further, vide letter dated 14.07.2022, Respondent filed additional submissions in both the petitions. By affidavit dated 08.08.2022, petitioners filed its rejoinder to the submissions made by the Respondent.

11. Later on, by affidavit dated 23.08.2022, the petitioners filed an application under Regulations 9, 39, 45 read with Regulation 2(f) of MPERC (Conduct of Business) Regulations, 2016 for withdrawal of the subject petitions mentioning the following:

- “1. *The Applicants have filed the present Application for withdrawal of the petition bearing number **5 of 2022 & 6 of 2022** with permission to file an appropriate petition on the same cause of action. **Petition Nos. 5 of 2022 and 6 of 2022** has been filed under Section 86(1)(b) read with Section 86(1)(e) and Section 86(1)(f) of the Electricity Act for recovery of undisputed outstanding amounts along with Late Payment Surcharge legally due to the Applicant (Petitioner).*
2. *The captioned petition was admitted by this Hon'ble Commission on 30.03.2022. **However, the petitioner does not intend to pursue the captioned matter and therefore, seeks permission of this Hon'ble Commission to withdraw the captioned petition. It is submitted that the concept of dominus litis, i.e. having dominion over the matter, should be attracted and hence, the petitioner may be allowed to withdraw the captioned petition.***
3. ***Further, the petitioner reserves its right to approach this Hon'ble Commission, on the case cause of action, at the appropriate stage under Section 86 of the Electricity Act, 2003. Hence, this Hon'ble Commission may grant liberty to do the same.***
4. *It is submitted that no prejudice is likely to be caused to the Respondents if the prayers for permission to withdraw the captioned petition is allowed."*

12. At the hearing held on 13.09.2022, the petitioners reiterated their above mentioned submissions made in the application dated 23.08.2022 and requested for withdrawal of the subject petitions. Ld. Counsel for the Respondent stated that he has no objection on the application filed by the petitioner for withdrawal of subject petitions. In view of the aforesaid,

the petitioners are allowed to withdraw the subject petitions. Hence the petitions are dismissed as withdrawn. As requested, the petitioners are at liberty to approach the Commission at any appropriate stage in this matter however, law of limitation shall apply.

**(Gopal Srivastava)**  
**Member (Law)**

**(Mukul Dhariwal)**  
**Member**

**(S.P.S. Parihar)**  
**Chairman**