MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL

Sub: In the matter of application under Section 86(1)(f) of the Electricity Act, 2003, Regulation 10 of MPERC (Cogeneration and Generation of Electricity from Renewable Energy Sources) (Revision-I) Regulations, 2010, Section 94(2) of the Electricity Act, 2003, MPERC (Conduct of Business) Regulations and read with Article 7.2.1 of the PPA dated 10.02.2017, seeking directions to the Non-applicants to discontinue the illegal and arbitrary levy of tariff charges applicable to HV 3.1 category upon the applicant.

Petition No. 13 of 2020

ORDER
(Date of order: 05th January' 2021)

M/s. Orange Bercha Wind Power Pvt. Ltd.
D-21 Corporate Park, 3rd Floor, 301B,
Sector-21, Dwarka, New Delhi – 110 075 - **Petitioner**

Vs.

(1) M.P. Power Management Company Ltd.,
Block No. 7, Shakti Bhawan, Rampur, Jabalpur – 482008

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

Shri Manu Maheshwari, Advocate, Shri Ritesh Sharma, Advocate and Shri Arpan Sahu, Manager appeared on behalf of the petitioner.

Shri V.K. S Parihar appeared on behalf of the Respondent No. 1.

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

The subject petition is filed under Section 86(1)(f) of the Electricity Act, 2003, Regulation 10 of MPERC (Cogeneration and Generation of Electricity from Renewable Energy Sources) (Revision-I) Regulations, 2010, Section 94(2) of the Electricity Act, 2003, MPERC (Conduct of Business) Regulations read with Article 7.2.1 of the PPA dated 10.02.2017, seeking directions to the Non-applicants to discontinue the illegal and arbitrary levy of tariff charges applicable to HV 3.1 category upon the applicant.

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

*"(a) The Impugned Invoices have been issued by the Non-Applicant No. 2 in utter disregard to 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**"]. The said invoices have also been issued in disregard to 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**"] and is also violative of the provisions of Electricity Act, 2003.*

(b) The Non-Applicant No. 2 has erroneously issued the Impugned Invoices upon the Applicant with retrospective effect without any justification and reasons, which renders the issuance of the said invoices illegal, arbitrary and de hors the mutual understanding arrived at between the parties through the Power Purchase Agreement dated 10.02.2017.

(c) It is submitted that the Applicant has made the payment against the Impugned Invoices under protest pending adjudication by this Hon'ble Commission and further implores this Hon'ble Commission to issue directions to the Non-Applicant(s) to discontinue levy of tariff charges under High Voltage Category 3.1.

Preliminary Submissions

(i) The Applicant is a Wind Energy Generating Company having an installed capacity of 50 MW in district Ratlam of the State of Madhya Pradesh, having its registered office at F-9, First Floor, Manish Plaza 1, Plot No. 7, MLU, Sector – 10, Dwarka New Delhi. A copy of the certificate of incorporation of the Applicant company has been attached hereto and marked as ***Annexure – 1.***

*(ii) It is submitted that in order to sell power generated from its unit having an installed capacity of 50 MW, the Applicantset up wind power plant near villages Lapatiya, Dhanesara, Jhar, Kamed, Sandla in Tehsil Ratlam, District Ratlam in the year 2016 and commissioned its wind power plant on 05.05.2016. Further, the Applicant entered into a Wind Energy Power Purchase Agreement (hereinafter referred to as the "**PPA**") dated 10.02.2017 with Madhya Pradesh Power Management Company Limited (hereinafter referred to as "**Non-Applicant No. 1**") and thereby the Applicant agreed to sell the wind energy generated from its power to the Non-Applicant no. 1 or its nominees at a levelized tariff of Rs.4.78p per kWh for the PPA period of 25 years. A copy of the PPA dated 10.02.2017 is being attached hereto and marked as "**Annexure – 2.***

(iii) The Non-Applicant No. 1 is a holding company of all the Distribution Utilities in the State of Madhya Pradesh and has entered into aforesaid PPA dated 10.02.2017 with the Applicant 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. It is submitted that as per Clause 7 of the PPA dated 10.02.2017, a Generator/ Co-generation from RE sources has been provided a dispensation/ entitlement to avail temporary power from any of the distribution utilities/ licencees for its own use at the time of emergencies like shut down to be billed only at a temporary tariff determined by this Hon'ble Commission and applicable to the relevant HT Industrial Category under the relevant Retail Supply Tariff Order(s). Clause 7 of the said PPA dated 10.02.2017 is being reproduced herein below for ready reference of this Hon'ble Commission:

"7.2 Drawl of Power by the Seller from DISCOM

7.2.1 The plant would be entitled to draw power from the DISCOM's network during shutdown period of its plant or during other emergencies. The supply availed would be billed at the temporary rate applicable to HT

Industrial category. The drawl by the Plant would not normally be expected to exceed 10% of the MW capacity it delivers to the DISCOM."

(iv) 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 and National Tariff Policy, 2016, 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 Non-Applicant(s). It would be imperative to state herein that Regulation 10 of the said Regulation provides for a provision similar to the one adopted by the Parties in the PPA dated 10.02.2017. Regulation 10 is being reproduced herein below for ready reference of this Hon'ble Commission:

"10. Drawing power during shut down by the 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 Distribution Licencee's network during shutdown period of its plant or duding other emergencies. The energy consumed would be billed at the rate applicable to Temporary Connection under HT Industrial Category."

A copy of the MPERC RE Regulations, 2010 is being attached hereto and marked as ***Annexure – 3.***

(v) It is submitted that in terms of Section 86(1)(e) 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 Applicant 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 / unit. In terms of the said Tariff Order, the Applicant has been paying the HT bills raised by Non-Applicant DISCOM. Tariff Schedule for various categories of consumers for FY 2018-19 has been attached hereto and marked as ***Annexure – 4 (Colly).***

The Applicant humbly submits that in line with the statutory requirement under Regulation 10 of the MPERC RE Regulations, 2010, for availing supply of power during shutdown period of its plant or during other emergencies. The Applicant entered into a HT Agreement with the Non-Applicant No. 2. This is also as per the Tariff Order FY 2018-19 dated 12.07.2018.A copy of the HT Agreement has been attached hereto and marked as ***Annexure – 6. In terms of the said tariff order the***

tariff payable under HV 7 category was Rs.8.75 per kWh.

(vi) 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 Applicant 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 clear that the Applicant being RE Generating Company, which would require periodical synchronization and connectivity with Grid. Further, the Applicant does not fall into any of class / categories mentioned HV 3.1. The Petitioner therefore would fairly and squarely fall under HV 7 category. Relevant Extractsof the MPERC Retail Supply Tariff Order dated 08.08.2019 is being attached hereto and marked as **Annexure – 5.***

*(vii) The Applicant humbly submits that pursuant to the execution of the HT Agreement and determination of the Applicant's category under the Retail Supply Tariff Order 2018-19 and 2019-20, the Applicant has been making payment under HV – 7 Category to Non-Applicant No. 2. However, the Non-Applicant No. 2 arbitrarily issued impugned invoices upon the Applicant categorising it as a HV – 3.1 Category. A copy of the Invoices dated 05.01.2020, 05.12.2019, 05.11.2019 and 05.10.2019 is attached hereto and marked as **Annexure – 7 (Colly).***

(viii) The Non-Applicant No. 2, for the first time vide its invoice dated 05.10.2019, for the month of September 2019 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 2019-20, the tariff prescribed for the HV 7 category under the heading – 'Generator synchronization with the grid' is Rs. 9.35/ unit. However, the Non-Applicant No.2, raised invoices on the Applicant to recover tariff calculated under HV 3.1 through invoices for the subsequent months, despite objections by the Applicant. Further, in

terms of extant Regulations, Tariff Orders for FY 18-19 and the PPA, the Applicant 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 9 of the HT Agreement dated 12.07.2018.As a matter of fact, the tariff schedule provided for category HV-7 in Retail Supply tariff Order for FY 2018-19 was annexed to the HT agreement meaning thereby, that for all subsequent years the HT power charges consumed by the Applicant 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 Applicant 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 Non-Applicant No. 2 for raising impugned invoices under category 3.1. is clearly arbitrary and untenable. position.

(ix) 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 Applicant has been forced to make the payments under protest which has commercially impacted the Applicant. It is reiterated that this commercial implication stands accentuated by the continuing imposition of bills by the Non-Applicant No. 2 in the absence of any specific direction/ stay by this Hon'ble Commission. As such, the Non-Applicant No. 2 issued impugned invoices in gross violation of the provisions of Retail Supply Tariff Order for FY2019-20 and the commercial principles under Section 61 read with Section 86(1)(e) of the Electricity Act, 2003.

(x) It is submitted that upon issuance of the Impugned Bills by the Non-Applicant No. 2, the Applicant vide its letter dated 26.12.2019 brought it to the attention of the said Non-Applicant seeking revision of the bills in accordance with Annexure – 3 to the Retail Supply Tariff Order dated 08.08.2019 for the FY 2019-20 and accordingly refund/ adjust the excess amount collected from the Applicant. It is submitted that no communication whatsoever has been received till date by the Applicant from the said Non-Applicant. A copy of the communication dated 05.12.2019 and 26.12.2019 has been attached hereto and marked as ***Annexure – 8 (Colly).***

(xi) Aggrieved by the aforesaid levy, the Applicant seeks to challenge the Impugned Invoices on the following grounds amongst others which are without prejudice to each other:

GROUNDS

A. The Applicant has preferred the present petition under Section 86(1)(f) read with Regulation 10 of the MPERC RE Regulations, 2010 and Tariff orders passed thereunder for FY 2018-19 and 2019-20. The rights and obligations arising between the parties are governed specifically under the PPA dated 10.02.2017 and the HT Agreement entered pursuant thereto on 12.07.2018 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 Non-

Applicant(s)/ licensees and Generating Company, is related to wrongful categorisation of the Applicant 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.

B. *It is submitted that while the Retail Supply Tariff Order dated 08.08.2019 as well as the Tariff Schedule for FY 2018-19 has clearly identified the Applicant as a HV-7 category consumer for the purposes of synchronization with the grid. Therefore, the levy of tariff by the Non-Applicant 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.*

C. *The Applicant humbly submits that a perusal of the finalized HT Agreement (Annexure 6) under "HV – 7 Category" issued by the Non-Applicant No. 2 on 12.07.2018 in pursuance of the PPA dated 10.02.2017 and the Tariff Schedule issued by this Hon'ble Commission along with the Retail Supply Tariff Order for FY 2019-20, 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 10.02.2017 and as per the mandate of the Regulation 10 of the MERC RE Regulations, 2010, the Applicant 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 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 Applicant achieved the commercial operation date of the Unit (50 MW) on 05.05.2016. As such, the issuance of bills upon the Applicant 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.

D. *The Applicant 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 Applicant 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)*

E. It is submitted that while the HT Connection Agreement (Annexure 6) was executed between the Applicant and the Non-Applicant No. 2 only for the limited purpose of synchronization with the grid at the time of emergency, as stipulated in the PPA dated 10.02.2017 and as per which the Applicant was required to pay only the Energy Charges @ Rs. 9.35/ unit, the Impugned Invoices have been issued erroneously and without any application of mind with retrospective effect. A bare perusal of the Invoice dated 05.10.2019 issued for the month of September, 2019 demonstrates that in addition to the Energy Charges @ Rs. 9.35/Unit, the Non-Applicant No. 2 has also erroneously demanded the differential payment of the Fixed Charges on account of change in category to the tune of Rs. 5,77,416.67/- while the differential amount demanded for Energy Charges on account of change in category is Rs. 18,136/- making the Net Payable Amount of Rs. 10,18,620/- as the final bill for the month of September, 2019. The Applicant 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 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 Applicant nor the supply is being availed at 132 KV for the said purpose. In both the eventualities whereby the Applicant can neither avail supply for meeting the "minimum annual consumption criteria" and "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 Bills has landed the Applicant in a strange financial quagmire, which required immediate attention on the grounds of illegality, arbitrariness and non-application of mind.

F. 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 Applicant cannot withstand the test of legality in the absence of a cogent justification.

G. 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.

H. In the light of the foregoing, the Applicant seeks an immediate stay/ discontinuation of impugned invoices under "HV-3.1 Category" as it is manifestly illegal and without any application of mind.

I. The Applicant humbly submits that the balance of convenience lies prima facie in favour of the Applicant and any order/ decree, if any, in favour of the Non-Applicant No. 2 can be squarely met by the Applicant as per the necessary directions issued by this Hon'ble Commission.

J. The Applicant craves leave of this Hon'ble Commission to add, amend, delete or modify any of the grounds/ averments as and when necessary.

K. The Applicant has not filed any other petition or initiated any proceedings before any other Court touching upon the instant subject matter except this humble petition.

L. *The cause of action arose on 05.10.2019 when the Non-Applicant No. 2 erroneously issued bills 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 Applicant and the Non-Applicant No. 2, for the purposes of synchronization with the grid alone. The cause of action arose again on 05.12.2019, 05.11.2019 and 05.01.2020 when the Non-Applicant No. 2 issued bills upon the Applicant under "HV-3.1 Category"."*

3. With the above submissions, the petitioner prayed as under:

a) Direct the Non-Applicant No. 2 to discontinue levying bills under "HV-3.1 Category" forthwith;

b) Direct the Non-Applicant No. 2 to refund/ adjust the amount of Rs. 22,88,185/- (Twenty-two Lakhs Eighty-eight Thousand One Hundred and Eighty-Five only) collected erroneously on account of the wrongful categorization of the Applicant as a consumer under HV-3.1 Category;

c) pass ad-interim orders to suspend the operation of the Impugned Invoices dated 05.01.2020, 5.12.19, 05.11.2019 and 5.10.2019;

d) pass any other order or direction in the eyes of equity, justice and good conscience.

4. The petitioner had also filed two applications (IA No. 5 of 2020 and IA No. 6 of 2020) for urgent hearing and interim protection. Ld. Counsel of the petitioner appeared before the Commission on 14th February' 2020 and requested for urgent hearing. Considering the aforesaid request, the aforesaid applications were fixed for hearing on 20.02.2020.

5. During the course of hearing held on 20.02.2020, Ld. Counsel of the petitioner while referring the order passed by the Hon'ble High Court, MP in WP No. 4259 of 2020 on 18.02.2020, order dated 22.01.2020 passed by Hon'ble APTEL in DFR 27 of 2020 & IA No. 95 of 2020 and daily order passed by this Commission on 28.01.2020 in Petition 43 of 2019 requested the Commission allow him to pay only the amount pertaining to HV-7 Tariff Category under

disputed bill till disposal of the subject petition. The petitioner filed an undertaking on affidavit dated 20.02.2020 stating that the petitioner shall pay/deposit full amount as mentioned in impugned invoices in case the outcome of subject petition is decided against the petitioner. The same was taken on record as part of the subject petition.

6. Based on all above, vide Commission's order dated 26.02.2020, the petitioner was directed to at least clear all dues up-to-date under HV-7 Tariff out of the disputed amount under impugned bills in subject petition. The Respondents were directed not to disconnect the petitioner's connection in the subject matter till next date of hearing subject to the condition that the payment towards the disputed bills is paid by the petitioner as per aforesaid directives. With the aforesaid directions, the IA No. 5 of 2020 and 6 of 2020 in the subject petition were disposed of.

7. The subject petition was admitted on the 6th March' 2020. The petitioner was directed to serve copy of petition on all the respondents in the matter. The Respondents were also directed to file their reply to the petition by the 16th March' 2020. The petitioner was asked to file rejoinder thereafter, by the 23.03.2020. Due to outbreak of COVID-19 and Nation-wide lockdown, the case was next heard through video conferencing on the 14th May'2020 wherein none appeared for the petitioner.

8. At the hearing held on 18th August'2020, the following was observed by the Commission:

(i) Vide letter dated 04.05.2020 (received on 26.05.2020), the Respondent No. 2 filed reply to the subject petition.
(ii) After seeking time extension for filing rejoinder in the last hearing held on 23rd June' 2020, the petitioner filed rejoinder by affidavit dated 14th August' 2020 after a delay of one and half month.
(iii) The representative appeared for Respondent No. 1 (MPPMCL) stated that he affirms the reply filed by Respondent No. 2 in the subject matter and he shall file written submission within a week in this regard.

9. At the next hearing held on 29th September'2020, Ld. Counsel appeared for the petitioner had sought short adjournment in the matter. The representative appeared for the Respondent No.2 stated that he has not received the copy of rejoinder filed by the petitioner. In view of the aforesaid, the petitioner was directed to ensure service of rejoinder to the Respondent No. 2 within a day. As requested by the petitioner, interim order passed by the Commission in Para 6 of the daily order dated 26th February 2020 in the subject matter was continued till the next date of hearing. As agreed by the parties, the case was fixed for arguments on the 06.10.2020.

10. During the course of hearing held on the 06.10.2020, Ld. Counsel for the petitioner and

the representative of the Respondent No.2 concluded their arguments and sought ten days' time for filing their written submissions. They were allowed to file their written submissions by the 19th October' 2020 and the case was reserved for order on filing of written submissions by the parties.

11. The Respondent No. 1 vide letter dated 20.03.2020 submitted that the response of the MPPMCL in Petitions Nos. 43/2019 and 51/2019 being similar nature of cases, may be considered in the subject petition also. Considering the aforesaid contention, the following reply of Respondent No.1 in aforesaid petitions is taken on record in this order:

> *"1. At the outset, respondent would like to submit that the issues regarding the circumstances leading to different billing methodology by the respondents 2 are not pertaining to the respondent 1 and detailed submission would be made by respondent 2 on these issues. The respondent 1 is restricting its submission on the regulatory provisions in the matter of billing of Grid Drawl by RE Generators.*
>
> *2. Further, it is also submitted that the orders passed by Hon'ble Commission in the matter of grid drawl by RE Generators as referred in the instant petition or otherwise also are consistent with the provisions of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 as amended from time to time and in case of any inconsistencies as per interpretation of petitioners, the provisions and interpretation of Hon'ble Commission regarding applicability of regulations shall prevail.*
>
> *3. Billing of power drawn for 'synchronization' purpose (up to two hours) is to be done under HV-7 tariff schedule only. Such drawl can be computed for entire billing month assuming that on each occasion of drawl, initial 2 hours will be used and allowed for synchronization purpose and energy drawn over and above 2 hours is to be considered as drawn for "non-synchronization purpose".*
>
> *4. It is submitted that due to inconsistencies in the billing of RE Generators amongst the 3 Discoms, a joint petition No. 29/2019 of all 3 Discoms and MPPMCL was filed before Hon'ble Commission with prayer to clarify the various billing issues and also to simplify the billing of grid drawl by RE Generators.*
>
> *5. It is submitted that Hon'ble Commission has disposed of the said petition no. 29/2019 vide its order dated 16.12.2019. Hon'ble Commission has directed that the petitioners may approach Commission with their contentions for HV-7 tariff through proposals in tariff petition. However, for the past billing, no clarifications could be received by the Discoms on their petition no. 29/2019.*
>
> *6. In accordance with the directives of Hon'ble Commission, a proposal for billing of RE Generators under simplified mechanism has been made in the retail tariff proposals for FY 20-21.*

7. It is therefore submitted that the undisputed facts of the instant petition is that the billing of RE Generators for grid drawl is required to be done for each occasion by segregating the energy drawn for synchronization (up to 2 hours) and beyond that by applying different sets of tariff rates i.e. for synchronization purpose @HV-7 tariff and other than synchronization (i.e. beyond 2 hours) @ temporary HV-3 rates."

12. The Respondent No. 2 vide its letter dated 4th May' 2020 submitted the following:

"(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.

(iii) That, as per direction of the Hon'ble Commission petitioner has not served the copy of the petition till date at office of the answering respondent. Therefore this reply is being submitted based on the copy of petition (without annexure) submitted by the petitioner vide its representation dated 29/01/2019.

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

(iv) 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.

(v) 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.

(vi) 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."***

(vii) 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.

(viii) 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).

(ix) 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.

(x) 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.***

(xi) That, petitioner is drawing power from the grid with respect to the following connection of Wind Generator:

S.No.	*Name of consumer*	*Consumer Code*	*Circle*
1	*M/s Orange Bercha Wind Power Pvt Ltd*	*1460877810*	*Ratlam*

(xii) 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 hour:

> ***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.*
>
> ***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 prorate basis considering only those number of days in which power is drawn over and above 2 hours in any occasion.*
>
> *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).***

(xiii) 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 3.1differential 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.

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

13. The petitioner filed rejoinder and written submissions on 14.08.2020 and 14.10.2020 respectively. The petitioner broadly submitted the following in its written submissions:

*"(i) The Petitioner is a Wind Energy Generating Company (Renewable Energy Generators) having an installed capacity of 50 MW in district Ratlam of the State of Madhya Pradesh. That the Petitioner entered into a Wind Energy Power Purchase Agreement (hereinafter referred to as the "**PPA**") dated 10.02.2017 with Madhya Pradesh Power Management Company Limited and thereby the Petitioner agreed to sell the wind energy generated from its power to the Non-Applicant no. 1 or its nominees at a levelized tariff of Rs.4.78p per kWh for the PPA period of 25 years. That RE generators requires to avail power as source during synchronization with the grid, and during the time of emergencies like shut down.*

(ii) Further, the MPERC RE Regulations, 2010, as amended, states that the RE Generators would be entitled to draw the power for the use of synchronization with the grid. It is submitted that the said Regulation clearly states 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. Thus, the billing would be done as per the rate specified in the retail supply order under tariff schedule. That in the other part of said regulation, the RE Generators will be billed at the rate applicable to temporary connection under HT Industrial Category.

(iii) That as per the tariff schedule, the category HV-7 applies to those power generators who avail power for synchronization with the grid. That the Respondent was thus billing the Petitioner since its inception under the HV-7 category taking into account the nature of the activity of the Petitioner and usage of the electricity by the Petitioner i.e. for synchronization.

(iv) It is further submitted that the Respondents, erroneously and arbitrarily issued invoices to the Petitioner which were billed under HV 3.1 category. It is important to note here that, the HV 3.1 category is applicable to consumers who are availing power for the purpose like lighting in the offices, main factory buildings, stores, canteen etc. and they(consumers) are dependent on the power drawn from the grid. That, in the present situation, the Petitioner is drawing the power for the purpose of synchronization with the grid on account of the shutdown. That the Respondents is completely erred in classifying the Petitioner in the category of industrial consumer.

Thus, Petitioner's drawl of power cannot be considered as drawl of power under HT industrial category-3.1.

(v) *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* 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".*

(vi) *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.*

(vii) *It is submitted that, the Respondents have issued invoices in contravention of the provisions of the Electricity Act, 2003, the RE Regulation, 2010 and orders passed by this Hon'ble Commission in similar circumstances. The respondents are incorrectly levying temporary supply tariff for industrial consumers on the petitioner. In any event, the respondents cannot apply two different categories of tariff on withdrawal of power by the same consumer (herein the generator) for the purpose of synchronization.*

(viii) *It is further submitted that the Tariff Order dated 08.08.2019 for the FY 2019-20 passed by this Hon'ble Commission is impugned in DFR No. 248 of 2020 filed by the present Petitioner before the Hon'ble Appellate Tribunal inter alia, on the very same issue as to whether the present Petitioner being RE Generator fall under the HV-7 Category or under HV-3.1 Category. The present Petitioner in the said appeal challenged the legal validity of the restrictions of 2 hours which is being imposed on RE Generators and the matter is sub-judice before the Hon'ble Appellate Tribunal. Further, another appeal is also pending challenging the bills raised under the Retails Supply Tariff Order for the FY 2019-20, wherein, the Hon'ble Appellate Tribunal was pleased to pass interim order dated 22.01.2020 in Appeal No. 25 of 2020.*

(ix) *That the Petitioner submits that Limitation of the applicability of 2 hours mentioned in Clause HV-7 (e) is not in consonance with the MPERC RE Regulations, 2010.That the limit of 2 hours for drawing power for synchronization provided in clause (e) in*

the tariff Schedule 2019-2020 under HV-7 category, is against the intent and very object of the provisions of Electricity Act, 2003 as well as statutory policies provided under the Act. It is further submitted that since the retail supply tariff orders are passed to give effect to the obligations arising out of the PPA and the RE Regulations, 2010 therefore such tariff orders should be in total conformity with the aforesaid provisions and any deviation from them would result in defeating the purpose of those provisions and are thus illegal.

(x) It is submitted that this Hon'ble Commission in the matters bearing Petition No. 20/2016 dated 05.07.2016, 22/2016 dated 08.07.2016, 42/2016 dated 05.12.2016 and 50/2016 dated 25.10.2016 has passed an order directing the respondents to charge RE generators under HV-7 category since the power is being drawn for the purpose of synchronization with the grid. The relevant part of the order passed in Petition no. 42/2016 is reproduced herein for ready reference:

> ***Having heard the petitioner and the respondents and on considering their written submissions, the Commission is of the view that the Clause 10 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010shall be applicable in the event of drawing of power by the petitioner during shut down of the plant or during other emergencies. During the shut down or emergency periods, the plant requires power for repairs and maintenance purposes, for which the petitioner shall have to avail power and would be billed at temporary supply tariff as specified in the aforesaid Regulations. If the power is required by the petitioner for synchronisation 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 has also noted that there is no ground for allowing WEGs to avail power from the grid for auxiliary consumption as a permanent consumer. The Commission, therefore, directs the respondents to take action accordingly as mentioned above and revise the impugned bills, if found necessary.***

(xi) It is submitted that, this Hon'ble Commission has consistently categorized the Generating Companies including RE generating companies under category HV-7 for the purposes of levy of tariff for consumption of power for synchronization to the grid. Therefore, in the light of the aforesaid Regulations, the category HV 3.1 and the tariff levied thereunder has no application whatsoever.

(xii) It is further submitted that the Petitioner has also filed IA before this Hon'ble Commission whereby Petitioner has impugned the invoice dated 04.02.2020. That the Respondent is seeking arrears from the Petitioner since April 2017 in the invoice dated 04.02.2020 while the said arrears were never shown as recoverable to Petitioner. <u>That, section 56(2) of Electricity Act, 2003 states that no sum can be</u>

recovered from a consumer two years after the due date unless such sum was shown continuously as recoverable as arrear. It is submitted that Respondents have demanded arrears without any basis and said amount is beyond two years time period. It is to be noted that the Respondent no.2 has demanded arrears for the period April, 2017 – August, 2019 amounting to Rs. 75,15,072/- which does not have any legal basis. That the respondent no.2 has arbitrarily billed the arrears under the category of HV 3.1.

(xiii) It is humbly submitted that the Petitioner fails to comprehend any cogent justification for such sudden and unilateral change by the Respondent, to bill the same wind power generators for the same power under two different categories, without any tangible change in circumstances, which is substantiated by the fact that:

i. there has been no change in the terms and conditions of HV-7 Tariff Category in either of the Retail Supply Tariff Orders of 2017-18, 2018-19 and 2019-20;

ii. there has been no change in the terms and conditions of HV-3.1 Category in either of the Retail Supply Tariff Orders 2017-18, 2018-19 and 2019-20; and

iii. Regulation 10 of the MPERC RE Regulations has not been further amended or modified by the Ld. MPERC.

(xiv) It is further submitted that as per Clause 8.34 and Clause 8.35 of the MPERC Supply Code, the Respondent is permitted to revise only provisional bills, which can be issued only in the case of the meter being inaccessible and/or dysfunctional. The MPERC Supply Code mandate only two circumstances wherein a provisional bill can be issued by the Respondent, and that it is only the provisional bills so issued that can be revised at a later date. It is not the case of Respondent that it had issued provisional bills during the period from April, 2017 to August, 2019 or account of the meter being inaccessible or dysfunctional in the said period. Accordingly, such unilateral revision of bills being attempted by the Respondent vide the Impugned Letters, that too after lapse of almost 3 years, is unlawful and against the provisions of the MPERC Supply Code as well.

(xv) Therefore, it is submitted that issuance of Impugned Invoices dated 05.10.2019, 05.11.2019, 05.12.2019, 05.01.2020 and 04.02.2020 by the Respondent no.2 based on arbitrary change in consumer category from HV 7 to HV 3.1 is clearly without the force of law and such a levy of charges on the Petitioner is grossly in violation of the Regulations, 2010 provisions of the Electricity Act,2003 besides suffers from non-application of mind. Accordingly, it is most humbly prayed that this Hon'ble Commission may be please to allow the Petition and pass a suitable order/ direction to the Respondent No. 2 to set aside Impugned Invoices.

14. The Respondent No. 2 vide letter dated 17.10.2020 submitted that since the issues involved in the subject petition are same which are involved in the petitions Nos. 32 to 40 of 2020, hence the same arguments which were submitted by the Respondent No.2 in aforesaid petitions may be taken on record in this matter: Considering the aforesaid contention, the

following written submissions of the Respondent No. 2 are taken on record:

RE: Billing of power drawn continuously above Two Hours

(i) 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'.

(ii) Regulation 10 of the aforesaid Regulation as amended vide 7th amendment 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.***
Emphasis supplied

(iii) That, from perusal of the aforesaid provision it is clear that billing of power drawn by generator from the grid is to be billed in the following manner:

(1) Synchronization power drawn ***for the period*** *prescribed in the* ***tariff schedule for synchronization*** *(i.e HV-7 Category) is to be billed as per* ***rate*** *prescribed in that schedule. In other words, if power drawn for synchronization two things is to be taken from the HV-7 Tariff category* ***'period of billing'*** *and* ***'rate of billing'.***

(2) In all other cases excluding the cases covered in (1) above, power drawn shall be billed at the rate applicable to temporary connection under HT Industrial Category i.e HV 3.1 Tariff category. This may be treated as residuary billing mechanism. Here it is pertinent to mention that this residuary clause is not confined with any specific purpose of drawal and shall be applicable for all circumstances not covered under (1).

(iv) Hon'ble Commission vide Tariff Order has made provision for drawl of power by RE Generators for synchronization purpose under HV-7 tariff schedule. The relevant conditions of HV-7 Schedule 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."

It may be seen that as per aforesaid clause (e) of the HV-7 Tariff Category generator can draw power for the purpose of synchronization for maximum ***period*** *of 2 hours. Thus, it is clear that while framing the regulation Hon'ble Commission was conscious about the ceiling on the* ***period*** *of drawl provided in the Tariff order, hence in the regulation it is specifically provided that apart from* ***period*** *shall be considered as per HV-7 tariff category.*

(v) That, in compliance of the aforesaid provisions of the Regulation and Tariff order, respondent Discom is required to apply 2 different sets of billing methodology for drawl of power by Generators.

(vi) That, it is submitted that under the HV 7 tariff category any generator can draw power for the purpose of synchronization maximum up to 2 hours only. Thus, any energy drawn over and above two hours in any occasion would fall under the residuary billing mechanism provided under Regulation 10 and 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).

(vii) That, contention of the petitioner that the power drawn over and above the 2 hour should also be billed under HV-7 category is without any substance. On any such interpretation ***use of power above two hours*** *under HV-7 Tariff category would become* ***unauthorized use of power*** *because HV-7 tariff category doesn't permit use of power more than 2 hours in any occasion. Further if we consider the period of drawl as irrelevant for the purpose of billing, the provisions regarding* ***period*** *of drawl in the tariff order as well as in the regulation would become infructuous. Such course of interpretation is not permitted at all. Accordingly as per provision of the regulation read with the tariff order drawl of above 2 two hours need to be billedat the rate applicable to temporary connection under HT Industrial Category.*

*(viii) That, it is submitted that unless tariff order and regulation are amended after following the due procedure prescribed in the Act, respondent Discom is bound to charge as per terms and condition approved by the Hon'ble Commission under HV-7 Tariff Category of Tariff order. A question of permissibility of charging of tariff other than approved by the Regulatory Commission came under consideration of the Hon'ble Supreme Court in case of Shree Sidhbali Steels Limited v. State Uttar Pradesh (2011) 3 SCC 193 (****Annexure-1****). Rejecting the request of the petitioner in this regard, Hon'ble Apex Court held as under:*

62. This Court in Assn. Of Industrial Electricity Users v. State of A.P. as well as in W.B. Electricity Regulatory Commission v. CESC Ltd., and in BSES Ltd. V. Tata Power Co. Ltd., has held ***that the licensee has no power to amend and/or modify the tariff determined by the Regulatory Commission.*** *Grant of reliefs claimed by the petitioners would amount to compelling them to act against the statute. Such a course is not permissible while exercising powers under Article 32 of the Constitution.* ***Thus Respondent 2 Corporation cannot be directed to amend or modify the tariffs determined by the Commission nor the petitioners would be entitled to seek any direction against the licensee to amend or modify the tariff determined by the Commission."***

In view of above it may be seen that Hon'ble Supreme Court has declined to grant relief of charging of tariff other than the approved tariff. The similar relief claimed by the petitioner in the instant case cannot be granted by this Hon'ble Commission exercising the adjudicatory jurisdiction under section 86(1) (f) of the Act.

RE: Non applicability of provisions of MP Supply Code 2013 regarding temporary supply (Ref: Para 14 & 15 in P.No. 35/2020):

(ix) In view of above billing being done by the answering respondent is as per Regulation 10. The contention of petitioner regarding non applicability of temporary supply on the basis of provision of the supply code is devoid of merit. As per above quoted provision of Regulation 10, the billing of power drawn by solar generating plants is being done at the rate applicable to temporary connection under HT industrial category. In other words, the rate at which said plant has to be charged has to be the rate which is applicable to temporary connection under HT industrial category. Thus, in the instant case enabling provision regarding billing is 'Regulation 10' and not the 'MP Supply Code 2013'.

RE: 7th Amendment incorporated the provision of Tariff Schedule HV-7 relating to 'rate' and 'period of supply' into the Regulation 10:

(x) The comparison of amended and un amended Regulation 10 is reproduced as under:

Regulation 10 post 7th amendment	***Regulation 10 before 7th Amendment***

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 <u>for the period</u> and <u>at the rate</u> as per retail supply tariff order under tariff schedule for synchronization.*** *<u>In other cases, it would be billed at the rate applicable to temporary connection under HT Industrial Category.</u>* *Emphasis supplied*	*10. Drawing power during shut down by Generator/Co-generation* *The Generator/Co-generation would be entitled to draw power exclusively for its own use from the Distribution Licensee's network during shutdown period of its Plant or during other emergencies. The energy consumed would be billed at the rate applicable to Temporary Connection under HT Industrial Category.*

It may be seen that vide seventh amendment, Regulation 10 has been amended substantially and incorporated the provision of Tariff Schedule HV-7 relating to rate and period of supply into the regulation.

RE: None of the previous decisions of this Hon'ble Commission relied upon by the Petitioner considered & decided the issue under instant petitions (Ref: para 8 of Rejoinder):

(xi) Petitioners have placed reliance upon certain previous judgment of this Hon'ble Commission. In this regard it is submitted that in none of the judgment referred by the petitioners, Hon'ble Commission has adjudicated the issue under consideration in the present petitions. The relevant extract of the these judgments is reproduced as under:

Petition No.50/2016	*6…….. During the shutdown or emergency periods, the plant requires power for repairs and maintenance purposes, for which the petitioner shall have to avail power and would be billed at temporary supply tariff as specified in the aforesaid Regulations. If the power is required by the petitioner for synchronisation of WEGs frequently, the same cannot be considered under drawl of power during shut down or emergency periods* ***<u>and the provisions of the aforesaid Regulations shall not apply and, therefore, shall be billed as per the provisions of tariff schedule HV-7.</u>*** *The Commission, therefore, directs the respondents to take action accordingly as mentioned above* ***<u>and revise the impugned bills from November, 2015 if found necessary.</u>*** *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 orders/PPAs after adjusting the revised bills. The respondents are also directed to report compliance by*

	15.11.2016.
Petition No.42/2016	*7.. ……During the shutdown or emergency periods, the plant requires power for repairs and maintenance purposes, for which the petitioner shall have to avail power and would be billed at temporary supply tariff as specified in the aforesaid Regulations. If the power is required by the petitioner for synchronisation 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 applyand, therefore, shall be billed as per the provisions of tariff schedule HV-7.*** *The Commission has also noted that there is no ground for allowing WEGs to avail power from the grid for auxiliary consumption as a permanent consumer. The Commission, therefore, directs the respondents to take action accordingly as mentioned above* ***and revise the impugned bills, if found necessary.***
Petition No.22/2016	*6……. The Commission therefore, directs the respondent no.1 and 2 to take action accordingly as mentioned above and revise the impugned bills from November, 2015, if found necessary.*
Petition No.20/2016	*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……."***

From the perusal of the above it may be seen that:

i. Aforesaid judgment pronounced by this Hon'ble Commission based on the pre-amended Regulation 10. Vide 7th Amendment; Regulation 10 has been amended substantially thus these judgments have no precedence value.

ii. In these judgments Hon'ble Commission merely held that billing should be done ***as per provisions of tariff schedule HV-7.*** *It is submitted that the billing by the respondent is being done according to the provision of HV-7 only as HV-7 Tariff Schedule provides prohibition on the drawal of power more than 2 hours.*

iii. Hon'ble Commission doesn't render any finding on correctness or otherwise on the billing done by Discom.

In view of above, judgment relied upon by the petitioners have no application in the present circumstances of the case.

(xii) ***Functioning of the State Commission through benches is not recognized by the Act as is provided in case of Appellate Tribunal of Electricity (Ref: page 9 of rejoinder)****:*

In this regard relevent provisions of the Act are reproduced as under:

82. Constitution of State Commission.–(1) Every State Government shall, within six months from the appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission:

(4) The State Commission shall consist of not more than three Members, including the Chairperson.

112. Composition of Appellate Tribunal.–(1) The Appellate Tribunal shall

consist of a Chairperson and three other Members.
(2) Subject to the provisions of this Act,–

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Appellate Tribunal with two or more Members of the Appellate Tribunal as the Chairperson of the Appellate Tribunal may deem fit:

Provided that every Bench constituted under this clause shall include at least one Judicial Member and one Technical Member;

It may be seen that in case of Hon'ble APTEL, Act clearly provides that jurisdiction of APTEL may be exercised by its benches. However in case of State Commission there is no such stipulation. Judgment of Hon'ble Supreme Court in case of Sant Lal Gupta relied upon by Petitioner regarding reference to larger bench has no applicability in the instant matter as maximum possible strength of State Commission is three Hon'ble Members including Hon'ble Chairman. The present case is being heard by all three members of this Hon'ble Commission.

RE: Bar of Limitation on recovery of legitimate dues of the licensee:

A. ***Sum become 'first due' only when supplementary bill raised for escaped billing not earlier:***

(xiii) That, petitioner has raised the plea of bar under section 56(2) of the Electricity Act 2003. Section 56 of the Act is reproduced as under:

Section 56. ***(Disconnection of supply in default of payment)****: -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:*

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) an amount equal to the sum claimed from him, or

b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, ***under this section*** *shall be recoverable after the period of two years from the date* ***when such sum became first due*** *unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied* ***and the licensee shall not cut off the supply of the electricity.***

*(xiv) It may be seen that section 56 provides an additional right of recovery of dues through disconnection of supply of electricity apart from other rights available to the licensee i.e. suit e.t.c. In other words Section 56(2) only bars recovery of dues through disconnection. Further this bar is applicable only after two year from the date when the amount becomes '****first due'****. Section 56(2) has no applicability on supplementary billing of escaped billing as the said demand become first due only when demand notice/supplementary bill in this regard issued by the licensee. Unless any demand is raised specifying the time limit for payment no such demand can be said as* ***'due'*** *and person consuming electricity cannot be termed as neglectful of their responsibilities of payment. Thus, aforesaid section has no application in making supplementary demand for escaped billing. It is now a settled legal position through various judicial pronouncements that there is no limitation for making the demand by way of supplementary bill.*

(xv) That, the issue of limitation on demand of earlier escaped billing came for consideration before Hon'ble Supreme Court in the case of M/S. Swastic Industries vs Maharashtra State Electricity (1997) 9 SCC 465 ***(Annexure-2)****. The relevant part of the said judgment is reproduced as under:*

"The admitted position is that the respondent- Electricity Board had issued a supplementary bill to the petitioner on February 5, 1993 demanding payment of Rs. 3,17,659/-. The petitioner objected to the bill by his letter dated February 16, 1993, However, when letter was issued for payment of the said amount, the petitioner paid it under protest and filed the complaint paid it under protest and filed the complaint before the State Consumers Disputes Redressal Commission. The Commission by order dated May 24, 1995 allowed the complaint and held that the claim was barred by limitation of 3 years. Feeling aggrieved, the Electricity Board filed an appeal. ***The National Commission relying upon the judgment of a Division Bench of the Bombay High Court in M/s. Bharat Barrel & Drum Manufacturing Co. Pvt. Ltd. Vs. The Municipal Corporation of Greater Bombay & Anr. (Air 1978 Bom. 369) has held that there is no limitation for making the demand by way of supplementary bill.*** *Section 24 of the Indian Electricity Act, 1910 gives power to the Board to issue such demand and to discontinue the supply to a consumer who neglects to pay the charges. It is contended by the learned counsel for the petitioner that Section 60-A of the Electricity (supply) Act, 1948 prescribes a limitation of 3 years for the Board to institute any suit, after its constitution , for recovery of the arrears. Thereby the limitation of 3 years is required to be observed. The Board in negation of Section 60A of Supply Act cannot be permitted to exercise the power under*

Section 24 of the Electricity Act, 1910. We find no force in the contention.

……

This is an enabling provision by way of suit. Despite the fact that Section 24 of the Indian Electricity Act clearly empowers the Board to demand and collect any charge from the Consumer and collect the same towards the electrical energy supplied by the Board in the following terms:

"Where any person neglect to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy, to him, the licensee may, after, giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge of other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but longer."

It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of its. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24 to make demand for payment of the charges and on neglecting to pay the same. They have the power to discontinue the supply or cut-off the supply, as the case may be, when the consumer neglects to pay the charges. The intendment appears to be that the obligation are actual. The board would supply electrical energy and the consumer is under corresponding duty to pay the sum due toward the electricity consumed. Thus the Electricity Board, having exercised that power, since admittedly the petitioner had neglect to pay the bill for additional sum, was right in disconnecting the supply without recourse to filling of the suit to recover the same. The National Commission, therefore, was right in following the judgment of the Bombay High Court and allowing the appeal setting aside the order of the State Commission. <u>Moreover, there is no deficiency of service in making supplementary demand for escaped billing.</u> Therefore may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage to the consumers. That would be deficiency of service under the Consumer Protection Act. We do not find any illegality warranting interference.

The Special Leave Petition is accordingly dismissed.

(xvi) From the bare perusal of the aforesaid judgment of the Hon'ble Supreme Court it is clear that :

i. There is no limitation for making the demand by way of supplementary bill.

ii. Right of disconnection is an additional right provided to licensees apart

from other option available for recovery i.e. filing of suit e.t.c.

(xvii) That, issue of applicability of section 56(2) in case of escaped billing came under consideration of Hon'ble Appellate Tribunal of Electricity in Appeal Nos. 202 & 203 of 2006 in the case of Ajmer Vidyut Vitran Nigam Limited Vs M/s Sisodia Marble & Granites Pvt. Ltd. & Ors. Vide order dated 14/11/2006 ***(Annexure-3****) Hon'ble APTEL held as under:*

"14. We have heard the learned counsel for the parties. The basic question for determination is what is the meaning of the words 'first due' occurring in Section 56(2) of the Electricity Act 2003; Regulation 39(1) of the Regulations, 2004 and condition No. 49 of the Terms and Conditions for supply of Electricity, 2004. In case the words 'first due' is construed as meaning consumption, it would imply that the electricity charges would become due and payable, the moment electricity is consumed. In that case failure to pay charges will entail consequences leading to disconnection of electricity to consumers even though the consumer will only know the units consumed by him and will not know the exact amount payable by him as per the approved tariff as the actual computation depends upon different parameters such as peaking/non-peaking rates; HT/LT rates etc. The responsibility to determine the amount payable by the consumer is that of the licensee. The consumer cannot be expected to discharge the duties of the distributor or the supplier of electricity. Moreover, it will create an anomalous situation as it would be difficult to determine the last date by which the payment is to be made by the consumer and in case last date is not known, it will be difficult to levy surcharge for delayed payment. Besides there will be problem in issuing notice for disconnection for failure to pay the charges on consumption. It appears to us that it could never be the intention of the legislature to equate the words 'first due' with consumption. The consumption of electricity will certainly create a liability to pay but the amount will become due and payable only after a bill or demand is raised by the licensee for consumption of electricity by the consumer in accordance with the Tariff Order. Such a bill/demand will notify a date by which the dues are to be paid without surcharge.

15. It is to be noted that a meter records the consumption of energy uninterruptedly on a continuous basis by the consumer and for such consumption the liability for payment of corresponding amount of charges by the consumer is continuously created but will not be due for payment unless the amount is raised through bill or a demand notice.

16. In H.D. Shourie vs. Municipal Corporation of Delhi, AIR 1987 Delhi 219, the Delhi High Court has ruled that electricity charges become first due after the bill is sent to the consumer and not earlier thereto. In this regard the High Court held as under:

"A bill for consumption of electricity can be sent even three years after the electricity has been consumed. The electricity charges become due after the bill is sent and not earlier. This being so, the proviso to S. 455 of Act (66 of 1957) will apply only when the bill has been sent and the remedy available with the licensee for filing a suit to recover the said amount would come to an

end after three years elapse after the electricity charges have become due and payable. To put it differently, the provisions of S. 455 would come into play after the submission of the bill for electricity charges and not earlier".

The judgement further holds that,

"The amount of charges would become due and payable only with the submission of the bill and not earlier. It is the bill which stipulates the period within which the charges are to be paid. The period which is provided is not less than 15 days after the receipt of the bill. If the word "due" in S. 24 is to mean consumption of electricity, it would mean that electricity charges would become due and payable the moment electricity is consumed and if charges in respect thereof are not paid then even without a bill being issued a notice of disconnection would be liable to be issued under S. 24. This certainly could not have been the intention of the Legislature. Section 24 gives a right to the licensee to issue not less than 7 days' notice if charges due to it are not paid. The word "due" in this context must mean due and payable after a valid bill has been sent to the consumer. It cannot mean 7 days notice after consumption of the electricity and without submission of the bill. Even though the liability to pay may arise when the electricity is consumed by the consumer, nevertheless it becomes due and payable only when the liability is quantified and a bill is raised. Till after the issue and receipt of the bill the authority has no power or jurisdiction to threaten disconnection of the electricity which has already been consumed but for which no bill has been sent".

The same judgement further provides that the arrear of charges in case of a defective meter cannot be more than six months irrespective of period of defect in the meter. It reads thus;

"The maximum period for which a bill can be raised in respect of a defective meter under S. 26 (6) is six months and no more. Therefore, even if a meter has been defective for, say, a period of five years, the revised charges can be for a period not exceeding six months. The reason for this is obvious. It is the duty and obligation of the licensee to maintain and check the meter. If there is a default committed in this behalf by the licensee and the defective meter is not replaced, then it is obvious that the consumer should not be unduly penalized at a later point of time and a large bill raised. The provision for a bill not to exceed six months would possibly ensure better checking and maintenance by the licensee".

17. Thus, in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running. ***In the instant case, the meter was tested on 03.03.2003*** *and it was allegedly found that the meter was recording energy consumption less than the actual*

by 27.63%. Joint inspection report was signed by the consumer and licensee and thereafter, the defective meter was replaced on 05.03.2003. ***The revised notice of demand was raised for a sum of Rs. 4, 28,034/- on 19.03.2005****. Though the liability may have been created on 03.03.2003, when the error in recording of consumption was detected,* ***the amount become payable only on 19.03.2005, the day when the notice of demand was raised.*** *Time period of two years, prescribed by Section 56(2), for recovery of the amount started running only on 19.03.2005. Thus, the first respondent cannot plead that the period of limitation for recovery of the amount has expired."*

*(xviii) That, the aforesaid order of the Hon'ble APTEL has been challenged by the consumers before Hon'ble Supreme Court in Civil Appeal no. (D.No.13164/2007). Vide order dated 17/05/2007 (**Annexure-4**), Hon'ble Supreme Court has dismissed the civil appeal confirming the order of Hon'ble APTEL.*

(xix) Issue of applicability of section 56(2) of the Act in case of supplementary billing also came under consideration of Hon'ble High Court of Madhya Pradesh Bench at Gwalior in the case of Kapoor Saw Manufacturing Co. MPSEB and others (2006 SCC Online MP 612). Vide judgment dated 13/07/2006 ***(Annexure-5)*** *Hon'ble High Court have upheld the supplementary bill raised on account of error in the matter of calculating tariff. The relevant para is reproduced as under:*

"(12.) AS far as bar contained in sub-section (2) of Section 56 for recovery of the entire amount of arrears for more than 4 years is concerned, Section 56 of the Indian Electricity Act contemplates a procedure for disconnection of electricity for default of payment where a consumer neglects to pay any electricity dues or charge to a Electric Company. The said provision and the bar created under sub-section (2) of Section 56 will apply to cases where recovery of amount is being made on the ground of negligence on the part of the consumer to pay the electricity dues. It is in such cases that recovery beyond the period of 2 years is prohibited. Present is not a case where action is taken due to default or negligence on the part of the consumer. ***Present is a case where error in the matter of calculating tariff by the Board is being corrected when the error came to the notice of the Board on 18-9-00. The provision of Section 56 will not apply in the facts and circumstances of the present case."***

It may be seen that Hon'ble jurisdictional High Court clearly held that cases of billing after noticing the error is not covered under Section56(2).

(xx) That, in view of aforesaid judicial pronouncement, amount becomes first due only when the notice of demand/supplementary bill is raised. In the instant case supplementary bill is raised on dated 16.01.2020 hence amount become ***first due only on 16.01.2020.*** *Thus, petitioner cannot plead that recovery is time-bar under section 56(2) of the Act.*

B. Bar under Section 56(2) is applicable only in cases where dues are recoverable from consumers and not from any other person:

*(xxi) That, it may be seen that Sub Section (1) of Section 56 is talks about the dues recoverable from **any 'person'** whereas Sub-Section (2) of Section 56, which provides the bar of two years, talks about dues recoverable from **'consumer'** only. Accordingly protection under Section 56(2) is not available to any person other than the **'consumer'**.*

(xxii) In the instant case petition has been filed by the petitioner in the capacity of generators invoking provisions of section 86(1) (f) of the Act. Therefore petitioner cannot raise plea of bar under Section 56(2). Further respondent distribution company is entitled to disconnect supply as per provision of sub-Section (1) of Section 56.

C. <u>Statute of limitation only bars the remedy but does not extinguish the debt:</u>

*(xxiii) That, it is now a settled legal position that the statute of limitation only bars the remedy but does not extinguish the debt. In this regard kind attention is drawn towards the judgment of the Hon'ble Supreme Court in the case of Khadi Gram Udyog Trust vs Shri Ram Chandraji Virajman 1978 AIR 287, 1978 SCR (2) 249 (**Annexure-6**):*

> *"……..The question that arises for consideration in this appeal is whether the entire amount of rent due would include even rent which cannot be recovered as having been time-barred. There is ample authority for the proposition that though a debt is time-barred, it will be a debt due though not recoverable, the relief being barred by limitation. In Halsbury's Laws of England (3rd Ed.) Vol. 24 at p. 205, Article 369, it is stated "except in the cases previously mentioned, the Limitation Act, 1939 only takes away the remedies by action or by set off; it leaves the right otherwise untouched and if a creditor whose debt is statute-barred has any means of enforcing his claim other than by-action or set-off, the Act does not prevent him from recovering by those means. The Court of Appeal in Curwen v. Milburn (1889) 42 Ch. D. 424 Cotton, L. J. said :*
>
> ***"Statute-barred debts are dues, though payment of them cannot be, enforced by action."***
>
> *The same view was expressed by the Supreme Court in Bombay Dyeing and Manufacturing Co. Ltd. v. The State of Bombay &Others(1) where it '**<u>held that the statute of limitation only bars the remedy but does not extinguish the debt</u>**, except in cases provided for by section 28 of the Limitation Act, which does not apply to a debt. Under section 25(3) of the Contract Act a barred debt is good consideration for a fresh promise to pay the amount. **<u>Section 60 of the Contract Act provides that when a debtor makes a payment without any direction as to how it is to be appropriated, the creditor has the right to appropriate it towards a barred debt.</u>** In a full Bench decision of the Patna High Court Ram Nandan Sharma and Anr. v. Mi. Maya Devi and Others(2), Untwalia, C. J. as he then was, has stated "There is a catena of decisions in support of what has been said by Tek Chand, p.330*

paragraph 12) ***that the Limitation Act with regard to personal actions, bars the remedy without extinguishing the right." The law is well-settled that though the remedy is barred the debt is not extinguished.*** *On consideration of the scheme of the Act, it is clear that the statute has conferred a benefit on the tenant to 'avoid a decree for eviction by complying with the requirement of section 20(4). If he fails to avail himself of the opportunity and has not paid the rent for not less than four months and within one month from the date of service upon him of a notice of demand, the landlord under section 20(2) would be entitled to an order of eviction. Still the tenant can avail himself of the protection by complying with the requirements of section 20(4). As he has not deposited the entire amount due the protection is no more available.* ***We agree with the view taken by the trial court and the High Court of Allahabad that the words "entire amount of rent due" would include rent which has become time-barred****In the result the appeal is dismissed. There will be no order as to costs."*

(xxiv) In the present case although dues are not barred by limitation, as per aforesaid dictum of the Hon'ble Supreme Court there is no prohibition on the realization of time bar debt by available modes. These other modes may include adjustment from Security (if any), adjustment from any amount refundable/payable to user of electricity by distribution licensee on any account, appropriation of amount paid by user of electricity to distribution licensee against time bar dues etc.

RE: Summary disposal of petition No. 29/2019 has no bearing on the instant petition:

(xxv) That, petitioner is trying to establish that Hon'ble Commission in the Petition No. 29/2019 adjudicated the issue finally against the respondents. Hence, there cannot be any revision of billing in accordance with the tariff order/regulation.

(xxvi) That, proceeding before Hon'ble Commission in the petition No. 29/2019 was not the adjudicatory in nature. Petition No. 29/2019 had been filed by the distribution licensees invoking the regulatory power of the Hon'ble Commission under Regulation 16 & 17 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010. Regulation 16 & 17 conferred discretionary power to this Hon'ble Commission to remove difficulties in appropriate cases. Res-judicata has no applicability on exercise or refusal to exercise the regulatory power by this Hon'ble Commission.

(xxvii) That, Section 11 of the Code of civil procedure provides for the res-judicata as under:

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit ***between the same parties****, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised,* ***and has been heard and finally decided by such Court.***

……

Explanation III.- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

(xxviii) That, from bare perusal of the aforesaid provision it is clear that for applicability of the res-judicata parties in the former and subsequent suit must be same. Further, case must be heard on merit and should be decided finally. Explanation III clearly provides that there must be an allegation by one party and denial/admission by other party. In the instant case present petitioner was not the party to the petition No. 29/2019. Some generators were joined as intervener but no hearing granted to them on the merit of the case so as to construe any denial/admission of any matter on the part of them. Even the copy of the petition not served on them till the decision pronounced on dated 16/12/2019. It is a settled legal position that intervener cannot be considered as party to the suit. Hon'ble Bombay High Court in the case of Maria Emilia Barreto Mascarenhas vs Sushma Ruzar Fernandes and Ors. 2006 (5) BomCR 761 ***(Annexure-7)*** *explained the difference between intervener and party to the suit in the following manner:*

"4……There is certainly a difference between a person being joined as party defendant and a mere intervener. Once a person is joined as party defendant to the suit, he would be entitled to file his pleadings and contest the proceedings according to the defence sought to be raised by such person. However, in case of intervenor, he is not entitled to file any pleadings nor to lead any evidence as such. He can appear in the matter merely to assist the Court to arrive at the truth on the basis of whatever materials are placed on record by the parties to the proceedings."

Similarly, Hon'ble Supreme Court in case of Saraswati Industrial Syndicate Ltd v. Commissioner of Income tax Haryana Rohtak [1999] 103 Taxman 395 (SC) ***(Annexure-8)*** *held that interveners are not entitled for similar relief as provided to the parties of the litigation:*

"12. Learned Counsel for the intervener submits that he is entitled for same order as we have just passed. We cannot pass such an order in an intervention application. ***The only purpose of granting an intervention application is to entitle the intervener to address arguments in support of one or the other side.*** *Having heard the arguments, we have decided in assessee's favour. The interveners may take advantage of that order".*

(xxix) Hon'ble High Court of Madhya Pradesh in case Jagdamba Prasad Soni V. State of MP and Others ***(Annexure-9)*** *held that if the matter has not adjudicated on merit in earlier litigation than res-judicata shall not be applicable. The relevant observations are reproduced as under:*

(11) For the applicability of the doctrine of res-judicata, the matter must have been adjudicated in "stricto sensu" in earlier litigation. The former order of the labour court was passed, dismissing the case of the petitioner in default. Admittedly, the matter was not adjudicated on merits. If the former case is

dismissed for want of jurisdiction or for default or on the ground of technical mistake, the decision being not on merits would not be res-judicata in the subsequent proceeding. (see sheodan singh vs. Daryao kunwar, air 1966 sc 1332.)

In view of above, it is clear that present petitioner was not the party of the petition no. 29/2019. Further that decision was not on merit of the case. Thus question of applicability of res judicata doesn't arise.

RE: There can be no estoppel against the statute:

(xxx) *That, contention of the petitioner that till the Sep-19 respondent is doing billing as per HV-7 Tariff Category hence thereafter billing methodology cannot be changed. Though specifically not mentioned petitioner is trying to invoke doctrine of promissory estoppel. The reliance on this doctrine is without any substance as there can be no estoppel against the statute. In the instant case, the bill(s) have been raised in terms of the tariff order. Any demand, which is raised under legal provisions, cannot be said to be inequitable.*

(xxxi) *That, in the case of M/s. Mathra Prashad and Sons Vs State of Punjab 1962 AIR 745 (**Annexure-10**) five judge bench of Hon'ble Supreme Court held that there can be no estoppels against the statute. The relevant para of the said judgment is reproduced as under:*

> *"…….. The second argument is also without force. **There can be no estoppel against a statute.** If the law requires that a certain tax be collected, it cannot be given up, and any assurance that it would not be collected, would not bind the State Government, whenever it choose to collect it.*

*Further Hon'ble Supreme Court in the case of **Shree Sidhbali Steels Limited** supra held as under:*

> *"33…….**However, it is well settled that taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law.** There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the government or public authority cannot be compelled to make a provision which contrary to law."*

***RE: Any hardship resulting from operation of Regulation/Tariff order cannot alter its meaning**:*

(xxxii) *That, petitioner has submitted that the revised billing is creating hardship due to additional financial burden.In this regard kind attention is drawn towards the judgment of the Hon'ble Supreme Court in case of Commissioner of Agricultural Income Tax, West Bengal v. Keshab Chandra Mandal AIR 1950 SC 265(**Annexure-11**). The relevant part is reproduced as under:*

> *"……There is an argument based on hardship or inconvenience.*

Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute or the rules….."

In view of above since HV-7 Tariff category clearly prohibits the drawl of power more than two hours. Therefore, any plea of hardship or inconvenience cannot be raised.

RE: Power drawn under HV-7 exceeds 15% limit:

(xxxiii) It is submitted that HV-7 Tariff category provides one more restriction upon drawl of power by generators. Clause (a) of HV-7 Tariff Category provides that the supply for synchronization with the grid shall not exceed 15% of the capacity of unit of highest rating in the Power Plant. However, it is noticed that Regulation 10 doesn't have any such stipulation. Regulation 10 only refers two factors which are to be taken from HV-7 tariff category i.e period and rate. Hence as per regulation there is no restriction regarding drawl of power upto 15% of capacity. Further Tariff order is also silent about the consequences if generator exceeds drawl limit of 15% . There is no mention about any action required to be taken in terms of penal billing or otherwise, if recorded MD of such generators exceeds the 15 % limit prescribed in tariff order.

(xxxiv) That, clause 1.15 of the General Terms and Conditions for High Tension tariff provides for the penal billing in case drawl of power exceeds the contracted power. The said clause is reproduced as under:

"1.15 Additional Charges for Excess Demand

i. The consumer shall at all times restrict their actual maximum demand within the contract demand. In case the actual maximum demand in any month exceeds 120% of the contract demand, the tariffs given in various schedules shall apply to the extent of the 120% of the contract demand only. The consumer shall be charged for excess demand computed as difference of recorded maximum demand and 120% of contract demand on fixed charges and while doing so, the other terms and conditions of tariff, if any, shall also be applicable on the said excess demand. The excess demand so computed, if any, in any month shall be charged at the following rates from all consumers except Railway Traction.

ii. Energy charges for excess demand: No extra charges are applicable on the energy charges due to the excess demand or excess connected load.

iii. Fixed charges for Excess Demand: - These charges shall be billed as per following:

1. Fixed charges for Excess Demand when the recorded maximum demand is up to 130% of the contract demand: Fixed charges for Excess Demand over and above the 120 % of contract demand shall be charged at 1.3 times the normal fixed charges.

2. Fixed charges for Excess Demand when the recorded maximum demand exceeds 130% of contract demand: In addition to fixed charges in 1 above,

recorded demand over and above 130 % of the contract demand shall be charged at 2 times the normal fixed charges.
Example for fixed charges billing for excess demand: If the contract demand of a consumer is 100 kVA and the maximum demand recorded in the billing month is 140 kVA, the consumer shall be billed towards fixed charges as under:-
a) Up to 120 kVA at normal tariff.
b) Above 120 kVA up to 130 kVA i.e. for 10 kVA at 1.3 times the normal tariff.
c) Above 130 kVA up to 140 kVA i.e. for 10 kVA at 2 times the normal tariff.
iv. The excess demand computed in any month will be charged along with the monthly bill and shall be payable by the consumer."

(xxxv) That, the aforesaid clause 1.15 provides the penal billing of fixed charges only and no penal billing provided in respect of energy charges. Thus penal billing in case of Recorded MD exceeds permissible limit of 15% cannot be applied with respect to power consumed under HV -7 tariff schedule due to following reason:

i. HV-7 tariff Schedule doesn't provide for any billing of fixed charges. Only energy charges are being billed under HV-7 tariff Schedule. Further aforesaid clause 1.15 doesn't provide for any penal billing on energy charges, thus no penal billing can be done even if drawl of power exceeds prescribed limit of 15%.

ii. HV -7 tariff schedule is applicable to generators, and generator do not have any specified contract demand with the Discom. Therefore comparison of contract demand with maximum demand cannot be done.

(xxxvi) In view of above, at present, considering the provision of the regulation 10 along with clause 1.15 of general terms and condition, billing is being done by the respondent Discom for the power drawn up to 2 hours under HV-7 Tariff Schedule without considering the condition of 15%. To avoid any future dispute in the matter Hon'ble Commission is requested to provided clarification whether any action is required to be taken in terms of penal billing or otherwise if drawl of power exceeds 15% of capacity.

(xxxvii) In view of above submission, it is requested to the Hon'ble Commission to dismiss the petitions and grant the relief sought by the respondent Discom in the reply dated 13/07/2020 to the petition.

15. 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. <u>In other cases, it would be billed at the rate applicable to temporary connection under HT Industry category.</u>*

(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 is 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 pro-rated 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 was 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".

(xiii) The petitioner in its arguments and subsequent written submission stated that the Respondent vide letter dated 04.02.2020 raised additional charges for the period of April'2017 to August' 2019 which does not have any legal basis as the same is time barred in terms of Section 56(2) of the Electricity Act'2003. The Respondent No. 1 in its written note placed counter arguments along with several citations on this issue. The submissions of both the parties on this issue are mentioned in para 13 and 14 of this order. Section 56 (2) of the Electricity Act'2003 provides as under:

"Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

In terms of the above provision under Section 56 (2), the sum due from any consumer is not recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied by the licensee. The Hon'ble Appellate Tribunal for Electricity in Judgment dated 14th November'2006 in Appeal Nos. 202 and 203 of 2006 held in para 14 that *"the consumption of electricity will certainly create a liability to pay but the amount will become due and payable only after a bill or demand is raised by the licensee in accordance with the Tariff Order. Such a bill/demand will notify a date by which the dues are to be paid without surcharge".* In para 17 of aforesaid Judgment, Hon'ble Tribunal mentioned that " *In our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/ demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running."*

Similarly, in another case, Hon'ble High Court of Madhya Pradesh, Bench at Gwalior in the matter of Kapoor Saw Manufacturing Co. V/s MPSEB and Others- (2006 SCC online MP 612), vide Judgment dated 13.07.2006 have upheld that the provisions of Section 56 of the Electricity Act 2003 will not be applicable when error in the matter of calculating tariff is being corrected when the error came to the notice. The relevant para of the aforesaid Judgment is mentioned by the Respondent No. 2 (Para 14 (xix) of this order)

From the above, the disputed amount in the subject matter was first due on 04.02.2020 when billing for additional charges was raised by the Respondent No.2. Hence, the contention of petitioner that the recovery of bills from April'2017 to August'2019 is time barred, has no merit.

16. 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)	**(Mukul Dhariwal)**	**(S.P.S. Parihar)**
Member	**Member**	**Chairman**