

**FMADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Petition No. 43 of 2019

Sub: In the matter of petition under Section 45 of the Electricity Act, 2003 read with Regulation 7.0 and 8.1.2 of the MPERC (Recovery of Expenses and Other Charges for providing Electric Line or Plant used for the purpose of giving supply) Regulations, 2006 and Tariff Orders dated 03.05.2018 (FY 2018-19) and 08.08.2019 (FY 2019-20).

ORDER

(Date of Order: 05th December' 2020)

M/s. Giriraj Enterprises,

Malpani House, I.G. Road, Sangamner,
District-Ahmednagar - 422605

- **Petitioner**

Vs.

(1) M.P. Power Management Company Ltd.,

Through Chief Manager

Block No. 15, Shakti Bhawan, Rampur, Jabalpur – 482008

(2) M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd.

Through General Manager (O&M)

NishthaParisar, Govindpura, Bhopal – 462023

- **Respondents**

(3) M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd.

GPH Compound, Pologround, Indore – 452001

(4) M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd.

Block No. 7, Shakti Bhawan, Rampur, Jabalpur – 482008.

Ms. Swapna Sheshadri, Advocate and Shri Ashwin Ramanathan, Advocate appeared on behalf of the petitioner.

Shri Sidharth Sharma, Advocate, Shri Aashish Bernard, Advocate and Shri R.P. Bisaria, Advocate appeared on behalf of the Respondent No. 2.

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

Shri Sanjay Malviya SE and Shri Shailendra Jain, Dy. Director appeared on behalf of the Respondent No. 3.

Shri Deepak Chandela, DGM appeared on behalf of the Respondent No.4.

The petitioner (M/s. Giriraj Enterprises) filed the subject petition under Section 45 of the Electricity Act, 2003 read with Regulation 7.0 and 8.1.2 of the MPERC (Recovery of Expenses and Other Charges for providing Electric Line or Plant used for the purpose of giving supply)

Regulations, 2006 and Tariff Orders dated 03.05.2018 (FY 2018-19) and 08.08.2019 (FY 2019-20) issued by MPERC.

2. M/s. Giriraj Enterprises has set up 28 MW wind electricity generating plant, at Kukru, Village Kordi District Betul (MP). It is a generating company within the meaning of Section 2(28) of the Electricity Act, 2003. The petitioner entered into a Power Purchase Agreement on 17.04.2015 with the Respondent No. 1 for sale of electricity from its wind energy generating (WEG) plant for a period of 25 years based on Commission's tariff order dated 26.03.2013 for procurement of power from wind electric generators. The relevant details of WEGs in the subject matter are as given below:

S. No.	WEG capacity	Location No.	COD
1.	6 x 2 MW	KKT - 10, 14, 15, 07, 09 & 16	01.10.2014
2.	5 x 2 MW	KKT - 11, 12, 01, 02 & 13	10.12.2014
3.	3 x 2 MW	KKT - 19, 24 & 27	31.12.2014

Petitioner's Submission:

3. While mentioning certain provisions of the PPA, HV-3.1 and HV-7 Tariff category in retail supply tariff orders for FY 2018-19 and FY 2019-20 issued by the Commission, the petitioner broadly submitted the following in the subject petition:

- (i) *"The Tariff Order as well as the PPA envisage that the supply/ drawl of power can be availed by the petitioner on payment of temporary rate applicable to HT Industrial category. Pursuant to the COD of the project, for every month, the Petitioner was being billed at the HT Industrial HV-3.1 Category in which the Fixed Charges and TMM Difference Charges were not being billed. This amount the petitioner being effectively charged under the HV-7 (Industrial) category, but for the nomenclature. Till such date, there was no dispute on the monthly payments and the petitioner was adhering to the same.*
- (ii) *This Hon'ble Commission has also been determining the Retail Supply Tariff for the consumers in the State of Madhya Pradesh on a yearly basis. For FY 2018-19, this Hon'ble Commission has passed the Tariff order on 03.05.2018 and for FY 2019-20, the Hon'ble Commission has passed the Tariff order on 08.08.2019.*
- (iii) *Both for FY 2018-19 and FY 2019-20, this Hon'ble Commission has maintained consistency in the tariff categorization for HV-3.1 and HV-7. On a plain reading of the*

above provisions, it can be seen that the petitioner would not get covered under the HV-3.1 category. The HV 3.1 (Industrial) is clearly for industrial consumers in the factory and related offices as well as common and ancillary facilities such as banks, water supply, general purpose shops, dairy units, cold storages etc. and by no stretch of imagination can this be applicable to the petitioner.

- (iv) Due to the above, the Betul Circle of the Respondent No. 2 where the petitioner's generator is located was billing the rates mentioned in HV-7 for the petitioner's import of electricity even though in the Bill HV-3.1 category was mentioned. However, the Respondent No. 2 unilaterally changed the billing procedure from December 2018 onwards and started billing the Fixed Charges and TMM Difference charges to the petitioner under HV 3.1 (Industrial) category. This led to an exponential increase in the tariff being billed to the petitioner.*
- (v) Immediately upon receipt of the bill, the petitioner made some comparisons with the bills of the earlier months. Thereafter, the petitioner's officers contacted the local Betul Circle and enquired as to how the billing had been changed mid-year and the exponential rise in charges. However, no satisfactory response was received by the petitioner. The changed billing methodology continued for the month of January 2019 also.*
- (vi) On 26.03.2019, the Respondent No. 2 sent two notices for disconnection alleging non-payment of bills dated 05.03.2019 by the petitioner. Copies of the disconnection notices dated 26.03.2019 are attached hereto and marked as Annexure E (colly).*
- (vii) The petitioner wrote detailed letters dated 03.04.2019 and 25.04.2019 to the Respondents stating that there was no basis to change the tariff categorization and billing procedure mid-year and also requested the Respondent No. 2 to correct the bills so that the payments could be released immediately.*
- (viii) However, the respondents neither corrected the bills nor responded to the above letters of the petitioner. Instead, the Respondent No. 2 issued further Disconnection Notices on 05.10.2019, 18.10.2019, 22.10.2019, 25.10.2019 and 26.10.2019. Copies of the above notices are attached hereto and marked as Annexure F (colly).*
- (ix) The petitioner has also been continuously following up with the respondents requesting them to adhere to the earlier billing procedure, including vide the letters dated 15.10.2019, 22.10.2019 and 26.10.2019, copies of which are attached hereto and marked as Annexure G (colly).*

- (x) *However, since there is no satisfactory resolution of the disputes, the petitioner has been constrained to approach this Hon'ble Commission.*
- (xi) *In terms of the Regulations 7 and 8.1.2 of MPERC (Recovery of expenses and other charges for providing electric line or plant used for the purpose of giving supply) Regulations, 2006, the distribution licensee are strictly expected to adhere to the tariff categorization and the billing procedure made by this Hon'ble Commission and cannot unilaterally change the billing methodology of a consumer or increase the tariff to a particular category of consumers. In the present case, the Respondent No. 2 has simply changed the whole billing procedure with respect to the petitioner, and has started billing the Fixed Charges and TMM Difference Charges from December 2018 onwards, which were not being billed till November 2018. In doing so, Respondent No. 2 effectively changed the tariff category since the petitioner was earlier being charged under (i.e. HV-7). Further, this change in billing procedure has been done in the middle of the tariff year, from December 2018 onwards. This is entirely impermissible and amounts to violating the tariff order passed by this Hon'ble Commission.*
- (xii) *This Hon'ble Commission has also clearly defined HV-7 category for those generators who are connected to the grid and seek to avail electricity. On a simple reading of the above categorization, the Respondents as a temporary measure, could have billed the petitioner under HV-7 and sought a clarification from this Hon'ble Commission, instead of simply changing the tariff category and the billing procedure.*
- (xiii) *The petitioner understands that the Respondent No. 1 has filed petition No. 29/2019 before this Hon'ble Commission wherein it has sought certain revisions in the tariff conditions of HV-7 category. There seems to be some confusion in the various circles of the distribution companies while treating the billing for import of power by wind energy generators.*
- (xiv) *It is also noticed that from September 2019, all circles have unilaterally changed the tariff categorization from HV-7 to HV 3.1. This will lead to complete chaos, especially when Petition No. 29/2019 is pending before this Hon'ble Commission for decision. Copies of the bills for the month of August 2019 and September 2019 issued by other circles are annexed hereto and marked as Annexure H (colly).*
- (xv) *In so far as the renewable energy generators are concerned, Section 86(1)(e) of the Electricity Act envisages a promotional role to be performed by this Hon'ble Commission. The statutory mandate is therefore to promote renewable energy generators.*

- (xvi) *It is also a well settled position that the wind energy generators would require some amount of import of electricity. This amount, however, is extremely less in quantum (approximately 0.20% to 0.30% as compared to the generation). This import is also due to the infirm nature of the generation which depends on the availability of the wind. The generators ordinarily require to consume power only when there is a low wind period. This period is also completely out of the control of the generator.*
- (xvii) *It is respectfully submitted that the bills raised by the Respondent No. 2 from December 2018 onwards ought to be stayed and a direction needs to be given to the Respondent No. 2 as well as other distribution companies i.e. Respondent No. 3 to Respondent No. 5 to bill the import of energy by the wind energy generators at HV-7 category instead of HV-3.1 category. This can be an interim measure till such time, this Hon'ble Commission takes a comprehensive view of the matter and grants a specific tariff category for import of electricity by the wind energy generators."*

4. With the above submissions, the petitioner made the following prayer :

- (i) Admit the petition;
- (ii) Direct that from December' 2018 onwards, the Betul circle and from September 2019 onwards, all circles should bill the import of electricity by wind energy generators under the HV-7 category only (without Fixed charges and TMM Difference Charges)
- (iii) To direct the Respondent No. 2 to revise the bills issued to the petitioner from December 2018 onwards till date, as well as in future till the time a final decision is taken by this Hon'ble Commission.

5. The petitioner also prayed for the following interim relief:

- (i) Stay the Disconnection Notice Nos. 10072 & 10074 dated 26.03.2019, 319 dated 05.10.2019, 337 dated 18.10.2019, 353-54 dated 22.10.2019, 5677 dated 25.10.2019 and 5722 & 5724 dated 26.10.2019 issued by the Respondent No. 2 till disposal of the petition.
- (ii) Stay the bills issued by the Respondent No. 2 from December 2018 onwards till the disposal of the petition.

Procedural History:

6. The petition was admitted on 03.01.2020 with directions to the petitioner to serve a copy of petition on all the Respondents. The Respondents were directed to file their reply to the subject petition within 15 days.

7. By affidavit dated 23rd January' 2020, the petitioner had requested for interim protection till final adjudication of this matter by the Commission. Vide Commission's order dated 28th January' 2020, the petitioner was directed to at least clear all dues up to date under HV-7 Tariff Schedule out of disputed amount under billing in the subject petition. The Respondents were directed not to disconnect the petitioner's connection till next date of hearing subject to the condition that the payment towards the disputed bill are paid by the petitioner as per aforesaid directions. Subsequently, the said interim protection has been continued till this matter is decided and disposed of by the Commission.

8. On 05.02.2020, the petitioner filed a compilation of documents including the copy of various Retail Tariff orders of previous years issued by this Commission. In the hearing held on 6th March' 2020, Ld. Counsel who appeared for the petitioner placed arguments in light of the aforesaid documents. The petitioner filed written submission on 18th March' 2020. During the hearings held on 14.05.2020 and 23.06.2020 through video conferencing, Ld. Counsel appeared for Respondent No. 2 sought time for filing a comprehensive reply in the subject matter. Considering the request, the Respondent No. 2, was given a last opportunity for filing comprehensive written reply by 02.07.2020 after serving a copy of same on other side also. The case was reserved for order thereafter. The Respondent No. 2 filed its written submission on 16th July' 2020.

Respondents' Submissions:

9. The Respondent No. 1, 2 and 3 filed their reply to the subject petition on 20th January' 2020, 31st January' 2020 and 03rd February'2019, respectively. The Respondent No. 4 filed reply to the subject petition on 24th February' 2020.

10. The Respondent No.1 broadly submitted the following:

- “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."*

11. The Respondent No. 2 broadly submitted as under:

- "1. *The order 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 petitions, the provisions and interpretations of Hon'ble Commission regarding applicability of regulations shall prevail.*

2. *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 7th amendment in the Regulation has been made on 17.11.2017.*

*"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.**"*

3. *The CGM(Commercial) MPMKVVCL has already revised bills from date of connection to till date as follows:*
 - a. *Synchronization units and other units are separated using load survey data considering that any energy used up to continuous 2 hrs or less is for synchronization and rest of units is for other uses.*
 - b. *For synchronization period only energy charges, as per tariff category HV-7, are applicable.*
 - c. *For other uses energy consumed, MD recorded and units for TOD rebate are calculated from load survey data and data recorded in energy registers. Billing demand is computed independently for each billing cycle and is considered MD for that billing month.*
 - d. *Only reactive energy consumed by the generators is considered for the reactive energy charges.*
 - e. *Accordingly, energy charges, fixed charges, PF penalty/ rebate and TOD rebate are billed for other uses under tariff category HV-3 industrial with temporary rates as provided in 7th amendment of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy Regulations, 2010) TMM charges are not applicable.*
4. *Instructions has been received from CGM (Commercial) MPMKVVCL Bhopal for not to disconnect the petitioner's connections till decision pending from MPERC.*
5. *The billing has been done as per the MPERC (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, 7th amendments have been made in the Regulations from time to time. The 7th amendment in the Regulation has been made on 17.11.2017."*

12. The Respondent No. 3 broadly submitted the following:

- “1. 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 vide instant petition is with respect to the billing of fixed charges and TMM by respondent No. 2 and no relief has been sought against the answering respondent No. 3. Therefore, answering respondent is not in position to comment on factual position of the case. Response of the answering respondent is limited to the applicable statutory provision and practice being followed by the answering respondent in the similar cases.*
- 2. That, issue of billing for the power drawn from the grid has been raised by the MPPMCL and all three distribution licensee of the state, before Hon’ble Commission in the petition No. 29/2019. In the said petition apart from the prayer regarding amendment in the regulation and tariff order, clarification has been requested from this Hon’ble Commission on various issues.*
- 3. It may be seen that clarification has been sought by the MPPMCL/ Discoms vide petition No. 29/2019 on the very same issues (manner of determination of MD, manner of prorate of fixed charges and levy of TMM) which are raised by petitioners vide instant petition. Therefore, it is now become necessary that clarification/ guideline may please be issued by the Hon’ble Commission on the aforesaid issues.*
- 4. That, M/s. Sterling Agro Industries Limited has also filed a petition No. 48/2018 before Hon’ble Commission raising grievances against billing done by the answering respondent with regard to drawl of power. The reply in side petition is already been filed considering the applicable statutory provisions and present practice being followed by answering respondents for billing. Answering respondent reiterates the content of the said reply and same is not reproduced here for sake of brevity.”*

13. The Respondent No. 4 has broadly submitted the following:

- “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 4 and detailed submission would be made by respondent 2 on these issues.*
- 2. It is submitted that due to inconsistencies in the billing of RE Generators the Respondent No. 4 together with Respondents 1, 2 & 3 filed a joint petition 29 of 2019 for seeking revision in MPERC (Cogeneration and Generation of Electricity from Renewable Energy Sources) (Revision-I) Regulations, 2010 & to amend the HV-7 tariff schedule of retail supply tariff orders*
- 3. 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.

4. *It is submitted that Hon'ble Commission has power to clarify the issues in implementation of the provisions of the regulations and remove any difficulties for implementation of regulations. The relevant regulations are reproduced as under:*

16. Power to Amend

16.1 *The Commission may at any time, add, vary, alter, modify or amend any provisions of these Regulations.*

16.2 *In the event of any dispute, the matter shall be referred to the Commission whose decision in this regard shall be final.*

17. Power to Remove Difficulties

The Commission may suo-moto or on an application from any person generating electricity from co-generation and renewable sources or distribution licensee, review these Regulations and pass appropriate orders to remove any difficulty in implementing the provisions of these Regulations.

5. *In view of the above, Hon'ble Commission is requested to issue the clarification on aspects mentioned in the para 05 of this submission."*

Written submissions based on arguments by the parties:

14. The petitioner broadly submitted the following in its written submission:

1. *The revised recovery sought to be affected by the Respondent is on the basis that this Hon'ble Commission notified the 7th Amendment to MPERC (Cogeneration and Generation of Electricity from the Renewable Sources of Energy) Regulations, 2010 "7th amendment") on 17.11.2017. It is the Respondents' case that only after the 7th Amendment did it become clear as to how the drawl of energy from the wind energy generators was to be billed, and this got further clarified in the Retail Supply Tariff Order issued by this Hon'ble Commission for FY 2018-19 on 03.05.2018.*
2. *It is the case of the Respondents that only pursuant to the 7th Amendment on 17.11.2017 did it become clear that the tariff for drawl by the wind energy generators for synchronization with the Grid was to be billed as per HV-7 category and the tariff for the drawl by wind energy generators during shutdown and emergencies was to be billed as per HV-3.1 category.*
3. *It is respectfully submitted that the above case is absolutely fallacious and against the records. There was no need for the Respondents to wait for the 7th Amendment which was issued by this Hon'ble Commission on 17.11.2017 to have a new found clarity in the manner of billing. Right from the Retail Supply Tariff Order for FY 2014-15, the year in*

which the wind generators of the petitioner got commissioned, this Hon'ble Commission in the respective retail supply tariff orders provided for the following categorization:

"HV-3.1 (Industrial)

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."

HV-7 "Synchronization of power for Generators connected to the grid

Applicability:

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

Terms and Conditions:

- *The supply for synchronization with the grid shall not exceed 15% of the capacity of unit of highest rating in the Power Plant.*
- *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.*
- *The supply shall not be allowed to the CPP for production purpose for which they may avail stand-by support under the relevant Regulations.*
- *The synchronization with the grid shall only be made available after commissioning of the plant.*
- *For synchronization with the grid, power shall be provided for a maximum period of 2 hours on each occasion.*

The generator including CPP shall execute an agreement with the Licensee for meeting the requirement of synchronization with the grid incorporating the above terms and conditions."

4. *Further, the Petitioner had also entered into a Power Purchase Agreement (PPA) with the Respondent on 17.04.2015 which, with regard to drawl of power, provided as under:*

"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.

7.2.2 The switching centre of DISCOM/TRANSCO shall be 132/33 kV substation

Gudgaon of DISCOM/TRANSCO in Tahsil Bhainsdehi, District Betul and switching centre of the Seller shall be Pooling station at Wind Farm site near Village Kukru, Tehsil Bhainsdehi, District Betul.

7.2.3 In case, the Seller is using the same feeder for injection of power to the grid substation and drawl of power for shut down period or during any emergencies, then the energy recorded by the Main Meter as total import shall be billed to the Seller by the DISCOM on monthly basis."

- 5. The Respondents understood the above clause in the PPA as permitting the Petitioner to draw power whether for synchronization or during other periods to be billed under HV-7 category. This was also the Respondents' understanding of the various retail supply tariff orders passed by this Hon'ble Commission for each of the years from FY 2014-15 to FY 2019-20.*
- 6. It is well settled that when parties to a contract interpret the contract in a particular manner for a long period of time, they are bound by this interpretation and cannot turn around after the period is over. Insofar as the Petitioner is concerned, it has already arranged its affairs and also paid the bills being raised by the Respondents for each of the months starting from October/ December 2014 at the rates being billed by the respective Respondents, namely as per the HV-7 category. In the circumstances, for the Respondents to now demand much higher amounts from the petitioner on the basis that the Respondents did not have any clarity till the time the 7th Amendment was notified by this Hon'ble Commission on 17.11.2017 is completely illegal, apart from being harsh and unjust.*
- 7. Further, the Respondents filed Petition No. 29/2019 before this Hon'ble Commission on 11.11.2019.*
- 8. The above is clear admission on the part of the Respondents that they were facing difficulties in segregation of energy drawn by the renewable energy generators from the grid on each occasion and it was impossible for them to identify the purpose of energy drawl by such generators. Further, the Respondents admitted that the renewable energy generators do not have any Contract Demand and therefore, it is not possible to bill the fixed charges on such generators.*
- 9. This Hon'ble Commission after hearing the Respondents dismissed the Petition No. 29/2019 vide an order dated 16.12.2019. This Hon'ble Commission was mindful of the fact that the billing to the respective category of consumers has already been done as per the Regulations and no further clarification needs to be given at that stage. The Hon'ble Commission also noted that since the process of the next year's tariff order had already started, the issue ought to be decided in the said proceedings, namely Petition No. 49/2019.*
- 10. It is also important to note that in Petition No. 49/2019, the Respondents have*

proposed the “tariff schedule HV-7: synchronization of power for generators connected to the grid” as under:

“Applicability:

This Tariff shall apply to those generators who are already connected to the grid.

Tariff for all voltages: Tariff:

Category of consumers	Energy (paise/unit)	Energy (paise/unit)
	Existing	Proposed
Generators connected to the Grid	935	960

Specific Terms and Conditions for HV-7 category:

- (a) The Generators shall not exceed Grid drawl above 15% of the capacity of the Power Plant.
- (b) In case of drawal of power above 15% of the capacity of the power plant on any occasion, entire energy drawn during the billing month shall be billed payable at twice the energy charge.
- (c) Reactive energy charges for reactive energy drawn shall be billed at the rate as may be prescribed by Commission from time to time.
- (d) The condition for minimum consumption shall not be applicable to the generators including CPP. Billing shall be done for the total energy recorded on all occasion for availing supply during the billing month.
- (e) The supply shall not be allowed to the CPP for production purpose for which they may avail stand-by support under the relevant Regulations.
- (f) The grid drawl shall only be made available after commissioning of the plant.
- (g) The generator including CPP shall execute an agreement with the Licensee for drawl of power from the grid incorporating the above terms and conditions.”

11. This Hon’ble Commission had also notified another Amendment to the MPERC Co-generation Regulations and heard the matter on 06.03.2020. All stakeholders in the said hearing submitted before the Hon’ble Commission that there should be only one categorization for renewable energy generators drawing electricity from the grid, irrespective of its purpose since this would simplify the entire issue and would ensure clarity both to the generators as well as to the distribution companies in the State of Madhya Pradesh.
12. In the circumstances mentioned above, there is absolutely no basis for the Respondents to (a) justify a dual-billing on the Petitioners for the period from December 2018 – by Betul Circle and September 2019 – by other circles; (b) revise the entire billing for the period from the COD of the wind energy generators during the pendency of the petitioner before this Hon’ble Commission.
13. There is a judicial admission on the part of the Respondents that they were not in a position to segregate the synchronization power from that of the power drawn during emergencies and shutdown. There was also no provision or procedure laid down by the

- distribution companies by which the generators could upfront declare the reason for their drawl. Further, more than 90% of the drawl in the case of wind energy generators is for the synchronization purpose only.*
14. *The Respondents cannot be permitted to content that they did not understand the tariff orders being passed by this Hon'ble Commission from FY 2014-15 onwards till the 7th Amendment, which was effected on 17.11.2017. Without prejudice to the submission and even admitting it, at least from 17.11.2017, the Respondents ought to have revised the billing and effected a dual-billing. Even this was not done and the forceful recovery by revision of billing methodology at this stage is a clear afterthought and a punishment to the petitioner for filing the present petition.*
 15. *The conduct of the Respondents is so perverse that even as late as November 2019, the Respondents approached this Hon'ble Commission to seek a clarification on how the billing should be carried out and after the rejection of such a clarification, has revised the entire billing methodology applying the very same basis which was rejected by this Hon'ble Commission in its order dated 16.12.2019.*
 16. *The recent judgment rendered by the Hon'ble Appellate Tribunal on 12.02.2020 in Appeal No. 112/2020 "Malwa Solar Power Generation Private Limited vs. Madhya Pradesh Electricity Regulatory Commission & Ors." also came up for discussion before this Hon'ble Commission on the hearing on 06.03.2020. It is stated that the decision of the Hon'ble Appellate Tribunal in the said appeal has no bearing on the present dispute. The reference to Regulation 10 of the MPERC Co-generation Regulations, 2010 is in the context of examining the case of Malwa claiming netting-off of energy drawn and generated by it from the grid. The decision of the Hon'ble Appellate Tribunal is that the Regulation 10 governs the rate at which the power imported from the grid would be billed but does not amount to categorize Malwa as a temporary consumer or a person taking temporary supply. Therefore, the rate applicable to temporary HT industrial category has been found to have been correctly levied on the import of power by Malwa. This is also justified since the commercial drawal of power by Malwa was from the Discoms, but the commercial sale of power was to SECI.*
 17. *As against the Malwa case, the petitioner has a PPA for sale of electricity to the Discoms (the Respondents herein). The said PPA also provides for import of power by the Petitioner. The Respondents have billed such import under HV-7 category since the COD of the plants. Therefore, the Respondents cannot belatedly change the billing applied by them.*
 18. *It is reiterated that the Respondents understood the various tariff orders of this Hon'ble Commission as well as the Power Purchase Agreement between the Respondents and the Petitioner to meet that the drawl of electricity by the Petitioner is for the synchronization purpose alone and should be billed under HV-7 category. Having done so, the Respondents cannot now take the petitioner by surprise by applying a separate billing methodology and calling for much larger payments from the petitioner especially after rejection of its prayers in the Petition No. 29/2019.*

19. *Further, the Respondents themselves in their tariff proposal for the ensuing year has proposed the categorization under HV-7 category differently. This being the case, the Respondent cannot revise either the billing methodology or re-categorize the petitioner for the past period at this stage.*
20. *To effectively decide the matter, it is respectfully being submitted that the Hon'ble Commission may make its interim order dated 25.01.2020 as a final dispensation for the period till the new retail supply tariff order is issued. In the course of the tariff proceedings of the Petition No. 49/2019, this Hon'ble Commission may hear all parties and prescribe an appropriate tariff for all the energy drawn by wind turbine generators and other renewable energy generators in the State of Madhya Pradesh, irrespective of the purpose for which such energy is drawn. This would also be in consonance with the principles laid down by the Hon'ble Appellate Tribunal in the cases of re-categorization of consumer categories.*
21. *The petitioner also submits that the above approach would be in consonance with the provisions of Section 86(1)(e) and 61(h) of the Electricity Act, 2003 which envisages this Hon'ble Commission to play a promotional role in the development of renewable energy generators and co-generators."*

15. The Respondent 2 broadly submitted the following in its written submission filed on 16th July' 2020:

1. *That, the primary contention of the petitioner is that the answering distribution licensee has not adhered to the tariff categorization and the billing procedure made by this Hon'ble Commission and has unilaterally changed the whole billing procedure with respect to the petitioner, by starting billing the petitioner for Fixed Charges and TMM Difference Charges from December 2018 onwards, which were not billed till November 2018. The petitioner has further alleged that, in doing so, the answering respondent has effectively changed the tariff category in the middle of the tariff year, since the petitioner was earlier being charged under the HV-7 category.*
2. *That, the petitioner and Respondent No. 1 M.P. Power Management Co. Ltd., Jabalpur, the holding company of the answering respondent, entered into a Power Purchase Agreement on 17.04.2015 for sale of energy from its plant for a period of 25 years. As admitted by the petitioner in Para 7 of the petition, the applicable category to the Petitioner was HT Industrial HV 3.1 Category, wherein the petitioner was to be billed pursuant to commissioning of the plant, on monthly basis. It is submitted that at that relevant time period, the petitioner though was placed under HT Industrial HV 3.1 Category, but was not being charged the Fixed Charged and TMM Difference Charges, which led the petitioner to assume that the applicable category to the petitioner was HV-7 (Industrial) Category.*

3. *That, in addition to the aforesaid, at the time of execution of the Power Purchase Agreement with Respondent No. 1 the petitioner had fairly agreed to the applicability of HT Industrial HV 3.1 Category and had not raised any disputes regarding the same before the Respondent No. 1. The answering respondent Distribution Company only adheres to the provisions of the Power Purchase Agreement and has no rights in respect of the same. Therefore, the contention of the petitioner that the HV-7 (Industrial) Category was applicable to the petitioner is an incorrect averment and unsustainable.*
4. *That, the petitioner has alleged that answering respondent answering distribution licensee has not adhered to the tariff categorization and the billing procedure made by this Hon'ble Commission and has unilaterally changed the whole billing procedure with respect to the petitioner, by starting billing the petitioner for Fixed Charges and TMM Difference Charges from December 2018 onwards, which were not billed till November, 2018. The said submission on behalf of the petitioner is entirely misconceived and baseless. The answering respondent has utmost respect for the direction issued by the Hon'ble Commission and has not in any manner willfully changed the tariff categorization and violated the billing procedure. It is submitted that the billing was in fact being done by the answering respondent under the HT Industrial HV 3.1 Category, however, since the load factor was not determinable at the time of commissioning of the petitioner's plant, the answering respondent could not apply the Fixed Charges and TMM Difference Charges while issuing the bills to the petitioner which resulted in comparably lesser value of bills to the petitioner till November, 2018.*
5. *That, vide order dated 17.12.2018, the Chief General Manager (Comm.), MPMKVVCL (the answering respondent company) issued a clarification for tariff category applicable and referred to guidelines for the billing of Renewable Energy Generators drawing power for their own use. It was stated therein that the Maximum Demand (MD) for billing of such Renewable Energy Generators may be determined as per the provisions of MPERC Tariff Order for FY 2018-19. Therefore, it was in compliance of this order dated 17.12.2018 issued by the Chief General Manager (Comm.), MPMKVVCL, the answering respondent determined load factor and billed the Fixed Charges and TMM Difference Charges from December 2018 onwards. Therefore, it is clearly evident from the aforesaid that the answering respondent did not act arbitrarily by deviating from the Tariff Categorization and rather merely on the clarification issued by the Chief General Manager (Comm.), MPMKVVCL started billing the Fixed Charges and TMM Difference Charges under the HT Industrial HV 3.1 Category, with which the petitioner became aggrieved.*
6. *That, it is submitted that the CGM (Commercial) of MPMKVVCL the answering respondent company has already revised the bills from date of connection till 17.11.2017 as per the HV-7 Category applicable to the extent applicable.*
7. *Further, the Tariff Order for FY 2019-20 stipulates a special Tariff Schedule – HV-7 has been devised for the HV-7 Category which is applicable to those generators which are already connected to the grid and seek to avail power for synchronization with the grid.*

A bare perusal of the Specific Terms and Conditions for HV-7 category makes it evident that for the synchronization with the grid, power shall be provided for a maximum period of 2 hours on each occasion. Therefore, applicability of the tariff under HV-7 category has been made for a maximum period of 2 hours and not beyond that period. When this provision of the Tariff Order is read with the 7th amendment it becomes clear that in other cases (here exceeding the period of 2 hours), the Generators would be billed at the rate applicable to temporary connection under HT Industry category.

8. *Therefore, in view of the aforesaid submissions, it is clear that billing to the petitioner has been done correctly and no willful deviation from the tariff categorization and the billing procedure made by this Hon'ble Commission has been done by the answering respondent nor has it unilaterally changed the billing procedure with respect to the petitioner. Therefore, on these grounds alone the petition deserves to be dismissed."*

16. 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. Madhya Kshetra Vidyut Vitaran Co. Ltd. Bhopal) for the past period.
- (ii) Generation of power through Solar and Wind projects is possible only when natural resource i.e. sunlight/wind is available. If the sunlight/wind is not available though the project is operational, it cannot generate power. During such time, it draws power from the grid for auxiliary consumption and for synchronization with the grid when generation starts again. Sometimes, power is also required during the shutdown or other emergencies in the plant. The Commission has observed that for billing the generators, who avail power from the Distribution Licensees under such circumstances, appropriate provisions have been made in the Regulations and the Retail Supply Tariff Order. The Commission vide Notification No. 3042/MPERC-2010, dated 09.11.2010, had issued the "Madhya Pradesh Electricity Regulatory Commission (MPERC) (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 (Revision-I) (RG-33 (I) of 2010)".

Subsequently, several amendments have been made in the Regulations from time to time. The 7th amendment in the Regulations was made on 17.11.2017, wherein Clause 10 of the said Regulations provides as under:

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

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

- (iii) The annual Retail Supply Tariff orders provide a Tariff Schedule HV-7, which is applicable for synchronization of power for generators connected to the Grid. The Retail Supply Tariff order for FY 2019-20, which is applicable currently also, 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. The process for issuing Retail Supply Tariff order for FY 2020-21 is also under finalization stage. However, revision if any, in the Regulations and new tariff order 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 existing Retail Supply Tariff order 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, which is applicable presently also, a specific tariff schedule HV-7 is 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 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 existing Retail Supply Tariff order. Therefore, for every instance of power drawl for synchronization, upto two hours, tariff as per HV-7 schedule is

applicable but 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 prevailing 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 is a serious lapse committed by the Respondent Discom and

later on, it has issued supplementary bills for difference of HV-3.1 (Temporary Supply) and HV-7 billing with regard to the usage by the generator. The Commission in the Retails Supply Tariff Orders has categorically directed the Respondent Discoms that they can't change in the 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”.

17. 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 Discoms shall not be entitled to recover any carrying cost prior to the period when the supplementary demand was issued for the first time.

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

Shashi Bhushan Pathak)
Member

(Mukul Dhariwal)
Member