10MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

BHOPAL

Sub: In the matter of petition under Section 86(1)(e) of the Electricity Act, 2003 read with Regulation 16.17 read with 18.1 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 seeking relaxation on the tariff applicable for auxiliary consumption by Solar Power Generators.

Petition No. 20 of 2020

ORDER

(Date of order: 10th May '2021)

M/s. Walwhan Solar MP Ltd.
Block B, 34 Sant Tukaram Road,
Carnac Bunder, Masjid, Mumbai – 400 009 - **Petitioner**

Vs.

(1) M.P. Power Management Company Ltd.,
Block No. 15, Shakti Bhawan, Rampur, Jabalpur – 482008
(2) State Load Despatch Centre
M.P. Power Transmission Co. Ltd.
Nayagaon, Rampur, Jabalpur – 482 008 (M.P.)
(3) M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd.
GPH Compound, Pologround, Indore – 452001
- **Respondents**

Shri Venkatesh, Advocate appeared on behalf of the petitioner.

Shri Manoj Dubey, Advocate appeared on behalf of the Respondent No. 1.

Shri S.S. Patel, SE appeared on behalf of the Respondent No. 2.

Shri Shailendra Jain, Dy. Director appeared on behalf of the Respondent No.3.

The petitioner is having 105 MW and 25 MW Solar Power Projects at Village Bhagwanpura and Village Padaliya, respectively, in Neemuch District. The petitioner is supplying power to MP Power Management Co. Ltd., under Power Purchase Agreements dated 05.10.2012.

2. The subject petition is filed under Section 86(1)(e) of the Electricity Act, 2003 read with Regulation 16.17 read with 18.1 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 seeking relaxation on the tariff applicable for auxiliary consumption by Solar Power Generators.

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

*1. M/s Walwhan Solar MP Limited (**"Petitioner"**) is a generating company within the meaning of Section 2(28) of the Electricity Act, 2003 ("**the Act"**) and operates a cumulative capacity of 130 MW (105 MW in Bhagwanpura Village and 25 MW in*

*Padaliya Village) of Solar Projects in the State of Madhya Pradesh. The Petitioner is presently supplying power to MP Power Management Company Limited ("**MPPMCL**"), under PPAs dated 05.10.2012. The Petitioner's projects are situated at Neemuch District and connected to the Rattangarh GSS for evacuation of power.*

*2. The Petitioner is constrained to invoke the 'Power to remove difficulty'/'Power to Relax' and is seeking relaxation on the application of Regulation 10 and 12.2 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision I) Regulations, 2010 ("**Cogen Regulations, 2010"**). The Petitioner is seeking the aforesaid relaxation due to following reasons: -*

(a) In February 2012, Respondent No.1 issued RfS for procurement of 200 MW of Solar Power from Grid Connected Solar Power Projects under Competitive bidding.

*(b) The Petitioner after being declared as successful bidder on 05.10.2012 executed the PPAs (in terms of Section 63 of the Act) for its Projects with MPPMCL i.e. Respondent No.1 (collectively referred to as "**PPAs**"). The Tariff under the said PPAs was envisaged as Rs. 8.05 per unit.*

*(c) In terms of Article 7.01 of the PPAs, the billing for the energy generated was based on the difference between the units sent out by the Projects ("**Export Units**") and the units consumed by the projects for auxiliary consumption ("**Import Units**"). Accordingly, in effect, the Import units were billed at the Tariff of Rs. 8.05 per unit. Further, there was also a clause for billing of Reactive Energy under the PPA.*

(d) The MP Discom MPPKVVCL i.e. Respondent No.3 by its circular dated 1st February 2016 commenced billing the above solar projects from 1st January 2016 at the Temporary Tariff as provided in Clause 10 of the Co Gen Regulations.

(e) Further, this Hon'ble Commission through an Amendment dated 15.11.2017 to the Cogen Regulations, 2010 also provided for a different treatment to the Import Units and directed payment of HT Tariff applicable on Temporary Connections vis-à-vis the treatment provided under the RfS and the PPA.

(f) Therefore, as per Regulation 10 and 12.2 of the Cogen Regulations, 2010, the Tariff applicable for the Solar Projects, including the Petitioner's project herein for Import Units for Auxiliary Consumption is now based on the Tariff applicable to "Temporary Connection" for HT Industrial Category. Further, the said Tariff applicable is about 25% higher than that applicable for regular power supply. The said imposition is egregious and has made the entire generation of the Petitioner Projects commercially unviable as the overall impact on tariff of the Petitioner project has been reduced 21 Paise and 7 Paise respectively.

(g) Hence, owing to the aforesaid sudden change in the treatment to the Auxiliary Consumption and its cascading impact on the Petitioner, the Petitioner is constrained to file the present Petition seeking invocation of 'Power to remove difficulty' as specified in Regulation 16 and 17 read with 18.1 of the Cogen Regulations, 2010 seeking relief on the Tariff payable for Auxiliary Consumption as "Temporary Connection" under HT Industrial category.

(h) The present Petition is being filed without prejudice to the rights of the Petitioner under its PPAs.

II. DETAILS OF THE PARTIES

3. The Petitioner is a company incorporated under the Companies Act, 1956 having its corporate office at Block A/Block B, 34 Sant Tukaram Road, Carnac Bunder, Masjid, Mumbai 400009. The Petitioners are generating companies within the meaning of Section 2 (28) of the Act.
4. The Respondent No. 1 is Power Management Company Ltd. is the holding company for all the DISCOMs in Madhya Pradesh.
5. The Respondent No. 2 the Madhya Pradesh State Load Despatch Center and is a Statutory Body operating under Section 31 and 32 of the Act.
6. Respondent No.3 is MPPKVVCL is the DISCOM in whose area the Petitioner project is established.

III. JURISDICTION OF THIS HON'BLE COMMISSION

7. The Petitioners have filed the present Petition under Section 86 (1) (e) read with Regulation 16, 17 read with Regulation 18.1 of the Cogen Regulations, 2010 and the relevant extracts of the same are being reproduced as follows:-

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.

18. Savings:

18.1 Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary to meet the ends of justice or to prevent abuses of the process of the Commission."

GROUNDS WITH SUBMISSIONS

8. The Petitioner is seeking relaxation of Regulations 10 and 12.2 of the Cogen Regulations 2010 on the basis of following grounds: -

I. Grounds for Relief

(a) The Import Units for the purpose of auxiliary consumption does not fall within the parameters of Regulation 10 of the Cogen Regulations. Accordingly, the Respondent No. _ cannot bill the Import Units as per rates applicable for 'Temporary Connection under HT Industrial Category';
(b) The reactive power charges are unjustified for the reason explained in this petition and
(c) There is severe adverse impact on the projects of the Petitioner.

A. The Power consumed by the Petitioner does not fall within the ambit of 'Temporary Power Supply'

8.1 *BECAUSE the Hon'ble Commission in the Co Gen Regulations, 2010 has stipulated a Tariff applicable to Solar Projects for auxiliary consumption would be at "Temporary Connection" under HT Industrial Category. However, it is apposite to mention herein that the power consumed by the Petitioner's Projects i.e. Import Units is not temporary in nature and does not fall within the ambit of Temporary Power Supply as per this Hon'ble Commission's own Regulations.*

8.2 *BECAUSE Regulation 4.43 of the Madhya Pradesh Electricity Supply Code, 2013 ("**Supply Code, 2013**") defines the scope and ambit of 'temporary power supply'. For ready reference, Regulation 4.43 of the Supply Code, 2013 is reproduced hereunder: -*
*"**Temporary Power Supply***
*4.43**Any person requiring power supply for purpose that is temporary in nature, for a period of less than two yea**r may apply for temporary power supply in the prescribed form (Annex- 1 or 2). The period of temporary connection can be extended upto five years **for construction of building/power plant and for the purpose of setting up of industrial units.** Requisition for temporary supply shall*

normally be given 7 days before the day when supply is required for loads up to 10 kW and 30 days before for higher loads."

[Emphasis supplied]

8.3 *BECAUSE from the perusal of the above provision it is evident that this Hon'ble Commission has defined the ambit and scope of 'temporary power supply', as under:-*
(a) Temporary power supply is to be provided to a person seeking power supply for purpose that is temporary in nature.
(b) The temporary connection so provided is to be utilised for the purposes of construction of buildings/power plants and setting up of industrial units.
(c) The temporary connection must be for a period of less than 2 years and in certain cases can be extended upto 5 years.

8.4 *BECAUSE the Petitioner is a Solar Generating Station and admittedly does not fall within the definition of a 'Temporary Connection' as specified by the Supply Code, 2013. Therefore, it is respectfully submitted that the purpose of temporary power supply is restricted to activities which are temporary in nature like construction/setting up of building/power plant. However, in the instant case, the Import Units so supplied by the Respondent No. 1 is for the purpose of Auxiliary Consumption to a permanent established Solar Project and is not even remotely temporary in nature. Hence, applicability of Temporary Charges upon the Petitioner Company is in violation of this Hon'ble Commission's own Supply Code, 2013. Moreover, this Hon'ble Commission itself in its Order dated 21.06.2016 passed in Case No. 20 of 2016 has held that in so far as Wind RE Projects are concerned the same cannot be charged Tariff as per the Co Gen Regulations, 2010 but are to be billed as per the provisions of the Tariff Order/ PPAs. The Relevant extracts of the Order are being reproduced as follows:-*
"7. 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, 2010 shall 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 shall not generate power and 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. ***However, the power is required by the petitioner for start up of WEGs frequently, which cannot be considered under drawl of power during shut down or emergency periods. The Commission has noted that the provisions of the aforesaid Regulations have been misinterpreted by the respondents. As such, this petition cannot be considered under Section 86(1)(f)***

of the Electricity Act, 2003. The Commission, therefore, directs the respondents to take action accordingly as mentioned above and revise the impugned bills from November, 2015 if found necessary. The Commission further directs the respondent no.1 to make the payment of bills of the petitioner for sale of energy from its WEGs as per the terms and conditions of the applicable tariff orders/PPAs*."*

8.5 *BECAUSE the Hon'ble Commission itself has recognized that in so far as Wind RE Generators are concerned the power drawn by them for Auxiliary Consumption cannot be equated with Shut Down and/ or other emergencies and they ought to be billed for such power in terms of the applicable PPAs. Hence, the same dispensation ought to be passed on Solar RE Generators such as the Petitioner as the Act more specifically Section 86 (1)(e) does not distinguish between Wind and Solar RE Generation. Hence, the relief granted to Wind RE projects ought to be passed on to Solar RE Projects such as the Petitioner.*

8.6 *BECAUSE a Solar Project for its own consumption requires power for meeting the loads like invertor cooling fans, power transformer cooling fans, etc. Further during the night-time, the consumption is towards street lighting and fence lighting. Such auxiliary consumption is inevitable, uncontrollable and cannot be treated as temporary in nature. The Petitioner's Projects would require Import of electricity for the said purpose till the life of the Projects. Further, as elucidated above, the purpose of such import of electricity is not for setting up building/power plant or to do any related activities. Further during the night period, unlike a thermal power plant, the generation of the plant is "Nil" and thereby the plant has to compulsorily depend on the Grid.*

8.7 *BECAUSE it is respectfully submitted that there exists no reason as to why the energy consumed by the Petitioner's Project for Auxiliary Consumption be treated as temporary in nature. Hence, Regulation 10 of the Co Gen Regulations, 2010 creates an anomalous position wherein Temporary Connection HT Charges are being made applicable to an installation which is permanent in nature. Therefore, the Petitioner is compelled to invoke Regulation 16, 17 and 18.1 of the Co Gen Regulations, 2010 seeking appropriate Amendment/ Review of the existing Regulation 10 and Regulation 12.1 of the said Co Gen Regulations, 2010.*

B. Adverse Impact on the Projects which is violative of Section 86 (1) (e) of the Electricity Act, 2003

8.8 *BECAUSE the Petitioner has set up the present Projects under competitive bidding route (Section) and has arrived at a very competitive tariff of Rs. 8.05/unit*

by discounting the Tariff determined by the Hon'ble Commission in the Solar Tariff Order, 2010 as per the RfS issued by Respondent No.1. It is relevant to state that at the time when the Petitioner submitted its bid, the dispensation applicable as per the PPA appended with the RfS did not prescribe applicability of HT Temporary Tariff for Auxiliary Consumption. It is respectfully submitted that the Petitioner's Tariff was arrived at by considering various factors and one such factor was adjustment of Import unit from Export Unit, which was also incorporated under the PPAs, as under: -

"SECTION 7.01: BILLING AND POWER ACCOUNTING:-
Every month, SLDC/RLDC shall intimate to the concerned Transco/Discom (in whose area the drawal point is situated) the net power Kwh delivered at injection point (export units – import unit = net power kwh) for the purpose of billing for sale by the seller to the grid"

8.9 *BECAUSE evident from the above, the Petitioner proceeded to quote the tariff of Rs. 8.05/unit based on the above provision of the PPAs which was duly executed between the parties. While the Commercial Operation Date of the Plant was around September 2013, due to a circular dated 1st February 2016 and the subsequent amendments of the Co Gen Regulations, 2010the Petitioner is being subjected to unreasonable conditions which have severe adverse financial impact on the Projects, as under: -*
(a) The Petitioner is being subjected to tariff applicable on temporary HT industrial category (Regulation 10) for the Billing periods from 1st January 2016 onwards; and
(b) The Petitioner is being subjected to various surcharges on the Import of electricity (Regulation 12.2).

8.10 *BECAUSE even though the Petitioner's nature of power consumption is not temporary and also not in the form that is applicable to the consumption by any Industry process, the Petitioner is being billed at tariff applicable on temporary HT industrial category in terms of Regulation 10 of Cogen Regulations, 2010. The same has a substantially adverse impact on the project which has critically hampered the viability of the project which is evident from the following:-*
(a) It is submitted that based on the data analyzed for the period between 1st January 2019 to 31st December 2019 (12 months), the average Tariff paid for the power imported works out is as high as Rs. 28.34 per unit for the 105 MW Project at Bhagwanpura Village . For ease of reference for this Hon'ble Commission, a tabular chart depicting the same is reproduced hereunder:

Impact on 105 MW Project (Jan 2019 to Dec 2019)

Sr No	Particulars	Units	Value
1	Auxiliary Consumption	Mus	1.916
2	Bill Paid	Rs Cr	5.43
3	Average Tariff	Rs/Kwh	28.34

The details for Auxiliary Consumption for 105 MW and the computation of average tariff is annexed hereto and marked as ***ANNEXURE P/9****.*

(b) It is further submitted that on account exorbitant HT Tariff being levied upon the Petitioner the overall viability of the Petitioner project has been reduced by 21 Paise……

(c) Similarly, for the Petitioner's 25 MW project at Padaliya Village, the effective average Tariff for Import of Power is about Rs 17.43 per unit and the overall tariff of the Petitioner's Project stands affected/ reduced by 7 Paisa. ……

The details for Auxiliary Consumption for 25 MW Project is annexed hereto and marked as ***ANNEXURE P/10.***

(d) It is further submitted that as a part of HT Industrial Category tariff, the Petitioner's Project is also being subject to various other charges like Fixed Charge, Energy Charges, FCA, PF Surcharge, Electricity Duty. Further the category of "Temporary" charges inflates the applicable tariff for import of power by 25%. The Petitioner has analysed the break-up of the tariff applicable to the Solar Projects for the period of Jan 19 to December 2019.

Re: Power Factor Surcharge

*(e) The Power Factor ("****PF****") Surcharge is levied to deter the consumers from operating at very low Power Factor and maintain the PF within limits. However, the same is relevant in cases pertaining to lagging power factor and moreover where is there is an industrial/commercial process involved and not to Solar Projects. In the instant case, Petitioner's projects, i.e 105 MW and 25 MW, injection of power is at a considerable distance (21 Km in the case of 105 MW and [****2.1*** *] Km for 25 MW) thereby requiring long transmission lines for the project. In addition, there is a 33 KV cable network in the Switchyard itself.*

(f) It is stated that such long lines along with the cables, during night time when the load is relatively less, generate reactive power (i.e leading phase) as against the lagging phase. As the metering is at the point of interconnection with the transmission grid, such leading power gets accounted for in the meter. However, such reactive power is not consumed in the plant but has been generated (i.e leading phase) and recorded in the meter. For demonstrating the foretasted the Petitioner has presented the details of the Joint Meter Readings for a sample month of November 2019. Sample readings for the Month November 2019 is annexed hereto and marked as ***ANNEXURE P/11.***

(g) As can be seen above, for import of energy i.e flowing to the solar plant, the Reactive Energy is in the form of Leading power factor. In the above table, in the 1st Meter (MPC 54487), Reactive Energy with leading power has been generated to the extent of 634 MVARH while the lagging was Nil. Similarly, the Feeder II consumes reactive energy at leading power factor to the extent of 636 MWH and only 1 MWH at lagging power factor.

(h) As a result of the same, the average power factor recorded by the project site for import of power is very low albeit on account of leading power factor. Unlike the normal industrial consumer, the control of reactive power consumption/generation is not under the control of the Solar Generator as (i) unlike any industry the plant is not designed for the same and (ii) unlike other industry, the metering of power is taking place at a distance from the plant thereby giving a scope for inadvertent generation of reactive power. This leads to low power factor and consequently to power factor surcharge.

Therefore, with great respect and humility it is submitted that the Solar Projects, including that of the Petitioner herein should not be made to pay for such power factor surcharge……

……

Re: RKVAH Charges

(i) It is submitted that during the generation of solar energy (Active Power), the plant has been absorbing and generating the reactive power to stabilize grid voltage. It is further submitted that unlike an industry there are no motors that have been installed in the plant which consume substantial reactive power. The consumption of the reactive power in the plant is on account of the Invertor transformer. Such consumption is not very significant as compared to that of an induction motor. The major part of the reactive power consumption during Solar generation is for maintaining the voltages and not for any process in an Industry as it generally used.

(j) For example, consider the reactive power transaction presented in the table earlier. Under Main meter MPC54587, the lagging reactive power consumed for the month of November 2019 is 385 MVARH and the leading reactive power consumed is 94 MVARH. It is submitted that a large part of this reactive power is being consumed only for maintain voltage and hence the same should not be charged to the account of the Power Plant. At present, the reactive power charge is applicable on both leading and lagging reactive power (i.e on the summation of the both).

(k) The rate of reactive power charge at present is Rs 0.27 per KVARh and same translates into import rate of upto Rs 2.27 per KVARh. In light of the above submission, it is prayed that the rate of reactive power charge be reduced for solar

power project or alternatively, the charge be applicable only to the consumption of lagging reactive power during solar generation.

Re: Demand Charges

(l) It is respectfully submitted that Fixed Charges (i.e Demand Charge) should also not be applicable upon the Petitioner, as the Import of Power is not for any production process as such but only for essential and auxiliary load. Further, it is respectfully submitted that large demand recorded by the meter for the projects is only account of the reactive power generated by the long Transmission Lines and cables and not on account any inherent characteristic of the auxiliary load of the solar plant. For the purpose of demonstrating the same, the Petitioner has computed the average load(i.e Auxiliary Consumption) and presumed that the load factor of the load would be very close to one as there is no reason for any variation in load. Since the reactive power during the period when MD has occurred has not been recorded, the Petitioner has presumed that the MD Recorded and the Average Load served would be the same as MD recorded but for the reactive power . The computations are as given below:

Sr No	Particulars	Units	105 MW	25 MW
1	Auxiliary Consumption During the year	Mus	1.916	0.3414
2	No of Hours of Auxiliary Consumption(@ 12 hrs per Day)	Hours	4380	4380
3	Average KW	KW	437	78
4	Average MD recorded	KVA	1600	98

(m) As can be seen from the above table, particularly for 105 MW site, there is a large difference between Average MD recorded and Average KW which it is respectfully submitted is attributed to the reactive power that is generated during the 15 minute period when the Maximum Demand is recorded. To make the point further, the Maximum Demand for Main Meter MPC54487 was 1675 KW for the month of November 2019 but there was no consumption of lagging reactive power at all. As mentioned earlier, for this, there as a generation of 634 MVARH meaning thereby that no lagging reactive power has been consumed by the 105 MW plant for November 2019.

(n) Further, the Demand Charges are generally levied to recover the infrastructure cost of the Discom. In the case of 105 MW Solar Project, the Discom network as such is not relevant as the injection of power is at the 132 KV. Even in the case of 25 MW, the injection of power is into a Grid Substation. Moreover, the very nature of Solar Project does not enable it to meet its load at night from its solar generation and it must necessarily depend on the Discom.

(o) Therefore, it is submitted that the Demand of the Auxiliary Consumption is not controllable and inevitable and such high demand is on account of the generation of reactive power rather than consumption of reactive power for this project site. Hence the Demand Charges should not be made applicable for power imported by Solar Projects.

8.10 BECAUSE in terms of detailed reasons stated above, it is respectfully submitted that the applicable Regulation 10 and Regulation 12.2 of the Co Gen Regulations, 2010 are causing tremendous hardship on the Petitioner warranting invocation of Regulation 16, 17 and 18.1 of the Co Gen Regulations, 2010 so that the said Regulation 10 and 12 may be Reviewed/Amended by the Hon'ble Commission in exercise of power vested with it under Co Gen Regulations, 2010 itself read with Section 86 (1) (e) of the Electricity Act, 2003.

8.11 BECAUSE with great respect and humility it is submitted that Regulation 10 and 12 of the Co Gen Regulations, 2010 and its application is in violation of the express mandate of the Constitution of India, the Act, Policy, Judgments of the Hon'ble Supreme Court and this Hon'ble Tribunal. The present dispensation as explained in Para 8.7 to 8.9 above gravely affects the overall mandate of the Act which is to promote RE generation and the same is evident from for the following:-

(a) The Madhya Pradesh Solar Power Policy, 2012 mandates to encourage, develop and promote solar power generation, to attract investment in state for establishment of solar power plants, to contribute to overall economic development, employment generation etc.
(b) The Constitution of India by way of Article 48A and 51A (g), has casted a Fundamental Duty upon the State as well as the citizens of India to protect, improve and preserve the environment. A critical aspect towards such preservation of environment is to generate energy from renewable sources, which has a much smaller environmental footprint than energy generated from fossil fuel and other resources. In view thereof the Hon'ble Supreme Court, in the matter of ***Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission, (2015) 12 SCC 611,*** *has held as under:-*
"It has been rightly contended by the learned Senior Counsel for the respondents that Para 4.2.2 of the National Action Plan on Climate Change and the Preamble to the 2003 Act emphasise upon promotion of efficient and environmentally benign policies to encourage generation and consumption of green energy to subserve the mandate of Article 21 read with Article 48-A of the directive principles of State policy and Article 51-A(g) of the fundamental duties enlisted under Chapter IV-A of the Constitution of India."

(c) Thus, it is imperative and essential for the Hon'ble Commission to take such measures, which shall promote generation and viability of renewable energy generators such as the Petitioner. In consequence with the mandate of the Constitution even the Electricity Act 2003, National Electricity Policy and the Tariff Policy mandates the Hon'ble Commission for providing concessions and other promotional measures for promoting generation of electricity from non-conventional sources of energy. It is pertinent to mention that solar energy generation is an important avenue for promotion of non-conventional sources of energy. The relevant provisions of the Electricity Act 2003, National Electricity Policy and the Tariff Policy which established the fact that promotion of RE Generation is the Statutory Duty and Obligation of the Hon'ble Commission are set out as under: -

i. Section 61 (h) of the Act provides that the State Commission must specify the terms and conditions for determination of tariff and in doing so it should be guided by inter alia promotion of co-generation and generation of electricity from renewable sources of energy.
ii. Section 86(1)(e) of the Act specifically mandates and provides that the State Commission must promote generation of electricity from renewable sources of energy by providing suitable measures for connectivity to the grid and sale of electricity to any person, and specify for purchase of electricity for such sources, a percentage of total consumption of electricity in the area of Distribution Licensee.
iii. Further, clause 5.12.1, 5.12.2 & 5.12.3 of the National Electricity Policy clearly indicates that the emphasis on the intention behind Section 86(1)(e) is to promote generation and co-generation from non-conventional and renewable sources of energy.

(d) In addition to the above, the Hon'ble Appellate Tribunal for Electricity in catena of Judgments has held that generation of power from renewable energy sources need to be promoted under Section 86(1)(e) of the Act. The same are as follows: -

i. Hon'ble Tribunal's Judgment dated 26.04.2010 in Appeal No. 57 of 2010 [Para 20 and 21]
ii. Hon'ble Tribunal's Judgment in the case of Rithwik Energy vs. Transmission Corporation of Andhra Pradesh 2008 (ELR) (APTEL) 237 [Para 34, 35]

(e) In view of the aforesaid provisions of the Constitution of India, Act, Policy and the Judgments of the Hon'ble Tribunal it is evident that promotion of RE Energy is of paramount importance and hence the existing dispensation of the Co Gen Regulations needs to be Reviewed/ Amended.

8.12 BECAUSE in the above compelling circumstances, the Petitioner seeks invocation of 'Power to remove difficulty' under Regulation 16, 17 and 18.1 of the Cogen Regulations, 2010. The Hon'ble Supreme Court and the Hon'ble Tribunal in a catena of cases has held that 'Power to remove difficulty' can be invoked if there is difficulty in implementing the Regulations. The relevant judgments are as follows: -
(a) BSES Yamuna Power Limited Vs. CERC & Ors.– Appeal Nos. 55 of 2013, 77 of 2013, 194 of 2013, 259 of 2012, 63 of 2013, 143 of 2013, 158 of 2013 & 43 of 2014.

"18.1. The main contention of the appellants on these issues is that the 'power to remove difficulties' or 'power to relax' has been conferred upon the learned Commission only to remove the trivial defects or peripheral defects and the said powers can only be exercised to the extent necessary to give effect a particular Regulation and such power cannot be exercised when the difficulty arises due to the application of Regulation in question.

18.2. A look at Regulation 12 of 2004 Tariff Regulations makes it clear that this 'power to remove difficulties' can be exercised by the learned Central Commission if any difficulty arises in giving effect to these Regulations and the Commission can make such provision which should not be inconsistent with the said Regulations. Further, the emphasis of the learned counsel for the appellants is on the point that the said power can only be exercised to the extent necessary only for giving effect to a particular Regulation.

18.3. ***We have gone through the judgment of Hon'ble Supreme Court, in Madeva Upendra Sinar Vs.Union of India (supra), in which the Hon'ble Supreme Court held that 'power to remove difficulty' may be exercised when there is a difficulty arising in giving effect to the provisions of the Act and not of any extraneous difficulty. This Appellate Tribunal in the case of NTPC Ltd. Vs. Madhya Pradesh State Electricity Board reported in 2007 ELR (APTEL) 7, held that the power comprised in Regulation 13 of 2004 Tariff Regulations is essentially a 'power to relax'. In case, any Regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, the Regulation can be relaxed****. The exercise of power under Regulation 13 of 2004 Tariff Regulations is minimized by the requirement to record the reasons in writing by the Commission before any provision of the Regulations is relaxed. This Appellate Tribunal in the reported case clearly held that there is no doubt that the Commission has the power to relax any provision of the Regulations. Such power has to be exercised only in exceptional cases and where non-exercise of the discretion would cause hardship and injustice to a party or lead to unjust result. Further, it has to be established by the party seeking exercise of 'power to remove difficulties' or 'power*

to relax' that the circumstances are not created due to act of omission or commission attributable to the party claiming the relaxation."

(b) ***Madeva Upendra Sinai v. Union of India, (1975) 3 SCC 765*** *has held as below: - 39. To keep pace with the rapidly increasing responsibilities of a welfare democratic State, the Legislature has to turn out a plethora of hurried legislation, the volume of which is often matched with its complexity. Under conditions of extreme pressure, with heavy demands on the time of the Legislature and the endurance and skill of the draftsman, it is well nigh impossible to foresee all the circumstances to deal with which a statute is enacted or to anticipate all the difficulties that might arise in its working due to peculiar local conditions or even a local law. This is particularly true when Parliament undertakes legislation which gives a new dimension to socio-economic activities of the State or extends the existing Indian laws to new territories or areas freshly merged in the Union of India. In order to obviate the necessity of approaching the Legislature for removal of every difficulty, howsoever trivial, encountered in the enforcement of a statute, by going through the time-consuming amendatory process, the Legislature sometimes thinks it expedient to invest the Executive with a very limited power to make minor adaptations and peripheral adjustments in the statute, for making its implementation effective, without touching its substance. That is why the "removal of difficulty clause", once frowned upon and nick-named as "Henry VIII clause" in scornful commemoration of the absolutist ways in which that English King got the "difficulties" in enforcing his autocratic will removed through the instrumentality of a servile Parliament, now finds acceptance as a practical necessity, in several Indian statutes of post-independence era".*

4. With the above submission, the petitioner prayed the following in the subject petition:

(a) Exercise power under Section 181 of the Act read with Regulation 16, 17 and 18.1 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 and amend Regulation 10 and Regulation 12 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 to exclude its applicability on Solar RE Projects.

(b) In the alternative, create a new category of Tariff i.e. HT Solar and apply the said Tariff on the petitioner Solar Project for Auxiliary Consumption.

(c) Pass any such Order as this Hon'ble Commission may deem fit in the facts and circumstances of the present case;

5. The petition was admitted on 14.05.2020 and the petitioner was directed to serve

copy of subject petition on all Respondents in the matter and report its compliance to the Commission. The Respondents were directed to file their replies to the petition within 15 days after serving a copy of the same on other side also. The petitioner was asked to file its rejoinder thereafter.

6. At the hearing held on 29.09.2020, the Commission observed the following:

(i) The Respondent No. 2 (SLDC) has filed reply to the subject petition on 24th July' 2020.

(ii) The Respondent No. 3 (MPPaKVVCL, Indore) has filed reply to the subject petition on 4th August' 2020.

(iii) By affidavit dated 28.09.2020, the Respondent No. 1 (MPPMCL) has filed reply to the subject petition.

(iv) The petitioner has not filed rejoinder on the reply filed by the Respondents.

In view of the above, the petitioner was directed to file rejoinder by **20th October' 2020** on the replies filed by the Respondents.

7. At the hearing held on 09.11.2020, the Commission observed the following:

(i) The petitioner has filed separate rejoinders on 22.10.2020 to the replies filed by the Respondent No. 1, 2 and 3.

(ii) Ld. Counsel who appeared for the petitioner placed his case before the Commission.

(iii) Ld. Counsel and the representative who appeared for the Respondent No.1 and 3 reiterated the contents filed in their replies.

(iv) On examining the contents in the subject petition and submissions made by the parties, it was noted by the Commission that the petitioner has sought amendment in Regulation 10 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 to exclude its applicability on solar RE projects. As an alternative to its aforesaid prayer, the petitioner has prayed to include a new category for HT Solar Projects in Commission's retail supply tariff Order.

8. In light of the above observations, the petitioner was informed about the following facts at the hearing held on 09.11.2020:

(i) The process for amendment in Regulation 10 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 had already been taken up and notification of the same is under process after seeking public comments and holding public hearing on 06.03. 2020.

(ii) Secondly, the process for determination of ARR and Retail Supply Tariff for FY

2020-21 on the petition filed by the Respondent No.1 is in progress after seeking comments/ suggestions/objections by the 30th May'2020 from all stakeholders through a public notice on the aforesaid petition.

9. In view of the above position, Ld. Counsel for the petitioner requested the Commission to list the subject matter for hearing in the month of January' 2021. As requested, the case was fixed for hearing on **19th January' 2021**.

10. At the hearing held on 19.01.2021, the petitioner and the Respondents concluded their arguments. The parties were directed to file their written submissions within seven days. The case was reserved for order on filing of written submissions by the parties within the above stipulated time.

Submission of the Respondents:

11. The Respondent No.1 (MPPMCL) submitted the following in reply to the subject petition:

(1) That, at the outset and subject to corrections if any on the part of the Petitioner, the answering Respondent, in conjoint reading of the petition and the prayer contained therein reads the word "reactive" appearing in its sub-para (b) under the sub-heading 'Grounds for Relief" as the word "auxiliary".

(2) That, before pondering over the issues involved in the case, it may be apposite, inter-alia, to refer to the following provisions of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 (Revision-I)

2. Short Title and Commencement:** 2.1 These Regulations may be called 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}.

***2.2** These Regulations shall come into force from the date of their publication in the Gazette of Government of Madhya Pradesh.*

***2.3** These Regulations shall apply to the whole of the Madhya Pradesh State.*

***10. Drawing power during shut down by Generator/Co-generation from Renewable Sources:** The Generator/Co-generation from Renewable Sources would be entitled to draw power exclusively for its own use from the 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.*

12. Banking

12.1. *The facility for Banking of the entire electric energy generated in each Financial Year from Non-conventional Energy Sources will be provided on the following conditions:*

(i) *The entire power generated from Non-conventional Sources of Energy during a Financial Year may be allowed for Banking.*

(ii) *The accounting of Banking of Power will be certified by MP Power Trading Co. Ltd./Distribution Licensees at the end of each Financial Year.*

(iii) *The quantum of banked power will be returned at a time to be decided by the MP Power Trading Co. Ltd. /Distribution Licensees.*

(iv) *The banked power may normally be returned from 15th July to 15th October from 2300 hours to 2400 hours and 0000 hours to 1700 hours by deducting 2% in terms of units (kWh) towards Wheeling Charges.*

(v) *The banked power may also be returned during November to February keeping in view the availability of power and demand in the Rabi Season and at the time of Peak Demand as decided by the MP Power Trading Co. Ltd./Distribution Licensees.*

(vi) *If a portion of banked power still remains un-adjusted at the end of Financial Year, then such remaining power would be construed as power purchased and the payment for the same will be made by the MP Power Trading Co at the rate determined by the Commission from time to time for Inadvertent Flow of Energy from Non-conventional Source.*

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

The aforesaid Regulations were notified in the gazette on 19th November, 2010 and came in force since date. The amendment, under consideration, to the said Regulations were notified on 15th November, 2017. Since the Petitioner's plant was commercially operating on the date of the said amendments, the Petitioner had sufficient time to agitate against the said amendments. A petition filed in the year 2020 is too late on the part of the Petitioner. Further, the amendment, once brought into force, cannot be reconsidered on the instance of a single generator. There needs to be a genuine demand at large on the issue.

Regulation 10, as quoted above, provides that for the power drawn exclusively for own use, during shut-down period, the generators shall be billed at the rates applicable to Temporary HT Connections. During shut-down Generators normally draw power for auxiliary consumption. Such consumption is to be billed at rates applicable to Temporary HT Connections. It does not mean that the connection itself becomes Temporary in such a case. The connection remains permanent for all purposes and it is only the tariff for power drawn during its shut down period gets billed as per rates applicable to Temporary HT Connections.

Further, Power Drawn during Shut down Period, Auxiliary Consumption in present context, is a parameter controllable in the hands of the Petitioner. The rates applicable to Temporary HT Connections to it for Auxiliary Consumption cannot be said to be egregious making the entire generation commercially viable in case of a bidding tariff.

(3) That, it is absolutely incorrect on the part of the Petitioner, as assailed by it under paras 9.1 to 9.7 of the petition, to assail that he is being treated as if he falls within the ambit 'Temporary Power Supply'. The Petitioner, at all, does not fall within the ambit of 'Temporary Power Supply'. His connection is permanent in present context. It is only the tariff of Temporary HT Connection is applicable for Auxiliary Consumption. The applicability of Tariff does not determine in present context as the connection to be temporary.

(4) That, the averments made by the Petitioner under paras 9.8 onwards in the Petition are denied and disputed specifically. Since, auxiliary consumption is a parameter controllable in the hands of the Petitioner, the Petitioner cannot assail that he is subjected to adverse impact which is violative of Section 86(1)(e) of the Electricity Act, 2003. The answering Respondent, including the other respondents have not violated any of the Rules, in present context, framed by Hon'ble Commission u/s. 86(1)(e) of the Act. Furthermore, Auxiliary consumption being a parameter controllable in his hands, the Petitioner cannot assert that the viability of his project gets adversely affected on account of imposition of tariff in accordance with the Regulations in force.

(5) That, it is paramount to submit that the provisions of law have overriding effect on the terms and conditions of the PPA. The answering Respondents have not violated any of the rules and regulations in present context.

(6) That, for the reasons that the paragraphs in the petition are not consecutively numbered, contrary to standard pleading practices, it is not possible to give a para-wise reply to the petition. For the reasons aforesaid, the contents of the petition are denied and disputed specifically and it is prayed that the petition, being sans-merit, be dismissed.

12. The Respondent No.2 (SLDC) broadly submitted the following in reply to the subject petition:

(i) As per provisions contained in M.P. Electricity Grid Code and Clause-7(1) of MP Electricity Balancing & Settlement Code, 2015, monthly State Energy Account contains the following information:

(a) Details of PAFM (Plant Availability Factor achieved during the Month in %) for each State Area Generating Station/ Independent Power Producer;

(b) Details of mis-declaration of Declared Capability by State Area Generating Station/ Independent Power Producer (if any);

(c) Details of Energy scheduled to Discoms from Inter State Generating Station and State Area Generating Station /Independent Power Producer;

(d) The details of energy injection of Renewable Energy Generators (REG) at common metering point, energy purchased by Madhya Pradesh Power Management Company Limited and energy wheeled to Discoms for own use / third party sale ***as furnished by respective Discoms/ Madhya Pradesh Power Transmission Company Limited****; and*

(e) Any other details which State Load Despatch Centre feels necessary to complete the State Energy Account;

(ii) As per Clause 7 (1) (d) of Balancing & Settlement Code 2015, the details of energy injection of RE Generators, energy purchased by MPPMCL and energy wheeled to Discoms for own use / third party sale shall be furnished to SLDC by the respective Discoms / MPPTCL for indicating in monthly State Energy Account.

The Petitioner solar power plants of capacity 105MW and 25MW are connected with the 132 KV Ratangarh Grid Substation through 2 nos. 132 KV and 2nos. 33KV dedicated feeders respectively. Thus, the responsibility of providing data to SLDC is of Licensee. Monthly injection into the Grid, drawal from the Grid and net injection into the Grid in respect of Petitioner's solar power plants have been provided by the MPPTCL / Discom.

(iii) SLDC had indicated petitioner's solar power plants gross energy generation, energy imported by Generator, Net Energy available at State Grid in monthly State Energy Account, as per ABT meter data / JMR data provided by Licensee. Net Energy Injected to the Grid from Petitioner's plant was indicated as energy purchased by MPPMCL which is as per regulatory provisions of Balancing & Settlement Code as well as PPA between MPPMCL and the Petitioner.

(iv) M.P. Power Management Co. Ltd. in its letter No. 116 dated 29.01.2016, copy made available to SLDC, has directed all the Discoms of MP to submit the power purchase bills of RE Generators on gross energy generated and energy drawn from the Grid shall be billed as per provisions of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 (Revision-I) (RG-33(I) of 2010) and subsequent amendments, w.e.f. 01.04.2016. A copy of letter dated 29.01.2016 is annexed herewith as ***Annexure-1****.*

(v) Thus, the SLDC had started indicating gross energy generation and energy import by RE Generators and gross energy injection of RE Generators as units purchased by MPPMCL w.e.f. 01.04.2016. Copies of relevant page of monthly State Energy Account for the month of March 2016 and April 2016 to show the treatment of energy of the Petitioner in monthly State Energy Account before and after 01.04.2016, are collectively annexed herewith as ***Annexure-2.***

(vi) SLDC has to perform the functions assigned to it as per regulatory provisions of the Hon'ble State Commission. Thus, SLDC has indicated RE energy in monthly State Energy Account as per data of ABT meters installed at the interface points / JMR data furnished by Discoms / MPPTCL, as mandated in Balancing & Settlement Code, 2009 and 2015.

(vii) That the instant petition is filed for applicability of provisions of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 (Revision-I) (RG-33(I) of 2010) and subsequent amendments by Discoms on the Petitioner. The Discoms are billing import of power by the solar plant of the Petitioner as per regulatory provisions.

(viii) SLDC is the Nodal Agency for faithful implementation of regulations framed by the Hon'ble State Commission and has to act according to the directives of Hon'ble State Commission. Thus making comments on legality and applicability of any regulatory provision of Hon'ble Commission is beyond the purview of SLDC. Therefore, no comments offered on paras of the instant petition.

13. The Respondent No.3 (MP Paschim Kshetra V.V, Co Ltd, Indore) submitted the following in reply to the subject petition:

1. *It may be seen that no dispute is raised regarding billing being done by the Licensee at present. However, amendment/new tariff is prayed for future billing with regard to Solar Generating Plant. During the course of argument petitioner reiterated that it is not challenging the present billing being done by the distribution licensee but only seeking amendment for future billing. Petitioner has submitted that the instant petition may be considered as mercy petition. Further petitioner has restricted its argument only on the applicable tariff for billing of power drawn by generator from grid. These submissions of the petitioner may please be taken on record.*

RE: Separate Tariff Category for drawl of power by Solar Generating Plant in the Tariff order:

2. *It may be seen from the perusal of the aforesaid prayer clause that separate new category has been sought but no proposal regarding this new category submitted.*

3. *That, the tariff order for the FY 2020-21 already been issued by the Hon'ble Commission based on the petition of the determination of the Aggregate Revenue Requirement and Retail Supply tariff for the FY 2020-21 (Petition no. 49 / 2019) filed by the Distribution Licensees. The public notice inviting comments/suggestion from the stakeholders by 07/03/2020 was published on dated 13/02/2020. Considering the Covid-19 pendamic, Hon'ble Commission again gave the opportunity to stakeholder by inviting comments/suggestion by 30/05/2020 vide public notice dated 13/05/2020.*

4. *Petitioner could avail the opportunity to make its submission before Hon'ble Commission. Petition for FY 2021-22 has been filed by the distribution licensees and petitioner may submit its comment on the ARR and Tariff petition of FY 2021-22 whenever public notice in this regard published.*

RE: Prayer for amendment to Regulation 10 of 'Regulations of 2010':

5. *That, 9th draft amendment in the Regulation 10 of the 'Regulation of 2010' already issued by this Hon'ble Commission vide public notice No. MPERC/D(L&R)/2020/287 Bhopal, Dated : 14/02/2020. The proposed draft Regulation 10 as per public notice is reproduced as under:*

   "10. Drawing power by Generator/Co-generator from Renewable Sources The Generator/Co-generator from Renewable Sources would be entitled to draw power exclusively for its 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 or during shutdown period of its plant or during such other emergencies shall be billed at the rate under respective tariff schedule in applicable retail supply tariff order.

6. *That, it may be seen that Hon'ble Commission already initiated the process of the amendment in the Regulation 10. Vide aforesaid public notice Hon'ble Commission has invited suggestion/objections/comments on the draft and public hearing in the said matter has been held on dated 06/03/2020. It is also pertinent to mention that petitioner has not submitted any proposed 'Regulation 10' which the petitioner wants to substitute with existing 'Regulation 10'. In the para 9.7 of the Chapter A of the petition, petitioner is*

merely seeking an appropriate Amendment/Review of the existing 10. Similarly in the para 9 of Chapter VI, petitioner has prayed that Solar RE project be excluded from the applicability of 'Regulation 10'. However petitioner has not indicated that what should be the billing methodology according to the petitioner.

7. *That, kind attention of the Hon'ble Commission also drawn to the fact that as per aforesaid draft Regulation 10, the power availed during synchronization or during shutdown or during other emergencies is proposed to be billed as per respective tariff schedule in applicable retail supply tariff order whereas at present HV-7 tariff schedule of the tariff order 2020-21 provide for the billing of power drawn only for synchronization purpose. Therefore if draft Regulation 10 notified in the present form corresponding amendment is also required in the Tariff order.*

8. *In view of above it is submitted that no amendment can be done based on the instant petition and petitioner can submit its suggestion/comment during the public hearing of ARR and Tariff Petition of FY 2021-22.*

14. The petitioner filed rejoinders to the replies filed by each Respondent. In its rejoinders, the petitioner broadly stated the following:

(i) At the outset it is stated that even the Respondent No.1 agrees that at the time when the PPA was signed between parties the applicable Regulatory framework did not evisage payment of exhorbitant Charges for auxiliary consumption. Therefore, the Petitioner reserves its right to take appropriate action under the provisions of the PPA. Curiously, MPPMCL in its Reply does not even whisper about its executive instructions dated 21.09.2015 and 29.01.2016 as relied upon by MPSLDC. The Petitioner craves liberty to rely upon the said letters during the course of hearing.

(ii) It is submitted that the present Petition does not in any manner raise the question of inter se dispute with the Cogen Regulations, but highlights the prejudice/ harm/ difficulty caused by the Application of Co-Gen Regulations.

*(iii) it is pertinent to mention herein that the the dispensation applicable as per the Power Purchase Agreements (**"PPAs"**) appended with the RfS at the time did not prescribe applicability of HT Temporary Tariff for Auxiliary Consumption. This fact has already been affirmed by MPSLDC and MPPMCL.*

(iv) It is further submitted that the Petitioner's project was constructed, and considerable investment was made by the Petitioner based on the legitimate expectation that the Petitioner will be subject to netting off mechanism. However, subsequently, MPPMCL

has subjected the Petitioner to payment of HT Temporary Tariff by issuance of certain executive instructions, which is otherwise not permissible in law.

(v) The Respondent No.2 in its Reply has relied upon letters issued by the Respondent No.1 which essentially led to the Petitioner praying for import of power for deduction of energy drawn from the grid These letters are significant and they demonstrate that prior to the 7th Amendment of the Cogen Regulations the applicable Regulatory framework did not envisage payment of HT Temporary Tariff for deduction of energy drawn from the grid

*(vi) It is submitted that MP Power Management Company Limited (**"Respondent No. 1"**), vide its Office Letter bearing No. 05-01/Comml/RE Bills/1682 dated 21.09.2015 stated that procedure applicable to treatment and billing of energy drawn by power plants supplying power at tariffs determined by way of competitive bidding would be in accordance with provisions of the Power Purchase Agreement (**"PPA"**).*

*(vii) However, Respondent No. 1, vide its Office Letter bearing No. 05-01/Comml/RE Bills/116 dated 29.01.2016 [**A-2/@Pg. 5 of the Reply**], conveyed the decision that the procedural guidelines circulated through Letter dated 21.09.2015 would be applicable to all generating plants, including plants for which tariffs have been determined by way of competitive bidding wherein from 01.04.2016, which also includes the Petitioner.*

(viii) In this regard, it is most respectfully submitted that reference to Letters dated 21.09.2015 and 29.01.2016 made by Respondent No. 2 in its Reply is an unequivocal expression of the fact that the decision to countermand the applicability of provisions under the PPA for billing of energy drawn by power plants was done originally by way of an executive instruction, and not applicable regulatory provisions. Thus, it is apparent that the procedure conveyed by Respondent No. 1 through its Letters dated 21.09.2015 and 29.01.2016 seeks to override the provisions of the PPA executed between the parties, which is a binding contract. Therefore, the express terms and conditions of the contract ought not be frustrated by the executive instructions issued by the Respondent No.1.

(ix) it is most respectfully submitted that the instant Petition is a fit case of this Hon'ble Commission to exercise its powers under Regulation 16, 17 and 18.1 of the Cogen Regulations as the application of the same is causing tremendous hardship to the Petitioner. Therefore, the said Cogen Regulations in so far as Regulation 10 and 12.2 is concerned, may be reviewed / amended by this Hon'ble Commission.

(x) That Respondent No. 3, in its Reply, has contended that the Petitioner failed to submit comments/objections qua the manner of billing or a Tariff proposal. Therefore, the Petitioner at this stage cannot dispute the manner of billing and seek a separate category of tariff to be created. Further, Respondent No. 3 has contended that the Cogen Regulations, 2010 have been issued by the Hon'ble Commission and therefore the same will override the PPA.

(xi) In this regard, it is stated that the Petitioner has invoked the 'Power to Remove Difficulty' / 'Power to Relax' vested with this Hon'ble Commission and has sought relaxation on the application of Regulations 10 and 12.2 of the Cogen Regulations. It is submitted that the present Petition does not in any manner raise the question of inter se dispute with the Cogen Regulations, but highlights the prejudice caused by its application to the Petitioner.

(xii) That the Respondent No. 3 vide its Reply has contended that this Hon'ble Commission has already initiated the process of amendment of Regulation 10 of the Cogen Regulations, 2010 and even invited objections/suggestions from all stakeholders vide Public Notice dated 14.02.2020 subsequent to which a Public hearing was also conducted on 06.03.2020. Therefore, the instant Petition has become infructuous.

(xiii) In this regard, it is most respectfully submitted that the Public Notice inviting comments/suggestions qua the amendment of Regulation 10 of the Cogen Regulations, 2010 as well as the Public Hearing that was conducted took place post the filing of the instant Petition. It is noteworthy that the said Petition was filed on 11.02.2020 and the Public Notice and the Public hearing took place on 14.02.2020 and 06.03.2020 respectively.

(xiv) It is further submitted that in case relief is granted by virtue of the amendment, then the Petitioner will not press its case vide the instant Petition. However, till the time the Regulations are not amended, it is most respectfully submitted that the same should not be applied in such a fashion wherein the Petitioner is incurring huge costs on a day to day basis on account of the application of the said Regulations.

(xv) Therefore, the contention raised by the Respondent No. 3 is wholly erroneous as the instant Petition pre-dates the issuance of Public Notice and the Public hearing. Accordingly, the Petition is not infructuous, and the cause of action still subsists.

(xvi) That Respondent No. 3 vide its Reply has contended that Petitioner's prayer qua a separate Tariff category is not maintainable for the following reasons:

(a) *The Petition being Petition No. 49 of 2019 for determination of the Aggregate Revenue Requirement and Retail Supply Tariff for the year FY 2020-21 filed by the Distribution Licensees of the state is under consideration before the Hon'ble Commission.*

(b) *A Public Notice was also issued on 13.02.2020 and 13.05.2020 inviting comments/objections from various stakeholders. However, the Petitioner failed to provide any comments and no proposal has been put forth by the Petitioner.*

(xvii) In this regard, it is most respectfully submitted that Public Notice inviting comments/suggestions was issued post the filing of the instant Petition. It is noteworthy that the said Petition was filed on 11.02.2020 and the Public Notices were issued on 13.02.2020 and 13.05.2020.

(xviii) It is further submitted that in case relief is granted by virtue of the amendment, then the Petitioner will not press its case vide the instant Petition. However, till the time the Regulations are not amended, it is most respectfully submitted that the same should not be applied in such a fashion wherein the Petitioner is incurring huge costs on a day to day basis on account of the application of the said Regulations.

Commission's Observations and Findings:

15. The Commission has observed the following from the subject petition and submissions by the parties in this matter:

(a) The petitioner is having 105 MW and 25 MW Solar Power Projects at Village Bhagwanpura and Village Padaliya, respectively, in Neemuch District. The petitioner is supplying power to MP Power Management Co. Ltd., under Power Purchase Agreements dated 05.10.2012.

(b) The petitioner has not invoked Section 86(1)(f) of the Electricity Act 2003 for adjudication of any dispute between the petitioner and Respondents in this matter. The petitioner has invoked Section 86(1)(e) of the Electricity Act, 2003 read with Regulation 16.17 read with 18.1 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 seeking relaxation on the tariff applicable for auxiliary consumption by Solar Power Generators.

(c) The petitioner without raising any dispute or challenging the bills raised by the Respondent No.3 on its solar power plant has sought relaxation/amendment in MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 as amended. As an alternative to its aforesaid prayer, the petitioner has prayed to include a new category for HT Solar Projects in Commission's retail supply tariff Order.

(d) The petitioner has made following prayers in the subject petition:

(i) Exercise power under Section 181 of the Act read with Regulation 16, 17 and 18.1 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 and amend Regulation 10 and Regulation 12 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 to exclude its applicability on Solar RE Projects.

(ii) In the alternative, create a new category of Tariff i.e. HT Solar and apply the said Tariff on the petitioner Solar Project for Auxiliary Consumption.

(e) The petitioner has stated time and again in its various submissions/rejoinders that the instant petition is a fit case of this Commission to exercise its powers under Regulation 16, 17 and 18.1 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 and the said Regulations in so far as Regulation 10 and 12.2 is concerned, may be reviewed / amended by this Commission.

(f) In the petition, the petitioner has mainly stated the following grounds seeking relaxation in Regulations:

(a) That the aforesaid MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 has provided that the tariff applicable for auxiliary consumption of Solar Projects would be at "Temporary Connection" under HT Industrial Category. The petitioner has contended that the power consumed by the Petitioner's Projects i.e. Import Units is not temporary in nature and does not fall within the ambit of Temporary Power Supply in terms of provisions under MP Electricity Supply Code.

(b) The Commission itself has recognized that in so far as Wind RE Generators are concerned the power drawn by them for Auxiliary Consumption cannot be equated with Shut Down and/ or other emergencies and they ought to be billed for such power in terms of the applicable PPAs. Hence, the same dispensation ought to be passed on Solar RE Generators such as the Petitioner as the Act more specifically Section 86 (1)(e) does not distinguish between Wind and Solar RE Generation. Hence, the relief granted to Wind RE projects ought to be passed on to Solar RE Projects such as the Petitioner.

16. In Petition No. 37 of 2016 filed before this Commission almost on the same issues raised in the instant matter, the Commission decided the following vide order dated 01.02.2017:

"*…The Hon'ble APTEL passed an order on 23.04.2015 in Appeal No. 297/2013 (GMR Gujarat*

Solar Power Pvt. Ltd. Vs GERC & Others) wherein this issue was discussed and held that: " The Appellant is entitled to be charged for import of power at temporary HTP category tariff as determined by the State Commission in retail supply tariff order from time to time…."

***8**. Under the above circumstances, the Commission is also of the view that the petitioner shall be billed as per the provisions of the Regulation 10 of MPERC (Cogeneration and generation of electricity from renewable sources of energy) (Revision-I) Regulations, 2010 for import of power from the grid which provides as under:*

"10. Drawing Power during shut down by Generator/Co-generation from Renewable Sources: The Generator/Co-generation from Renewable Sources would be entitled to draw power exclusively for its own use from the 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."

9. In view of the above, the petition no. 37/2016 stands disposed of. "

17. The above order was challenged before the Hon'ble APTEL in Appeal No. 112/2017, Hon'ble APTEL vide Judgment dated 12.02.2020 upheld the order of the Commission with the following observations and findings:

42. "In the present case, the Appellant was charged for import of power at the rate applicable to temporary connection under HT industrial category in accordance with the directions of the State Commission's regulations. Therefore, this Tribunal in Appeal No. 297 of 2013 already opined that charging a solar power plant for import power at the rate applicable to HT temporary industrial category is valid and justified by opining that provision of extant tariff orders, directives and tariff determined by the State Commission are applicable to solar power plants for power imported from the grid.

43. Then coming to the arguments of the Appellant that the Appellant is being treated as temporary consumer, we are of the opinion that this argument is incorrect for the following reasons:

44. The Appellant has long term PPA for more than 25 years to supply power from its solar plant, which was entered into between the Appellant and SECI. That apart, a reading of definition of 'consumer' and also 'temporary power supply', as stated

above, clearly indicate that the import of power from the grid by solar plants is not as a temporary power supply, since as long as solar plants supply power to SECI on long term basis, Appellant needs to get power from the grid for its auxiliary consumption during the period of non-generation in a routine manner.

45. *The energy consumed by the Appellant is charged at the rate applicable to temporary connection under HT industrial category and not as a temporary consumer or not as a temporary supply.*
46. *In other words, the rate at which the power is imported from the grid is in accordance with Regulation 10 of 2010 Regulations, and there is no question of temporary status of either temporary consumer or temporary supply so far as the Appellant is concerned.*
47. *The provision, which refers to 'temporary power supply' clearly shows that temporary connection can be extended to a maximum period of five years only for construction of buildings, power plants and for the purpose of setting up of industrial units. The import of power by the Appellant, at any stretch of imagination, does not come within the above activity.*
48. ***On the other hand, in terms of Regulation 10, it says during shutting down period or during other exigencies, the generator from renewable source who is entitled to draw power exclusively for its own use from the distribution network has to be charged at the rate applicable to temporary connection under HT industrial category. In other words, the rate at which he has to be charged, has to be the rate which is applicable to temporary connection under HT industrial category.***
49. ***Therefore, viewed from any angle, reasoning and the finding of the State Commission cannot be found fault with. The Appellant has not made out any grounds warranting interference. Accordingly, the appeal is dismissed. All the pending IAs, if any, shall stand disposed of."***

18. In light of the aforesaid Judgment passed by the Hon'ble Appellate Tribunal for Electricity, the prayer of the petitioner for relaxation in Regulation 10 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 does not have any merit and is therefore not allowed.

19. The petitioner has also sought amendment in Regulation 10 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 to exclude its applicability on solar RE projects. Further, the petitioner has suggested an alternative to this also and prayed to include a new HT category for Solar Projects in Commission's retail supply tariff Order.

20. As far as the part of above prayers in this petition is concerned, separate process for revision in MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 and determination of ARR and retail supply tariff for FY 2021-22 is in progress. The comments/suggestions on draft Regulations and the petition for determination of ARR and retail supply tariff for FY 2021-22 were invited from all stakeholders and the public hearings in both matters have also been held wherein all stakeholders including the petitioner had opportunity to present their case hence, these matters are to be decided separately by the Commission. Therefore, the Commission is of the view that there is no need to deal with the aforesaid issue in this petition.

With the aforesaid observations and findings, the prayer is disallowed and the subject petition is dismissed.

-sd-	-sd-	-sd-
(Shashi Bhushan Pathak)	**(Mukul Dhariwal)**	**(S.P.S. Parihar)**
Member	**Member**	**Chairman**