

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

BHOPAL

Sub: Petition regarding wrongful imposition of Additional Surcharge by the Madhya Pradesh Paschim Kshetra Vidyut Vitaran Co. Ltd., seeking refund of Additional Surcharge wrongfully recovered from the Petitioners, in violation of Rule 22(3) Electricity (Amendment) Rules, 2024 read with Regulation 13.1 (vii) of the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) (Revision-I) Regulations, 2021 (and amendments thereof) & challenging the actions of Respondents in violation of the PPA dated 26.07.1999 executed between the Petitioner No. 1 and Madhya Pradesh Electricity Board (current Respondent) and seeking compliance of the terms of the PPA.

ORDER

(Date of Order: 30th April' 2026)

M/s Ascent Hydro Projects Ltd.,
6, Shiv VastuTejpal Scheme,
Road No. 5, Ville Parle (East),
Mumbai (MH) – 400057

M/s Piramal Pharma Ltd.,
67-70, Sector II, Pithampur,
Distt. Dhar (MP) – 454775

M/s VE Commercial Vehicles Ltd.,
Plot No. 102 Sector-1, Pithampur,
Distt. Dhar (MP) – 452002

- **Petitioner(s)**

Vs.

Managing Director,
MP Paschim Kshetra Vidyut Vitaran Co. Ltd.,
GPH Compound, Polo Ground,
Indore (MP) – 452003

- **Respondent**

Ms Mandakini Ghosh, Advocate, appeared on behalf of the Petitioners.
Shri Sayandeep Chakraborty, Advocate, appeared on behalf of the Petitioners.
Shri Abhishek Sharma, Advocate appeared on behalf of the Respondent.

The subject petition is filed by M/s Ascent Hydro Projects Ltd., M/s Piramal Pharma Ltd., & M/s VE Commercial Vehicles Ltd., under Section 86(1)(f) of the Electricity Act, 2003 read with Regulation 45 of the MPERC (Conduct of Business) Regulations, 2016 & in violation of Rule 22(3) Electricity (Amendment) Rules, 2024 read with Regulation 13.1 (vii) of the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) (Revision-I) Regulations, 2021.

2. By affidavit dated 04th August' 2025, the petitioner broadly submitted the following in its

petition:

- i. The present Petition has been filed by the Petitioners seeking refund of Additional Surcharge wrongfully levied and recovered from Petitioners No. 2 & 3, i.e., Piramal Pharma Ltd. and VE Commercial Vehicles Ltd., being open access consumers, against power consumed from Petitioner No. 1's 2.2 MW mini hydro generating plant. The Petitioners are seeking relief in terms of Rule 22(3) Electricity (Amendment) Rules, 2024 read with Regulation 13.1 of the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) (Revision-1) Regulations, 2021 and amendments thereof (hereinafter referred to as "MPERC Open Access Regulations, 2021"). The Madhya Pradesh Paschim Kshetra Vidyut Vitaran Co. Ltd., (hereinafter referred to as "Respondent") have been raising invoices on Petitioners No. 2 and 3, levying Additional Surcharge, in contradiction to the provisions of the Electricity (Amendment) Rules, 2024 and the MPERC Open Access Regulations, 2021. Both Petitioner Nos. 2 & 3 are situated in the area of supply and maintain contract demand of 3000 KVA and 9700 KVA respectively with Respondent. The Petitioner Nos. 2 & 3 are paying full demand/fixed charges to the Respondent. However, despite such payment, Respondent is continuing to levy additional surcharge on the Petitioner No. 2 & 3 in violation of central government rules and regulations issued by this Hon'ble Commission.
- ii. It is further submitted that Respondents are failing to implement clauses 3.8 and 8.3(c) of the PPA which provides that excess units supplied by Petitioner No. 1 will be deemed sale to Respondent. However, Respondent is simply consuming the excess injected units by Petitioner No. 1 without providing any credit to Petitioners or implementing PPA clauses. Hence, there is unjust enrichment on part of Respondent in violation of the terms of the PPA. Therefore, the Petitioner is seeking implementation of the PPA which provides for deemed sale of surplus energy to Respondent supplied by Petitioner.
- iii. The Petitioner No. 1, Ascent Hydro Projects Ltd., runs and operates a 2.2MW Small hydroelectric power plant at Birsinghpur, District Umaria, Madhya Pradesh ("**Hydro Power Plant**"). The Petitioner No. 1 from its Hydro Power Plant supplies power to two HT Consumers, i.e. Piramal Pharma Ltd., Petitioner No. 2, and VE Commercial Vehicles Ltd., Petitioner No. 3, in Pithampur, Madhya Pradesh. Both Petitioner Nos. 2 and 3 are situated in the area of Respondent, West Distribution Licensee.
- iv. The Petitioner No. 1 was allotted Birsinghpur Mini Hydel Project (2 x 1100 kW) ("**Birsinghpur MHP**") by the MP State Electricity Board vide Letter of Allotment ref. 03-06/MMC/1768 dated 29.10.1997 and ref. 03-06/00/2738 dated 14.01.1999 which inter-alia provide for Third Party sale of energy as per Scheme of incentives for non-conventional energy sources issued by GoMP dated 26.09.1994. Subsequently, the Petitioner No. 1 and the erstwhile MPSEB also executed a Power Purchase Agreement ("PPA") containing detailed terms and conditions for execution, energy generation, evacuation arrangement, conditions for sale of power to MPSEB and Third Party consumers, payment and tariff etc.

- v. The Petitioner No. 1 also signed an Agreement dated 26.07.1999 for purchase of power, wheeling, captive use, third party sale and setting up of Birsinghpur MHP (2 x 1100 kW) with MPSEB which includes its successors and permitted assigns. The PPA was valid for a Term of 30 (Thirty) years from Commercial Operation Date of the hydro-electric plant. The PPA provides that excess units generated by Petitioner No. 1 will be considered as deemed sale to the licensee.
- vi. The Government of Madhya Pradesh, Energy Department, vide its Order no. 5234/13/2002 dated 20.06.2002 accorded permission to Petitioner No. 1 U/S 18-A of the Electricity (Supply) Act, 1948 for establishment of the aforesaid 2x1100 kW Birsinghpur MHP to be executed in accordance with terms and conditions of the Agreement dated 26.07.1999, Petitioner No. 1 installed and commissioned the hydro-electric project which is operational since July 2006.
- vii. The Petitioners Nos. 2 and 3, i.e. M/s Piramal Pharma Ltd. and VE Commercial Vehicles Ltd. are third party consumers of the Petitioner No. 1, drawing power from the Petitioner No. 1 through open access. Power supply to Petitioner No. 2 from Petitioner No. 1 commenced in Year 2006 and is continuing till date. Petitioner No. 1 commenced supply to Petitioner No. 2 from 2016 and is continuing till date.
- viii. The Respondent, Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Ltd., is the distribution licensee under Section 14 of the Electricity Act, 2003 and undertakes the activities of distribution and retail supply on behalf of Madhya Pradesh State Electricity Board in the areas covered by the Commissionaires of Indore and Ujjain. Petitioner Nos. 2 & 3 maintain 3000 KVA and 9700 KVA respectively as contract demand with Respondent.
- ix. On 10.06.2003, the Government of India enacted the Electricity Act, 2003. The aforementioned statute provided for levy of Additional Surcharge in the following manner:

"Section 42. (Duties of distribution licensee and open access):---

(1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

....

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply."

- x. Accordingly, the Petitioners Nos. 2 and 3 pay fixed charges to the Respondent as determined in the tariff order by this Hon'ble Commission from time to time for maintaining the contract demand. As a result, the Petitioners No. 2 and 3 have the right to draw any quantum (upto contract demand and additional 20%) from the Respondent within the provisions of Hon'ble Commission's Tariff Order in

respect of the contract demand and the Respondent has the obligation under Section 43 of the Electricity Act, 2003 to supply. The Petitioners are also availing open access and receiving supply from Petitioner No. 1. However, as per applicable orders, a consumer is allowed to draw in excess up to 120% of contract demand without any imposition of penal charges.

- xi. On 19.10.2004, this Hon'ble Commission in Petition No. 83/2004 upheld that inadvertent flow of electricity from Petitioner No. 1 into the distribution system would be settled by the Respondent (erstwhile MPSEB) at Rs. 2.25/unit. The relevant extract of the order is as below:

"Having considered the facts and circumstances of the case, Commission appreciates that in view of GoMP policy, no surcharge and additional charge is presently payable by the wheeled consumer for third party sell to the Respondent. Commission reviewing its Order dated 14.09.04 decides to grant exemption from requirement of obtaining licence for sale of electricity to the third party u/s 16 of MP Vidyut Sudhar Adhinyam, 2000 for the period of PPA from the date of Order subject to the conditions of payment of wheeling charges at the existing rate of 2% by the petitioner and payment of subsidy 4% by the State Government as per the policy dated 26.09.04. The inadvertent flow of energy in the Board's system shall be paid @ Rs 2.25 per unit as per prevailing GoMP policy..."

- xii. Thereafter, this Hon'ble Commission notified the "Terms and Conditions for Intra State Open Access in Madhya Pradesh" Regulations (Revision-1), 2021 on 17.12.2021.

- xiii. Subsequently, on 10.01.2024, the Ministry of Power, Government of India issued the Electricity (Amendment) Rules, 2024 amending Regulation 22 of the Electricity Rules, 2005 to the extent that Additional Surcharge would not be applicable for Open Access Consumer to the extent of contract demand being maintained with the distribution licensees. The relevant portions of the Electricity (Amendment) Rules, 2024 have been reproduced hereinbelow:

"22. Open Access Charges

...

(3) Additional Surcharge.-*The additional surcharge levied on any Open Access Consumer shall not be more than the per unit fixed cost of power purchase of the distribution licensee concerned:*

Provided that for a person availing General Network Access or Open Access, the additional surcharge shall be reduced from the value in the year in which General Network Access or Open Access was granted so that, if it is continued to be availed by this person, the additional surcharge shall get eliminated within four years from the dated of grant of General Network Access or Open Access:

Provided further that the additional surcharge shall not be applicable for Open Access Consumer to the extent of contract demand being maintained with the distribution licensees:

Provided also that the additional surcharge shall be applicable only for the Open

Access Consumers who are or have been consumers of the concerned Distribution licensee.

Explanation.- *For the purpose of this rule, General Network Access and Temporary-GNA shall have the same meaning as defined in the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 as amended from time to time."*

- xiv. Thereafter, on 24.05.2024, this Hon'ble Commission issued the MPERC (Terms and conditions for intra-state Open Access in Madhya Pradesh Regulations (Revision-I) 2021 (Fourth Amendment) (ARG-24(1)(iv) of 2024) ("MPERC Open Access Fourth Amendment Regulations"), to the extent that additional surcharge shall not be levied upon Open Access consumers (green and conventional) availing power from open access up to the extent of their contract demand with the Distribution Licensee. The relevant portions of the MPERC Open Access Fourth Amendment Regulations have been reproduced herein below:

"2.1 Following provisions shall be inserted after 1st proviso to sub-regulation (vii) of Sub-Regulation 13.1 of Regulation 13 (A) of the Principle Regulations, namely:-

Provided further that such additional surcharge shall not levied in case a person is availing power from open access up to the extent of his contract demand with Distribution Licensee and fixed charges thereof are paid to the Distribution Licensee:

Provided also that such additional surcharge shall be levied in case a person is availing power from open access over and above his contract demand with Distribution Licensee:

Provided also that additional surcharge shall be applicable only for the open access consumers who are or have been consumers of the concerned Distribution Licensee."

- xv. However, despite the aforementioned notifications issued by the Ministry of Power and regulations issued by this Hon'ble Commission, with regards to the levy of Additional Surcharge, the Respondent has constantly levied Additional Surcharge upon the Petitioners No. 2 and 3 vide their Invoices issued to the Petitioners No. 2 and 3. It is stated and is also evident from the bills that the Petitioner No. 2 has at no point drawn power including through open access exceeding its contract demand. Petitioner No. 3 has drawn power including open access marginally exceeding the contract demand of the Respondent for only 11 months in the 17 months' period from February, 2024 to May, 2025. However, the drawl is well within the limit provided by the Hon'ble Commission and the Respondent accordingly allows drawl without any penalty up to 120% by consumers over and above the contract demand and as such no penalty has been imposed on Petitioner No. 3. However, Respondent has imposed full Additional Surcharge on the Petitioner No. 2 & 3.

- xvi. Thereafter, on 10.09.2024 and 25.10.2024, the Petitioner No. 1 sent letters to the Respondent requesting them not to levy the Additional Surcharge upon the Petitioners No. 2 and 3 on account of the amendments to the Electricity Rules, 2005 and the MPERC Open Access Regulations 2021.
- xvii. Thereafter, from November 2024 the Respondent stopped levying Additional Surcharge upon Petitioner No. 2 and continued till February 2025. However, from March 2025 onwards, the Respondent has once again imposed Additional Surcharge on the Petitioner No. 2 and further levied Additional Surcharge on the supply during November 2024 - February 2025 of Petitioner No. 1, recovering the exemption allowed during this period. There is no explanation or intimation to the Petitioners regarding re-imposition of additional surcharge.
- xviii. It is stated that the exemption from levy of Additional Surcharge extended to Petitioner No. 2 from November, 2024 to February, 2025 on the power supplied by Petitioner No. 1 was INR 22,25,929.00. The same has now been recovered in the invoice raised on Petitioner No. 2, by the Respondent, in March 2025. Further, the Respondent, from March, 2025 had withdrawn the exemption from levy of Additional Surcharge, without any intimation or explanation.
- xix. Further, despite the non-imposition of Additional Surcharge on Petitioner No. 2 for the above-specified period, no refund was issued to Petitioner No. 2 for the amount of Additional Surcharge paid by Petitioner No. 2 to the Respondent in the previous months, neither from February, 2024, i.e. the date of issuance of the amendment to the Electricity Rules, 2005, nor from June, 2024, i.e. the date of issuance of the amendment to the MPERC Open Access Regulations, 2021.
- xx. It is pertinent to note that though Petitioner Nos. 2 & 3 sourced power from Petitioner No. 1, Respondent did not give the same dispensation of waiver of Additional Surcharge in terms of the regulations to Petitioner No. 3 as it had provided to Petitioner No. 2. Hence, Petitioner No. 3 continued to pay Additional Surcharge to Respondent for power consumed from Petitioner No. 1.
- xxi. As a result of the arbitrary and inconsistent conduct of the Respondent, the Petitioners have been deprived of the benefits available to the Petitioners No. 2 and 3 for power drawn from Petitioner No. 1, which have been irrationally held back by Respondent in violation of the aforementioned amendments.
- xxii. Thereafter, on 17.04.2025, the Petitioner No. 1 had again sent a letter to the Respondent, requesting for non-levy of the Additional Surcharge upon the Petitioners No. 2 and 3. Respondent has not replied to the letter dated 17.04.2025 by the Petitioner No. 1.
- xxiii. It is further stated that Madhya Pradesh Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal, the Distribution Licensee for the Central Region, had implemented the aforementioned amendments regarding non-levy of Additional Surcharge upon Open Access Consumers. On enquiry, it has come to the notice of Petitioners that other similarly placed open access consumers in other State Discom like in

Central Discom, Tafe Motors, taking power from Solar generators, has been exempted from payment of additional surcharge as per the prevalent regulations. Hence, the Petitioners are constrained to file the present petition seeking relief against the arbitrary and illegal action of the Respondent.

- xxiv. The Petitioner No. 1 from April 2024 is also suffering from non-compliance of terms of PPA by the Respondent. The Respondent has been deducting the units generated and supplied by the Petitioner into the grid without any explanation. There is a mismatch between the supplied units by Petitioner No. 1 and consumed by Petitioner No. 2 & 3 (after adjustment of wheeling charges and transmission losses). The PPA executed between the Petitioner No. 1 and Respondent provides that surplus units supplied by the Petitioner No. 1 will be deemed sale and will be purchased by the Respondent at Rs. 2.25/unit. Hence, the Petitioner No. 1 is seeking compliance of PPA provisions by Respondent and payment for the excess/inadvertent inflow of energy by Petitioner No. 1 and consumed by Respondent. This is in accordance with Hon'ble Commission's order dated 19.10.2004 as well.

GROUND:

- xxv. It is submitted that in light of the aforementioned amendments to the Electricity Rules, 2005, and the MPERC Open Intra State Access Regulations, 2021, additional surcharge shall not be applicable on the Open Access consumer to the extent of contract demand being maintained with the distribution licensee and within the provision allowed by the Hon'ble Commission. Therefore, Additional Surcharge, if at all, should be applied to the extent the Petitioners are exceeding their contract demand beyond the limit of 120% provided by the Hon'ble Commission. Accordingly, the Respondent's action of imposing Additional Surcharge upon the Petitioners No. 2 & 3, is in the teeth of the Electricity Rules, 2005, the MPERC Open Access Regulations, 2021, principles of the Electricity Act, 2003 and other settled principles of law.
- xxvi. It is submitted that Petitioners Nos. 2 & 3, being consumers of the Respondent Distribution Licensee pay demand charges even while availing power through open access. These demand charges account for recovery of the fixed cost borne by the Distribution Licensee and ought to be considered while working out the power purchase fixed cost obligation attributable to the open access consumers. It is accordingly submitted that levy of additional surcharge would lead to double collection of revenue by the Distribution Licensee from the embedded Open Access consumers on account of additional surcharge.
- xxvii. It is further submitted that the non-levy of additional surcharge on open access consumers would be necessitated in order to maintain the balance of competition between the Licensee and open access consumers, as has also been iterated in the National Tariff Policy, 2016. The National Tariff Policy, 2016 provides as follows:

"8.5 Cross-subsidy surcharge and additional surcharge for open access

8.5.1 National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access should not be so onerous that it eliminated competition which is intended to be fostered in generation and supply of power directly to the consumers through open access.

...

8.5.4. The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges"

- xxviii. It is therefore submitted that the levy of additional surcharge by the Respondent upon the Petitioners No. 2 & 3, is extremely onerous upon the Petitioners herein. Levy of such Additional Surcharge to the extent the contract demand (plus excess of 120% allowed by this Hon'ble Commission) is being maintained deters competition and acts as disincentive to the Consumers from availing power from Open Access. Therefore, such action of the Respondent is not only in violation of the MPERC Open Access Regulations, 2021 and the Electricity Rules, 2005 but also against the principles of the Tariff Policy, 2016.
- xxix. It is respectfully submitted that Respondent being a creature of the statute is bound by the state and central rules/regulations issued under the Electricity Act, 2003. The Respondent has acted illegally and arbitrarily by imposing Additional Surcharge. The actions of Respondent cannot be countenanced in law. Though the Petitioners have written several correspondences to Respondent, there has been no reply or acknowledgement from the Respondent. Without any response, Respondent has acted arbitrarily by first imposing Additional Surcharge, then withdrawing the levy for only one open access consumer and then re-imposing the open access charges. It is prayed that this Hon'ble Commission may direct the Respondent to refund the Additional Surcharge wrongfully collected and strictly direct Respondent to comply with the applicable regulations in the future.
- xxx. It is further submitted that it is settled law that State Electricity Regulatory Commissions are bound by its statutory regulations. It is respectfully submitted that the Hon'ble Supreme Court of India, ***PTC India Ltd. v. CERC [2010 (4) SCC 603]***, has held that the State Commissions are mandated to follow its regulations if they are in place and cannot side-track them or ignore them. It is respectfully submitted that in light of the abovementioned judgement of the Hon'ble Supreme Court, this Hon'ble Commission consider the provisions and aforementioned amendments to the MPERC Open Access Regulations 2021 while considering the instant Petition. The relevant portions of the Hon'ble Supreme Court's judgement in ***PTC India Ltd. v. CERC [2010 (4) SCC 603]***, has been extracted hereinbelow:

"54. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates

establishment of an independent and transparent Regulatory Commission entrusted with wide ranging responsibilities and objective inter alia including protection of the consumers of electricity Accordingly, the Central Commission is set up under Section 76 (1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Section 76 (1) and 79 (1) one finds that Central Commission is empowered to take measures / steps in discharge of the functions enumerated in Section 79 (1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-state transmission of electricity, to issue licenses, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79 (1), therefore, have got to be in conformity with the regulations under Section 178.

55. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a pre-condition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the 2003 Act. An order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject matter of challenge before the Appellate Authority under Section 111 as the levy is imposed by an Order/decision making process. Making of a regulation under Section 178 is not a pre-condition to passing of an Order levying a regulatory fee under Section 79(1)(g).

.....”

- xxxi. In light of the submissions made hereinabove, it is humbly prayed that this Hon'ble Commission direct the Respondent not to levy additional surcharge upon Petitioners No. 2 & 3 and to further refund the amount of additional surcharge collected from the Petitioner No. 2 & 3 since February, 2024.
- xxxii. It is also respectfully submitted that Respondent is also failing to abide with the terms of the PPA dated 26.07.1999 and this Hon'ble Commission's order dated 19.10.2004. The Respondent is deducting certain units from the power supplied by Petitioner No. 1 to Petitioner No. 2 & 3 without any explanations. Therefore, the difference in units (post adjustment of wheeling and transmission losses) is nothing but consumption by Respondent.
- xxxiii. It is pertinent to note that in the event, the power supplied by Petitioner No. 1 is in excess of power consumed by Petitioner No. 2 & 3, such power is deemed to be sold to Respondent Such dispensation is provided in the PPA in the following manner.

"3.8 ALLOCATION OF UNITS (kWh) TO WP CONSUMERS

The Company shall give monthly allocation of Units and MW for each wheeled power consumer. The wheeled units for billing purpose shall be taken as actual units wheeled (after deduction of wheeling charges) or the allocated units whichever is lower.

In case the wheeled units are less than the units consumed by the WPC. the consumption over and above the wheeled units will be taken as units supplied by the Board, and will be billed by Board at applicable tariff as per subsisting HT agreement between WPC and the Board.

In case the wheeled units are more than the units consumed by the WPC the excess units will be treated as units deemed sold to Board and will be paid by the Board to the Company at the fixed rate of Rs 2.25 per unit.

3.11 RESPONSIBILITY OF REALISATION FROM WP CONSUMERS

...

b) In case of sale of power to WP Consumers, Board's responsibility shall be limited to the extent of delivery of total units fed to Board's system by the Company minus wheeling charges.

...

8.3(c) For the surplus units exported, after allowing for wheeling charges and adjustment of allocated units, the same shall be deemed to be sold to the Board and the Board shall pay to the Company for the same at prescribed rate of purchase from NES plant per unit."

- xxxiv. However, the Respondent is failing to abide with the above provisions of the PPA and not paying/providing credits for the power supplied by Petitioner No. 1. Such conduct is in violation of its contractual obligations. Hence, it is prayed that this Hon'ble Commission may direct the Respondent to abide by its contractual obligations contained in Clause 3.8 and 8.3 of the PPA and make payment for the surplus energy supplied by Petitioner No. 1. Alternatively, this Hon'ble Commission may also direct the Respondent to provide credits for excess energy consumed by Respondent in the energy bills for Petitioner No. 2 & 3 in the future.
- xxxv. It is also respectfully submitted that Respondent is failing to abide with this Hon'ble Commission's directions dated 19.10.2004 wherein it was specifically provided that inadvertent inflow of energy from Petitioner No. I would be settled at Rs. 2.25/unit. However, Respondent is failing to pay for/provide credits for the power supplied by Petitioner No. 1.

Jurisdiction of this Hon'ble Commission

- xxxvi. It is respectfully submitted that Regulation 45 of the MPERC (Conduct of Business) Regulations, 2016 clearly states that:

"45. Saving of inherent power of the Commission.-

(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 for meeting the ends of justice or to prevent the abuse of the process of the

Commission.

(2) Nothing in these Regulations shall bar the Commission from adopting a procedure for dealing with the matters in conformity with the provisions of the Act, which is at variance with any of the provisions of these Regulations, if the Commission, for reasons to be recorded in writing, deems it necessary or expedient.

(3) Nothing in these Regulations shall, expressly or impliedly, bar the Commission to deal with any matter or exercise any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit."

xxxvii. It is respectfully submitted that the present petition is inter alia, preferred under Section 86(1)(f) of the Electricity Act, 2003 and as such well within the jurisdiction of the Hon'ble Commission. The relevant clause is reproduced below for reference:

"Section 86. (Functions of State Commission): (1) The State Commission shall discharge the following functions, namely: -

.....

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

....."

xxxviii. It is respectfully submitted that the present petition is also maintainable under MPERC Open Access Rules, 2021 which confer jurisdiction on this Hon'ble Commission to adjudicate upon any dispute under the aforementioned regulations. This Hon'ble Commission also has the power to remove difficulties in implementation on the present regulations. Hence, the Petitioners are rightfully approaching this Hon'ble Commission seeking reliefs regarding wrongful imposition of Additional Surcharge.

xxxix. The present petition is being filed bonafide and in the interest of justice. The Petitioner seeks liberty to add/withdraw and modify the contents of the petition if required. The Petitioners have not made similar petitions before any other forum.

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

- i. *Declare that the Petitioner No. 2 and 3 are not liable to pay any additional surcharge for power availed on open access from Petitioner No. 1 up to their contract demand including up to the limit of 120% of contract demand allowed by the Hon'ble Commission, in terms of Electricity Rules, 2005 and the MPERC Open Access Regulations, 2021;*
- ii. *Direct the Respondent to not levy Additional surcharge on Petitioners for power availed on open access up to their contract demand including up to the limit of 120% of contract demand allowed by the Hon'ble Commission, in terms of Electricity Rules, 2005 and the MPERC Open Access Regulations, 2021;*
- iii. *Direct Respondent to only impose Additional Surcharge on Petitioner No. 2 & 3 to the extent Petitioner Nos. 2 & 3 are exceeding the contract demand beyond the 120% threshold allowed by the Hon'ble Commission and not on entire open access*

- consumption;*
- iv. *Direct the Respondent to refund Additional Surcharge wrongfully paid by Petitioner NO. 2 & 3 for the period February 2024 till date along with interest;*
- v. *Direct Respondent to abide by Clause 3.8 and 8.3(c) of the PPA dated 26.07.1999 and previous order of this Hon'ble Commission, and pay for the energy supplied by Petitioner No. 1 and consumed by Respondent;*
- vi. *In the alternative, direct Respondent to provide credit for the surplus energy supplied by Petitioner No. 1 consumed by Respondent in the future energy bills of Petitioner No. 2 & 3;*
- vii. *Direct Respondent to not levy additional surcharge on open access consumption by Petitioner No. 2 & 3 during adjudication of the present petition;*
- viii. *Direct Respondent to not arbitrarily deduct units of power supplied by Petitioner No. 1 to Petitioner Nos. 2 & 3 during adjudication of the present petition;*
- ix. *Direct Respondent to abide by the terms of the PPA and order of this Hon'ble Commission during adjudication of the present petition;*
- x. *Condone any inadvertent omissions, errors, short comings and permit the Petitioner to add/ change/ modify/ alter this filing and make further submissions as may be required at a future date; and*
- xi. *Pass such other orders that this Hon'ble Commission may deem fit and proper in the facts and circumstances so presented.*
- xii. *Pass any other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case.*

4. At the motion hearing held on 12.11.2025, petition was admitted and Respondent was directed to file its reply to the petition within the next 15 days. The case was fixed for hearing on 16.12.2025.

5. By Affidavit dated 15th December' 2025, the Petitioners i.e. M/s Ascent Hydro Projects Ltd., M/s Piramal Pharma Ltd., and M/s VE Commercial Vehicles Ltd., submitted an IA broadly submitting the following:

- i. The present Interlocutory Application has been filed under Section 94 of the Electricity Act, 2003 ("Electricity Act") and Regulation 39 of the MPERC (Conduct of Business) Regulations, 2016 seeking interim reliefs in Petition no. 126 of 2025 currently pending before this Hon'ble Commission.
- ii. In the hearing of the aforesaid Petition no. 126 of 2025 dated 12.11.2025, this Hon'ble Commission directed the Petitioners to file an Interlocutory Application for the grant of interim reliefs. Pursuant to the same, the present Interlocutory Application is being filed.

The submissions from points **iii** to **xxx** made by the Petitioners in its Interlocutory Application are the same as those in the main petition. Therefore, they are not reiterated to avoid duplication.

- iii. The present Interlocutory Application is being filed bonafide and in the interest of justice. The Petitioner seeks liberty to add/withdraw and modify the contents of the Application, if required.

• **Prayer:-**

- i. *Direct Respondent to not levy/recover additional surcharge on open access consumption by Petitioner Nos. 2 & 3 qua power consumed from Petitioner No. 1 during adjudication of the present petition;*
- ii. *Direct Respondent to not arbitrarily deduct units of power supplied by Petitioner No. 1 to Petition Nos. 2 & 3 during adjudication of the present petition;*
- iii. *Direct Respondent to abide by the terms of the PPA and order of this Hon'ble Commission during adjudication of the present petition;*
Pass any other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case.

6. At the next hearing held on 16.12.2025, Ld. Counsel appearing on behalf of the Petitioners submitted that she has filed IA with requisite fee and that there are some developments regarding change in status of impugned demand which shall be submitted through an affidavit. Respondent submitted that they had not received copy of IA filed by the Petitioners. Therefore, the Petitioners were directed to provide a copy of IA to the Respondent within 2 days in hard copy as well as in soft copy through mail. Respondent was directed to submit reply on petition as well as on IA within a period of 2 weeks serving a copy of same to the Petitioners simultaneously. As requested, the Petitioners were allowed to file rejoinder in a weeks' time, thereafter. The case was fixed for hearing on 28.01.2026.

7. By Affidavit dt. 30th December' 2025, Respondent i.e. MP Paschim Kshetra Vidyut Vitaran Co. Ltd., submitted following in Reply to the Interlocutory Application filed by the Petitioners:

- i. That, the facts of the matter are already a part of the record of this Hon'ble Commission, and hence for the sake of brevity, the same are not reiterated here in their entirety and reference to the factual matrix of the case is strictly limited to the extent relevant for effectively answering the averments made by the Petitioner in the Application
- ii. That, at the outset, the Respondent denies and disputes all the averments stated in the Application in toto and states that the same are absolutely flawed. The contents of the Application are denied in their entirety as if specifically traversed. Merely by reason of not specifically dealing with any of the averments/contentions or statements, the Respondent does not or shall not be deemed to have admitted the veracity and/or authenticity of the contents mentioned in the Application. The Respondent most respectfully submits that the grounds stated in the Application are without any merit and the Application is nothing but a futile exercise on the part of the Petitioner and subvert the adjudication of issues involved in the present petition on merits. The Respondent also most respectfully submits that the Application' is based upon legally untenable grounds and as such, deserves to be dismissed at the threshold by this Hon'ble Commission.
- iii. At the outset, it is submitted that the Application is misconceived, premature, and not maintainable, as it seeks, under the guise of interim relief, final and substantive reliefs which are impermissible in law. The Application deserves to be

rejected in limine.

- iv. It is submitted that the primary relief sought in the Application is a direction restraining the Respondent from levying Additional Surcharge and from deducting units, which is identical in substance to the final reliefs sought in the main Petition. It is a settled principle of law that interim relief cannot result in granting the final relief itself, particularly when the issues involve disputed questions of law and fact requiring adjudication.
- v. It is further submitted that granting such relief will amount to prejudging the Petition, rendering the main petition infructuous and prejudicing the Respondent, a regulated utility bound to act strictly in accordance with statutory regulations and tariff orders.
- vi. With reference to the averments made in Paragraphs 1 to 27 of the Application, the Respondent categorically denies each and every allegation therein as being false, incorrect, misconceived, and untenable in law. The Respondent reiterates and places reliance upon the Preliminary Objections contained in Paragraph No. 2 of the Reply to the Petition, which are expressly adopted and incorporated herein by reference, and are not repeated for the sake of brevity.
- vii. The Petitioners have failed to establish any prima facie case warranting interim protection. The levy of Additional Surcharge has been strictly in accordance with the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2021, as applicable during the relevant period, and the Electricity (Amendment) Rules, 2024. It is further submitted that where the maintainability of the main proceedings itself is under serious challenge, no prima facie case can be said to exist for grant of interim relief
- viii. The Respondents submits that the Petitioners have further failed to demonstrate any irreparable injury/loss. The dispute is purely monetary in nature and it is a settled principle of law that no interim injunction lies in matters involving monetary claims. Thus, the averment with respect to the "irreparable loss" is wholly illusory and unsupported by any material evidence.
- ix. The Balance of Convenience is also in favour of the Respondent as the Respondents is statutorily obligated to recover fixed costs arising from long-term power procurement and to bill consumers strictly in accordance with tariff orders and regulations. Thus, grant of interim reliefs restraining the recovery of Additional Surcharge would result in immediate and unrecoverable revenue loss, distortion of tariff recovery, and unfair shifting of burden onto other consumers. It is further submitted that the Petitioners being large industrial consumers can always be compensated by adjustment or refund if the Petition succeeds.
- x. Without prejudice to the foregoing objections, the Respondent submits that the Interlocutory Application is liable to be dismissed on the additional and independent ground that the Petitioners have failed to satisfy the well-settled "trinity test" governing grant of interim relief, namely:

- a. existence of a prima facie case,
 - b. balance of convenience in favour of the applicant, and
 - c. irreparable injury in the absence of interim protection
- xi. It is a settled proposition of law, consistently reiterated by the Hon'ble Supreme Court and followed by regulatory fora, that all three ingredients of the trinity test must co-exist before any interim relief can be granted.

Prayer:-

It is therefore, prayed that the instant reply to Application filed by the Respondent may kindly be taken on record and in light of the aforesaid submissions, the Application may kindly be dismissed with costs in favour of the Respondent.

8. By Letter dated 30th December' 2025, Respondent i.e. MP Paschim Kshetra Vidut Vitaran Co. Ltd., submitted following in their reply to the petition:

1. That, at the outset, the Respondent denies and disputes all the averments stated in the Petition in toto and states that the same are absolutely flawed. The contents of the Petition are denied in their entirety as if specifically traversed. Merely by reason of not specifically dealing with any of the averments/contentions or statements, the Respondent does not or shall not be deemed to have admitted the veracity and/or authenticity of the contents mentioned in the Petition.

The Respondent most respectfully submits that the grounds stated in the Petition are without any merit and the Petition is nothing but a futile exercise on the part of the Petitioner. The Respondent also most respectfully submits that the petition is based upon legally untenable grounds and as such, deserves to be dismissed at the threshold by this Hon'ble Commission.

2. **PRILIMINARY OBJECTIONS**

It is most humbly submitted on behalf of the Respondent that the present Petition is not maintainable as based on legally untenable grounds and as such, deserves to be dismissed at the threshold by this Hon'ble Commission on the following preliminary objections:

A. EXISTENCE OF VALID AND BINDING ARBITRATION CLAUSE

- a) At the outset, the Respondent submits that the Petition is not maintainable insofar as it seeks adjudication of disputes arising out of the Power Purchase Agreement dated 26.07.1999 (hereinafter referred to as "PPA") executed between Petitioner No. 1 and the predecessor of the Respondent. The said Agreement contains a clear, express and binding dispute resolution clause under Article XII, which mandates resolution of disputes through mutual discussion, conciliation and, failing that, arbitration under the Arbitration and Conciliation Act, 1996, with the seat of arbitration at

- Jabalpur.
- b) The grievances raised by Petitioner No. 1 relating to "deemed sale" of surplus energy, alleged non-payment for inadvertent flow, adjustment and allocation of injected units, and interpretation of Clauses 3.8 and 8.3(c) of the PPA are purely contractual disputes, arising "out of and in connection with" the Agreement. The Petition contains no averment that the arbitration clause is void, inoperative or incapable of being performed. In the absence thereof, the Petition is a clear attempt to bypass the agreed arbitral forum and is liable to be rejected in limine or, at the very least, Petitioner No. 1 must be relegated to arbitration.
- c) The said PPA contains a specific, mandatory and binding dispute resolution mechanism, set out in Article XII "Dispute Resolution", which has been reproduced by the Petitioners themselves at Page 62 of the Petition. The said clause is reproduced herein for ease of reference:

"ARTICLE XII - DISPUTE RESOLUTION

12.1 In the event of any dispute or difference arising between the parties hereto in respect of or in connection with this Agreement, the parties shall, in the first instance, endeavour to resolve the dispute amicably through mutual discussions.

12.2 If the dispute is not resolved within thirty (30) days of the commencement of such discussions, the same shall be referred to conciliation in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

12.3 In the event the dispute is not resolved through conciliation, the dispute shall be finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996. The arbitral tribunal shall consist of two arbitrators, one to be appointed by each party, and an Umpire to be appointed by the arbitrators so appointed.

12.4 The venue of arbitration shall be the Headquarters of the Board, i.e., Jabalpur.

12.5 The award of the arbitrators shall be final and binding on the parties."

- d) A bare reading of the aforesaid clause, make it abundantly clear that all dispute "in respect of or in connection with" the PPA, including disputes relating to the alleged deemed sale of surplus power, settlement of inadvertent flow of energy, adjustment, deduction or reconciliation of the injected units and interpretation of Clauses 3.8 and 8.3(c) of the PPA are contractual disputes mandatorily required to be resolved through the agreed arbitral mechanism.
- e) The Petition does not contain even a whisper of an averment that the aforesaid arbitration clause is void, inoperative or incapable of performance. In the absence of such a plea, Petitioner No. 1 cannot be permitted to selectively rely upon beneficial clauses of the PPA while consciously avoiding the agreed dispute resolution clause, which forms an integral part of the same contract.

- f) It is submitted that the invocation of Section 86(1)(f) of the Electricity Act, 2003, in the present case is a clear attempt to bypass arbitration, which is impermissible in law. Section 86(1)(f) is an enabling provision and does not override party autonomy or extinguish a valid arbitration agreement. The Hon'ble Commission cannot be converted into a substitute arbitral forum merely because one party seeks to avoid arbitration.

B. OBJECTIONS AS TO THE MISJOINDER OF PARTIES AND CAUSE OF ACTION

- a. The Petition is procedurally defective as it impermissibly combines two distinct and legally unrelated causes of action. Petitioner No. 1 raises contractual disputes under a pre-2003 PPA, whereas Petitioner Nos. 2 and 3, being Open Access consumers, raise statutory tariff and billing grievances concerning the Additional Surcharge.
- b. The Petitioner No. 1, a generating company, raises disputes arising from the 1999 Power Purchase Agreement, including claims based on Clauses 3.8 and 8.3(c) thereof, which are contractual in nature and subject to arbitration as demonstrated hereinabove.
- c. The Petitioner Nos. 2 and 3, on the other hand, are Open Access consumers, raising statutory grievances relating to the levy and refund of Additional Surcharge, purportedly on the basis of
- a. The Electricity (Amendment) Rules, 2025
 - b. The MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) (Revision-I) (Fourth Amendment) Regulations, 2024
- d. These two sets of disputes arise under entirely different legal regimes, involve different factual matrices, and are governed by different adjudicatory mechanisms. Their joinder in a single Petition is impermissible and renders the Petition liable to be dismissed for misjoinder of parties and causes of action.

C. THE DOCTRINE OF STATUTORY OVERRIDE WITH RESPECT TO THE PPA AGREEMENT

- a) The Petitioner herein seeks to enforce Clause 3.8 and Clause 8.3(c) of a Power Purchase Agreement (PPA) executed on 26th July 1999, which allegedly provides for the "deemed sale" of excess energy to the Board at a fixed rate of Rs. 2.25/unit. The Petitioners submit that the Respondent's failure to pay for this excess energy is in violation of the PPA executed between the Petitioner and Respondents.
- b) It is most respectfully submitted that the said PPA was executed under the Electricity (Supply) Act, 1948. Thereafter, with the enactment of the Electricity Act, 2003, the contracts executed prior to the 2003 Act are saved only to the extent they are not consistent with the provisions of the 2003 Act and the regulations framed thereunder.

- c) The Hon'ble Apex Court in the landmark judgment of *PTC India vs. Central Electricity Regulatory Commission (2010) 4 SCC 603* has conclusively settled the law with respect to the hierarchy and contracts. The Hon'ble Apex Court has held that:
"A regulation under Section 178 is in the nature of a subordinate legislation. Such subordinate legislation can even override the existing contracts including power purchase agreements which have got to be aligned with the regulations under Section 178 and cannot consist of provisions inconsistent with the regulations..."
- d) The concept of "deemed sale" of any quantum of energy injected into the grid without scheduling is antithetical to the modern ***Availability Based Tariff (ABT) and Deviation Settlement Mechanism (DSM)*** regimes established by Regulations. The MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010, 2018, and 2021 have successively established specific mechanisms for energy accounting, banking, and the settlement of surplus power. These statutory regulations supersede the archaic "deemed sale" clauses of the 1999 PPA. Petitioner No. 1 cannot insist on the performance of a contractual term that has been rendered void or modified by subsequent statutory regulations.

D. SUPPRESSION OF MATERIAL FACTS WITH RESPECT TO PETITIONER NO. 3

- a) The Petitioners have approached this Hon'ble Commission with unclean hands by suppressing the material facts with respect to the drawl pattern of Petitioner No. 3 (VE Commercial Vehicles Ltd.)
- b) It is most respectfully submitted that the Petition in Paragraph No. 15 of the Petition explicitly admits that the Petitioner No. 3 has drawn power including open access marginally exceeding the contract demand of the Respondent for only 11 month in the 17-month period from February 2024-May 2025.
- c) It is of utmost importance to mention here that such admission is fatal to their claim for waiver of the Additional Surcharge. The proviso to the Regulation 13.1 of the Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2021 (Revision-I) {RG-24(1) of 2021) inserted by the its Fourth Amendment, contains an explicit exclusion clause that:
"Provided also that such additional surcharge shall be levied in a case a person is availing power from open access over and above his contract demand with Distribution Licensee"
- d) It is submitted that the Petitioner No. 3 violated the contract demand limit in 11 out of 17 months. Consequently, Petitioner No. 3 is statutorily disqualified from availing the waiver of the Additional Surcharge. The Petitioner herein is attempting to gloss over this violation by terming it TDS "marginal" and citing a separate "120%

load factor" provision relevant for the penal demand charges, which is a separate regulatory mechanism unrelated to the eligibility for the Additional Surcharge waiver. The Petitioner herein is attempting to mix two distinct issues and regulations to mislead the Commission.

E. **PROSPECTIVE LEGISLATION APPLICATION OF SUBORDINATE LEGISLATION**

- A. The primary relief sought by the Petitioners is the refund of Additional Surcharge recovered from February 2024, solely based on the notification of the Electricity (Amendment) Rules, 2024 by the Ministry of Power, Government of India, on 10th January 2024. The Petitioners contend that Rule 22(3) of these Rules, which purportedly limits the levy of Additional Surcharge to the extent of contract demand maintained, became effective immediately upon notification by the Central Government, thereby rendering the Respondent's actions illegal from February 2024 onwards.
- B. It is most respectfully submitted that the Electricity Act, 2003, specifically grants powers of tariff determination and regulation of intra-state distribution to the State Electricity Regulatory Commission.
- C. This Hon'ble Commission notified the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) (Revision-I) (Fourth Amendment) Regulations, 2024, only on 24th May 2024. The Clause 1.2 of these Amendment Regulations is reproduced herein for ease of reference:

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

- D. It is a settled principle of law that subordinate legislation operates prospectively unless the parent statute expressly authorizes retrospective application. It is of utmost importance to mention here that neither the Electricity Act, 2003, nor the notification of the Fourth Amendment Regulations contains any provision for retrospective applicability. Therefore, the waiver or modification of the Additional Surcharge applies only from the date of publication, i.e., 24.05.2024.
- E. Thus, for the period between February 2024 and May 2024, the Respondent was legally obligated to levy Additional Surcharge as per the then-prevailing MPERC Regulations and the Tariff Order for FY 2023-24. It is further submitted that any deviation from the prevailing regulations by the Respondent would have constituted a violation of this Hon'ble Commission's orders. The Petitioner's claim for a refund for this interim period is legally unsustainable as it seeks to apply a regulation retrospectively to a period when it was not in force in the State of Madhya Pradesh.

F. ABSENCE OF INHERENT SUBJECT MATTER JURISDICTION

- a. The present Petition is preferred under Section 86(1)(f) of the Electricity Act, 2003. It is submitted that this section exclusively empowers the Hon'ble Commission to adjudicate disputes between licensees and generating companies.
- b. The Respondents submit that the Petitioner has explicitly admitted in Paragraphs Nos 1 and 3 of the Petition that the Petitioner Nos. 2 and 3 are Consumers maintaining a contract demand with the Respondent.
- c. It is submitted that Section 86(1)(f) of the Electricity Act, 2003 empowers the State Commission to adjudicate disputes "between licensees and generating companies". The Petitioners No.2 and No.3 are admittedly embedded consumers, not licensees or generating companies. Therefore, to the extent the petition seeks relief on behalf of such consumers (Petitioners Nos 2 and 3), it lies beyond the scope of Section 86(1)(f) In any event, a dispute under Section 86(1)(f) must arise out of a valid contract or provision of law between a licensee and a generating company, and mere grievances of open-access consumers against the licensee do not constitute a dispute under Section 86(1)(f).
- d. The Petitioners allege jurisdiction under Section 86(1)(f) but fail to show a dispute falling within its ambit. As noted, Section 86(1)(f) is a special provision under the Act for disputes between a distribution licensee and a generating company. Thus, Petitioner No.1 (a generating company) has a PPA with MPPKVVCL, and Petitioners No.2 and No.3 are not parties to any contract with MPPKVVCL, and thus have no rights under Section 86(1)(f). Any issue of charges between MPPKVVCL and embedded consumers cannot be raised under Section 86(1)(f). Hence, the invocation of Section 86(1)(f) is wholly misplaced, and the petition must be rejected on this ground alone.
- e. The Hon'ble Supreme Court in "*Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd. (2019) 17 SCC 82*" has held that:
"Adjudication upon disputes can only be between licensees and generating companies and not between licensees and consumers, which is provided for in an open access situation by Section 42 (for which there is a separate mechanism)."
- f. The Hon'ble Supreme Court has held that an Open Access Consumer is not a generating company. Therefore, a dispute between a Discom and a Consumer cannot be adjudicated by the Commission under Section 86(1)(f).
- g. In light of the above, the proceedings qua Petitioner Nos. 2 and 3 are *coram non judice* (before a judge not competent to hear the matter) and are liable to be dismissed on this ground alone as far as Petitioner Nos. 2 and 3 are concerned. Therefore, this Hon'ble Commission lacks the jurisdiction to entertain a money claim or refund petition filed by consumers

G. EXISTENCE OF A STATUTORY ALTERNATIVE REMEDY UNDER SECTION 42(5) AND 42(6) OF THE ELECTRICITY ACT 2003:

- a. Without prejudice to the foregoing objections, the Respondent submits that the present Petition, in so far as it relates to the grievances of Petitioner Nos. 2 and 3, is liable to be dismissed on the additional and independent ground that the Petitioners have bypassed the statutorily prescribed consumer grievance redressal mechanism under the Electricity Act, 2003.
- b. The Electricity Act, 2003 is a self-contained and complete code, which provides a clear, hierarchical and specialised mechanism for redressal of consumer grievances, particularly those relating to billing disputes, levy of charges, surcharges and tariff components reflected in individual electricity bills.
- c. That, Section 42(5) of the Electricity Act, 2003 mandates the establishment of the Consumer Grievance Redressal Forum (CGRF) by every distribution licensee. The said provision, as relied upon by the Respondent, is reproduced herein for ease of reference:
***"Section 42(5):
 Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission."***
- d. Further, Section 42(6) of the Electricity Act, 2003 provides a statutory appellate remedy against the decision of the CGRF before an independent Electricity Ombudsman. The said provision, reproduced herein for ease of reference, reads as follows:
***"Section 42(6):
 Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission."***
- e. That, bare perusal of the Section 42(5) and Section 42(6) makes it abundantly clear that all consumer specific grievances, including disputes relating to correctness of billing, application of tariff, levy or recovery of surcharges, interpretation of contract demand and refund or adjustment claims in individual bills, are required to be first preferred before the CGRF, and thereafter if necessary before the Electricity Ombudsman.
- f. Thus, in the present petition, the dispute of Petitioner No. 2 and Petitioner No. 3 is the alleged "wrongful imposition of the Additional Surcharge in their electricity bills" for a specific billing period, which is intrinsically and fundamentally a billing dispute, falling squarely within the jurisdiction of the CGRF under Section 42(5).
- g. It is a settled proposition of law that where a statute provides a specific and efficacious remedy, the same must be exhausted before invoking the extraordinary or original jurisdiction of a regulatory or

constitutional authority. Thus, permitting the Petitioners to directly approach this Hon'ble Commission in respect of individual billing disputes would amount to circumventing the statutory scheme and rendering Sections 42(5) and 42(6) nugatory.

- h. It is further submitted that if such Petitions are entertained, it would inevitably open the floodgates for every HT or LT consumer to approach this Hon'ble Commission for grievances arising out of individual bills, on thereby defeating the legislative intent behind Sections 42(5) and 42(6) of the Act and overburdening the Commission with matters outside its intended role, thus, rendering the specialised consumer grievance battle redressal mechanism otiose.
- i. That, on this ground alone, the Petition, in so far as it pertains to Petitioner Nos. 2 and 3, is liable to be dismissed at the threshold as not maintainable, with liberty, if any, to avail the appropriate remedy under Section 42(5) and thereafter under Section 42(6) of the Electricity Act, 2003.

PARAWISE REPLY ON MERITS

- A. With regard to the averments made in Para 1 of the Petition, the Respondent submits that the contents thereof are a matter of record only to the limited extent of the description of parties. It is specifically denied that the Respondent is levying an Additional Surcharge in contradiction to the provisions of the Electricity (Amendment) Rules, 2024 or the MPERC Open Access Regulations, 2021. In reply to the averments, it is submitted that the levy of Additional Surcharge by Respondent has been made strictly in accordance with the prevailing MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2021 and other applicable statutory instruments in force during the relevant period.
- B. With regard to the averments made in Para 2 of the Petition, the Respondent submits that the same are denied as being legally untenable. It is denied that there is any "unjust enrichment" or "wrongful recovery" of charges. In reply, it is submitted that the Respondent is a regulated utility and recovers an Additional Surcharge to offset the stranded fixed costs of generation capacity. Furthermore, any claim regarding the PPA dated 26.07.1999 is subject to the mandatory Dispute Resolution mechanism provided at Page 62 of the said Agreement, which the Petitioner has failed to invoke before approaching this Hon'ble Commission.
- C. Save, and except for the matters of fact and record specifically admitted herein, the Respondent denies and disputes each and every allegation and/or contention raised in Paragraphs 3 to 14 of the Petition. The contents thereof are primarily matters of record; the Respondent submits that the same do not merit any response in terms of the present reply. However, it is submitted that the "Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Intra State Open Access in Madhya Pradesh) Regulations, (Revision I) 2021 (Fourth Amendment) (ARG-

24(1)(iv) of 2024", came into force only from the date of their publication in the Madhya Pradesh Gazette. The Regulation 1.1 and 1.2 of the said regulation are reproduced herein for ease of reference:

"FOURTH AMENDMENT TO MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS FOR INTRA-STATE OPEN ACCESS IN MADHYA PRADESH) (REVISION-1) REGULATIONS, 2021

1. Short Title and Commencement- 1.1. These Regulations shall be called "Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, (Revision-1) 2021 (Fourth Amendment) (ARG-24(I)(iv) of 2024)".

1.2. These Regulations shall come into force from the date of their publication in the Madhya Pradesh Gazette."

It is submitted that the said regulations do not have a retrospective effect, thus the Respondent was bound by the then-existing 2021 Regulations. It is further submitted that the Amendment to Regulations 13 of the Principal Regulations, 2.1 proviso is reproduced herein for ease of reference:

"Provided also that such additional surcharge shall be levied in case a person is availing power from open access over and above his contract demand with Distribution Licensee:

- D. With regard to the averments made in Para 15 of the Petition, the allegations of "wrongful" and "constant" levy of surcharge are denied as being legally untenable. It is of utmost importance to mention here that the Petitioner No. 3 clearly admits to the exceeding contract demand in 11 out of 17 months period from February 2024 - May 2025. Thus, as per the proviso to Regulations 13.1(vii) of the Fourth Amendment mentioned herein above, any consumer exceeding their contract demand is statutorily disqualified from the waiver of Additional Surcharge. It is submitted that the Petitioners' attempt to characterize this violation as "marginal" is legally irrelevant, as the Proviso to Regulation 13.1(vii) of the MPERC 4th Amendment Regulations, 2024, creates a strict disqualification: "Provided also that such additional surcharge shall be levied in case a person is availing power from open access over and above his contract demand." Since the Petitioner No. 3 admittedly exceeded its Contract Demand, the Respondent is statutorily mandated to levy the Additional Surcharge, and there is no "wrongful" imposition as alleged. Thus, the levy of Additional Surcharge by the Respondent is entirely legal and valid.
- E. With regard to the averments made in Para 16 of the Petition, the receipt of letters and the details of invoices are matters of record, the Respondent submits that the same do not merit any response in terms of the present reply.
- F. With regard to the averments made in Para 17-24 of the Petition, the

Respondent denies the same in toto as being wrong and untenable as against the Respondent. The Respondent places reliance on the Preliminary Objections Para No.2 of the present Reply is reiterated herein by way of reference with respect to the averment and not repeated herein for the sake of brevity.

REPLY TO THE GROUNDS:

That the contents of Para 25 to 35 are denied as being wrong and untenable in law, it is submitted that the reliance is placed on the Preliminary Objections/Grounds in the present Reply and averments herein above, and the same are not being repeated for the sake of brevity.

REPLY TO PRAYER

In view of the aforementioned facts and circumstances of the present matter and grounds raised, it is humbly prayed that the present Petition before this Hon'ble Commission is without any legal merit and deserves to be dismissed at the threshold.

- a. The present Reply may not be treated as any admission of fact or any contentions sought by the Petitioner. The Respondent reserves its right to submit further response or Affidavit, as and when required and/or directed by this Hon'ble Commission.
- b. The Respondent most respectfully submits that the Petitioners are not entitled to any of the reliefs sought under the "PRAYERS" section of the Petition. Each of the prayers is misconceived, legally untenable, and contrary to the statutory and regulatory framework governing Open Access, Additional Surcharge and renewable energy accounting. Without prejudice to the preliminary objections and submissions made hereinabove, the Respondent replies to the prayers as under:
- c. With reference to prayer clause (a), which seeks a declaration that the levy and recovery of Additional Surcharge by the Respondent is illegal and liable to be refunded, the Respondent reiterates that the present Petition is not maintainable. The levy of Additional Surcharge has been effected strictly in accordance with the MPERC Open Access Regulations as they stood prior to 24.05.2024 and the applicable Tariff Orders. The Electricity (Amendment) Rules, 2024 do not operate retrospectively, and no vested right to refund has accrued to the Petitioners. Furthermore, in so far as the grievance relates to individual billing disputes of Petitioner Nos. 2 and 3, the same is required to be agitated before the Consumer Grievance Redressal Forum under Section 42(5) of the Electricity Act, 2003. Accordingly, the relief sought under clause (a) is liable to be rejected.
- d. With reference to prayer clause (b), which seeks directions to restrain the Respondent from levying Additional Surcharge and to issue revised bills or credits, it is submitted that the Respondent is fully compliant with the Electricity Act, 2003, the regulations framed by this Hon'ble Commission, and the applicable tariff orders. The Respondent is statutorily bound to raise bills in accordance with prevailing regulations and cannot be enjoined

from performing its legal obligations. Any direction to restrain lawful billing would amount to compelling the Respondent to act in violation of statutory provisions and tariff orders. Hence, no such direction is warranted.

- e. With reference to prayer clause (c), which seeks directions relating to adjustment, credit or settlement of surplus / inadvertent energy allegedly injected by Petitioner No. 1, the Respondent submits that the said prayer is purely contractual in nature and arises out of the Power Purchase Agreement dated 26.07.1999. The PPA contains a binding dispute resolution clause mandating arbitration, and therefore, this Hon'ble Commission ought not to adjudicate the said claim. In any event, settlement of surplus or inadvertent energy is governed by the MPERC Renewable Energy Regulations and the applicable Tariff Orders for Small Hydro Projects, and not by the obsolete "deemed sale" concept relied upon by the Petitioners. Consequently, no relief can be granted under clause (c).
 - f. With reference to prayer clause (d), which seeks reliance upon earlier orders of this Hon'ble Commission, including the Order dated 19.10.2004, it is submitted that the said order is factually and legally no distinguishable and has been superseded by subsequent regulatory developments and Tariff Orders, particularly those issued in 2013 and 2018. The directions in earlier cases were rendered in a different regulatory regime and on the basis of specific facts and mutual understandings, which are conspicuously absent in the present case. The Petitioners cannot claim parity or extension of such orders as a matter of right.
 - g. In view of the foregoing submissions, it is submitted that none of the prayers sought by the Petitioners are sustainable in law or on the facts. The Petition is an attempt to retrospectively apply subordinate legislation, bypass statutory remedies, and resurrect superseded contractual provisions. The same is therefore liable to be dismissed in its entirety, with costs.
9. Subsequently by Affidavits dated 15th January' 2026, Petitioner i.e. M/s VE Commercial Vehicles Ltd., and dated 20th January' 2026, Petitioners i.e. M/s Ascent Hydro Projects Ltd., and M/s Piramal Pharma Ltd., submitted following additional submission:
- i. Following the filing of this Petition before this Hon'ble Commission, the Respondent addressed a letter dated 12.11.2025 in reply to the Petitioner No.1's letter dated 17.04.2025 ("MPPKVV Reply Letter"). In the letter, the Respondent admitted that it had been wrongly imposing additional surcharge on Petitioner No. 2, M/s Piramal Pharma Ltd. and agreed to refund the additional surcharge imposed on the Petitioner No. 2 in the period of June 2024 to September 2025 in two equal instalments in October 2025 and November 2025.
 - ii. In the said MPPKVV Reply letter, the Respondent refused to stop the imposition of additional surcharge on the Petitioner No.3, M/s VE Commercial Vehicles Ltd. basis a gross misinterpretation of the term "Contract Demand", wherein the Respondent compared contract demand with total generation capacity to consumers.

- iii. Subsequently on 04.11.2025, the Respondent refunded the first instalment of Rs.61,58,092.58/- through its October invoice raised on Petitioner No.2.
 - iv. The Petitioner No. 1 addressed a letter dated 02.12.2025 in response to the MPPKVV Reply. The Petitioner No.1 pointed out the discrepancy of comparing generation capacity with contract demand and requested that the additional surcharge be refunded to the Petitioner No. 3. The Petitioner No. 1 also pointed out that the first instalment did not cover the interest on the amount withheld since June of 2024 and requested that the same be paid through the second instalment.
 - v. Through the November 2025 invoice raised by the Respondent on the Petitioner No. 2 on 05.12.2025, the Respondent repaid the second instalment of Rs.61,58,092.58/-, thus repaying the total additional surcharges charged on the Petitioner No. 2 for the period of June 2024 to September 2025, sans the interest component, which is yet to be repaid.
 - vi. The Respondent has also not levied any additional surcharges on the Petitioner No. 2 in the October 2025 and November 2025 invoices.
 - vii. The Respondent is however, yet to extend this lawful exemption to the Petitioner No.3, which is also entitled to this exemption basis the grounds set out in detail in the Petition.
10. By Affidavit dated 20th January' 2026, Petitioners i.e. M/s Ascent Hydro Projects Ltd., M/s Piramal Pharma Ltd., and M/s VE Commercial Vehicles Ltd., submitted following in their rejoinder:
- i. The present consolidated Rejoinder ("Rejoinder") has been filed on behalf of the Petitioners to the Reply to the Petition dated 30.12.2025 and the Reply to the Interim Application("IA") of even date filed by the Respondent before this Hon'ble Commission.
 - ii. At the outset, the Petitioners deny each and every allegation, contention, interpretation, averment and inference contained in the Replies filed by the Respondent, save and except those specifically admitted herein or evident from the record. The Replies are majorly evasive, internally inconsistent, and fails to meet the pleadings standard mandated under law.
 - iii. The Respondent has largely issued bald denials without dealing with the material pleadings, statutory framework, and documentary evidence relied upon by the Petitioners.
 - iv. The Replies proceed on an erroneous conflation of contractual disputes with statutory regulatory issues. The present Petition and the Interim Application filed therein squarely raise questions of regulatory compliance and related issues which cannot be diluted into private contractual disputes.

- v. The instant Rejoinder will first address the Respondent's contentions contained in its Reply to the main Petition, before proceeding to counter the Respondent's Reply to the Petitioners' IA.

REJOINDER TO THE REPLY TO THE PETITION DATED 30.12.2025

RESPONDENT'S CONTENTION ON EXISTENCE OF VALID AND BINDING ARBITRATION CLAUSE

- vi. The Respondent has contended, in paragraphs A(a) to A(f) that the Petition is not maintainable since it seeks adjudication of disputes arising out of the Power Purchase Agreement dated 26.07.1999 ("PPA") executed between the parties, thus making mutual discussion, conciliation and then arbitration the appropriate dispute resolution mechanism via the dispute resolution clause contained under Article XII.
- vii. The Petitioners humbly submit that the Respondent's objection based on the arbitration clause contained in the PPA is wholly misconceived. The Respondent's attempt to portray the present dispute as a purely contractual or arbitrable dispute is legally untenable, and contrary to settled laws governing the jurisdiction of State Electricity Regulatory Commissions and the arbitrability of disputes. The present dispute arises not from contractual performance but from statutory obligations imposed under the Electricity Act, Central Rules and State Regulations.
- viii. It is settled law that statutory jurisdiction conferred on regulatory authorities cannot be ousted by private contractual arrangements. Disputes involving tariff determination, surcharge levies, accounting for injection of electricity, and statutory compliance are non-arbitrable in nature.
- ix. Reliance may be placed on the judgment of the Hon'ble Supreme Court in the matter of GUVNL v. Essar Power Ltd, (2008) 4 SCC 755 which held as follows:

"59. In the present case we have already noted that there is an implied conflict between Section 86(1) (f) of the Electricity Act, 2003 and Section 11 of the Arbitration and Conciliation Act, 1996 since under Section 86(1)(f) the dispute between licensees and generating companies is to be decided by the State Commission or the arbitrator nominated by it, whereas under Section 11 of the Arbitration and Conciliation Act, 1996, the court can refer such disputes to an arbitrator appointed by it. Hence on harmonious construction of the provisions of the Electricity Act, 2003 and the Arbitration and Conciliation Act, 1996 we are of the opinion that whenever there is a dispute between a licensee and the generating companies only the State Commission or the Central Commission (as the case may be) or arbitrator (or arbitrators) nominated by it can resolve such a dispute, whereas all other disputes (unless there is some other provision in the Electricity Act, 2003) would be decided in accordance with Section 11 of the Arbitration and Conciliation Act, 1996. This is also evident from Section 158 of the Electricity Act, 2003. However, except for Section 11 all other provisions of the Arbitration and Conciliation Act, 1996 will apply to arbitrations under Section 86(1)(f) of the

Electricity Act, 2003 (unless there is a conflicting provision in the Electricity Act, 2003, in which case such provision will prevail)."

- x. The Hon'ble Appellate Tribunal for Electricity ("APTEL") has authoritatively settled this issue in *Madhya Pradesh Power Management Co. Ltd. v. Damodar Valley Corporation* (Appeal No. 309 of 2019), wherein the Tribunal clearly delineated what constitutes a "tariff dispute" and held that such disputes are non-arbitrable and must necessarily be adjudicated by the Regulatory Commission. The Hon'ble APTEL held that such disputes to be adjudicated by Appropriate Commissions, irrespective of the existence of an arbitration clause in the PPA. The Tribunal in para 25 held that:

"25. ... We wonder how the dispute relating to termination of PPAS would be regarded as a dispute relating to tariff or regulation of tariff of the generating companies, as held by the Commission in the impugned order. To understand this aspect, it is necessary to determine what constitutes tariff and non-tariff disputes. In our considered opinion, all the matters which would have a bearing upon the tariff for a generating company would constitute 'tariff disputes' namely disputes related to Change in Law, delayed completion of projects, invocation of Force Majeure events etc. Such matters impact the tariff for a generating company directly and, therefore, fall solely within the jurisdiction of the Commission...

30. We do not see any conflict or inconsistency between Section 8(1) of A&C Act, 1996 and Section 79(1) of the Electricity Act, 2003. Section 8(1) of the A&C Act, 1996 makes it mandatory for a judicial authority to refer the parties for arbitration where it finds that a valid arbitration agreement exists between the parties and a party to the arbitration agreement so applies. Section 79(1)(f) of the Electricity Act, 2003 also empowers to the Central Commission to refer to any dispute for arbitration apart from adjudicating the disputes involving in generating companies or transmission licensees etc. In this regard, we have already clarified that in view of provisions of Clauses (a) to (d) of Section 79(1) of the Electricity Act, 2003, only non-tariff disputes can be referred to arbitration.

*...
32. It is true that the scheme of Electricity Act, 2003 shows that it is a self-contained comprehensive legislation which not only regulates generation, transmission and distribution of electricity by public bodies and encourages public sector participation in the process but also ensures creation of special adjudicatory mechanism to deal with the grievances of any person aggrieved by any order made by an adjudicating officer under the Act. However, at the same time, the expression "and to refer any dispute for arbitration" used at the end of clause (f) of both the Sections 79(1) and 86(1) of the Electricity Act, 2003 definitely leave scope for some disputes to be referred for arbitration. This view is further strengthen by Section 158 of the Act which provides that arbitration directed by the Commission shall be subject to the provisions of A&C Act, 1996.*

*...
36. Thus, in view of the above discussion, we are unable to uphold the findings of the Commission in the impugned order. We make it clear that non-tariff disputes involving a generating company or a distribution licensee do not fall within the ambit of clause (f) of Section 79(1) of the Electricity Act, 2003 and are thus,*

arbitrable."

- xi. This judgement of the APTEL was further upheld by the Hon'ble Supreme Court in Civil Appeal No. 10480/2024 (2024 SCC OnLine SC 2936).
- xii. The Tribunal further clarified that only disputes which relate purely to termination or breach of contract, and which have no bearing on tariff or regulatory functions, may be classified as non-tariff disputes capable of reference to arbitration. The Tribunal expressly recognised that while arbitration is not alien to the Electricity Act, disputes involving statutory and regulatory functions of the Commission are excluded from arbitration and must be adjudicated by the Commission in exercise of its regulatory jurisdiction.
- xiii. A bare perusal of the Prayers in the Petition convey that the primary reliefs sought by the Petitioners pertains to the non-levy of additional surcharge on the Petition Nos. 2 and 3, and hence fall, quite evidently, within the bracket of tariff disputes. Further, Petitioner No. 1 also seeks tariff for the units which have been consumed by the Respondent and not adequately compensated.
- xiv. The Petition raises issues relating to tariff treatment, regulatory compliance, statutory interpretation and legality of charges levied under the regulatory framework. These matters fall squarely within the exclusive jurisdiction of this Hon'ble Commission and cannot be ousted by contractual clauses or private dispute resolution mechanisms.
- xv. The Respondent's attempt to divert a statutory dispute into arbitration is therefore liable to be rejected in limine as being contrary to law and binding legal precedents.

RESPONDENT'S CONTENTION ON OBJECTION ON MISJOINDER OF PARTIES AND CAUSES OF ACTION IS UNSUSTAINABLE

- xvi. The Respondent's objections contained in paras B(a) to B(d) regarding alleged misjoinder of parties and causes of action is wholly artificial and devoid of any legal substance. The present Petition raises common questions of law and fact arising from a single integrated and continuous course of conduct adopted by the Respondent, namely the unlawful levy and recovery of Additional Surcharge, erroneous interpretation and application of statutory regulations, and improper adjustment of renewable energy injections by Petitioner No.1. The reliefs sought flow from the same factual matrix, regulatory framework, and statutory obligations and therefore constitute a composite cause of action.
- xvii. The Petitioners submit that a conjoint reading of Order II Rule 3 with Order I Rule 1 of the Code of Civil Procedure, 1908 ("CPC") would convey that joinder of causes of action and parties is expressly permissible in situations where:
 - I. Right to relief arises out of the same act or transaction or series of acts or transactions, and

- II. Common question(s) of law or fact would arise if separate suits were brought.
- xviii. In fact, Order II Rule 2 explicitly provides that plaintiffs having causes of action in which they are jointly interested against the same defendant may unite such causes of action in the same suit.
- xix. The Hon'ble High Court of Bombay made a categorical observation in ***Krishna Laxman Yadav and Ors. vs. Narsingh Rao Vithal Rao Sonawane and Anr., (1972 SCC OnLine Bom 96)***, holding that, "*The result of the provisions of Order 1, Rule 1 of the Civil Procedure Code is that where right to relief exists in favour of several plaintiffs as a result of the same transaction even if the right is several the plaintiffs would be entitled to join in the same suit for the several reliefs the only precondition being that common question of law or fact arose between the plaintiffs.*"
- xx. It is a set principle of law that even if one question of law or fact common to both the suits could arise, there would be justification for joinder and the requirement of Rule 1 of Order I would be satisfied [***Sitaram Agarwalla vs. Rajendra Chandra Pal and others, 1955 SCC OnLine Gau 587***]. Similarly, in ***Shambhoo Dayal vs. Chandra Kali Devi (1963 SCC OnLine All 34)***, the Hon'ble Allahabad High Court observed that plaintiffs can be joined in one suit even on the basis of different causes of action, provided any common question of law or fact would arise if the suit had been filed separately.
- xxi. The object of these provisions is to avoid multiplicity of proceedings, prevent conflicting decisions, and secure complete and effective adjudication of disputes arising from the same transaction. In the present case, all Petitioners are aggrieved by the same illegalities committed by the Respondent through misinterpretation of the same statutory provisions. This adjudication necessarily involves common legal questions, and questions of fact as well as law. Further, Petitioner Nos 2 & 3 are not getting the units injected by Petitioner No. 1 (after accounting for transmission and distribution losses).
- xxii. In any event, the Petitioners humbly submit that misjoinder of parties is not fatal to proceedings, as recognised under Order I Rule 9 CPC, which expressly provides that no suit shall be defeated by reason of misjoinder or non-joinder of parties, conveying that courts should adjudicate disputes on merits rather than on technicalities.
- xxiii. Hence, it is submitted that the Respondent's misplaced objection on misjoinder is a bald technical objection, raised only to delay adjudication and deserves to be rejected in limine.

RESPONDENT'S ATTEMPT TO MISAPPLY THE DOCTRINE OF STATUTORY OVERRIDE

- xxiv. The Petitioners humbly submit, with respect to paras C(a) to C(d), that the Respondent has attempted to plead the doctrine of statutory override via vague,

bald, and wholly unsubstantiated averments and resting on generic assertions without pleading any concrete statutory basis. The Respondent has conspicuously failed to identify even a single specific statutory provision, regulation, rule, or clause which allegedly negates or overrides the Petitioners' claims basis the PPA. It is settled law that a party asserting statutory override must plead and establish the provision relied upon.

xxv. The Petitioner relies squarely on clauses 3.8 and 8.3(c) of the PPA, to contend that it provides that surplus units supplied by the Petitioner No. 1 will be deemed sale and will be purchased by the Respondent at Rs. 2.25/unit and the Respondent is in violation of the same.

xxvi. The Respondent's reliance on the judgment of the Hon'ble Supreme Court in ***PTC India Ltd. v. CERC, [(2010) 4 SCC 603]*** is wholly misplaced, legally distinguishable and irrelevant to the present dispute. In the present proceedings, the Petitioners are not challenging the validity of any regulation or subordinate legislation. The grievance raised herein pertains exclusively to the illegalities committed by the Respondent re the wrongful levy of additional surcharge and the violation of the PPA. The ratio of PTC India has no application to disputes concerning unlawful operational actions taken in violation of binding regulations. Further, the judgment of the Hon'ble Supreme Court has been further clarified in the matter of ***GVNVL v. Renew [(2023) SCC OnLine SC 411]***.

"Applicability of the Second Amendment to pre-existing contracts-the general law

60. Power Purchase Agreements are essentially not statutory contracts; however, certain terms contained in those contracts, are regulated by law, i.e. applicable regulations, under the Act. The PPA between a generating company or, as in this case, a wind generator, and a distribution licensee, such as Gujarat Urja, is the outcome of a carefully considered decision, whereby the parties, after due deliberations and negotiations, agree on terms, which are based on existing law and regulations. Aside from contending that the PPA had to be approved, (which this court has rejected in a previous part of this judgment) but was not, the respondents also urge, independently, that the Second Amendment had necessitated re-visiting of the terms of the PPA, relating to the payment of average pooled power purchase cost, given that the amendment mandated that the power would be at the pooled power purchase cost, as opposed to the previous provision, which stated that the cost would not exceed the pooled power purchase cost.

...

63. Whilst there cannot be any doubt that regulations framed under the Act can be made applicable to existing contracts, what is discernible from PTC India (supra) is that in that case, the applicability of the Trading Margin Regulations which for the first time, compelled persons engaged in trading of electricity, in terms of Section 2 (17) of the Act, to register, obtain licenses, and operate within the margin limits indicated in the regulations. These provisions introduced a new regime, regulating an area, or activity which had hitherto been unregulated. The entire edifice of prescribing general standards for application to all those operating within its sweep, is to ensure that they are universal and constitute a code. The observations in PTC India (supra), therefore, are to be seen in this context. Being regulations of general

application, dealing with arrange of commercial activity, there could have been no question of existing contracts, operating in isolation, through separate silos, outside of their framework. In the present case, however, the PPAs were entered into in the exercise of equal bargaining power, after due negotiation by the parties, and within the framework of existing regulations: both central and state. Therefore, unless any later amendment expressly overrides existing contracts, the terms of such agreements bind the parties."

xxvii. It is respectfully submitted that the PPA will not be affected by any later regulations. The Respondent has also failed to notice the judgment of this Hon'ble Commission which has upheld and implemented the provisions of the PPA post enactment of the Electricity Act, 2003. Such order has not been disputed by the respondent and has attained finality.

xxviii. The Petitioners humbly submit that the Respondent is attempting to circumvent the PPA by raising frivolous and vague grounds without legal or statutory backing, which is an impermissible practice. The Appellate Tribunal for Electricity ("APTEL") has, in numerous judgements, upheld the status of PPAs entered into between private parties as a sacrosanct document. In ***M/S Gadre Marine Export and Anr. vs. Maharashtra Electricity Regulatory Commission and Ors.***[APL No. **313 of 2018**), the Hon'ble APTEL held,

"31. The Tribunal in its earlier orders have also emphasized the importance of honoring binding contractual terms and highlighted that the PPA was a legally enforceable agreement that could not be unilaterally terminated by the Appellants. We would like reiterate that the PPA holds a sacred status as the pivotal document governing the relationship between contracting parties and it is essential to uphold the agreed-upon terms of the agreement to maintain its sanctity and ensure compliance with the parties' original intentions. Therefore, PPA is the sacrosanct document between the contracting parties and no interpretation averse to the consensus ad idem can be given to the PPA. This Tribunal in the case of "Uttar Pradesh Power Corporation Ltd. & Ors., vs. Uttar Pradesh Electricity Regulatory Commission"(2021 SCC OnLine APTEL 31)has held as under:

"115. From a perusal of Para 11 (relied upon by the respondent) of the abovementioned judgment, it is evident that a PPA is a statutory contract only to the extent of tariff fixation as well as the conditions as mentioned in Section 43A (2). Thus, the contention of the respondent no. 2 is not only misplaced but also incorrect. Further, the appellant is well within his rights to raise a legal argument at any stage of the proceedings. Further, the Appellant has taken a specific ground under the grounds to appeal whereby the appellant has contended that the State Commission while passing the impugned judgment and order dated 03.01.2018 has converted the PPA into a judicial direction without considering that the PPA is the sacrosanct document between the contracting parties and no interpretation averse to the consensus ad idem can be given to the PPA.

...

338. PPA is a sacrosanct document since it is approved by a regulatory authority created under a statute after parties sign and submit the same for approval. Therefore, even a slightest change or modification to it (PPA) cannot be done without

Commissions approval, hence it cannot be terminated without the prior approval of the State Commission"

32. The Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited's case (supra) on the issue of mandate to honour the binding contractual terms held as under:

"60. In the case at hand, rights and obligations of the parties flow from the terms and conditions of the Power Purchase Agreement (PPA). PPA is a contract entered between GUVNL and the first respondent with clear understanding of the terms of the contract.

A contract, being a creation of both the parties, is to be interpreted by having due regard to the actual terms settled between the parties. As per the terms and conditions of the PPA, to have the benefit of the tariff rate at Rs 15 per unit for twelve years, the first respondent should commission the solar PV power project before 31-12-2011. It is a complex fiscal decision consciously taken by the parties. In the contract involving rights of GUVNL and ultimately the rights of the consumers to whom the electricity is supplied, the Commission cannot invoke its inherent jurisdiction to substantially alter the terms of the contract between the parties so as to prejudice the interest of GUVNL and ultimately the consumers."

- xxix. The Respondent, hence, should be prevented by this Hon'ble Commission from trying to misuse this authority to rationalize the non-performance of binding provisions.

RESPONDENT'S ALLEGATION RE THE SUPPRESSION OF MATERIAL FACTS WITH RESPECT TO PETITIONER NO.3

- xxx. The Respondent's allegation of suppression contained in paras D(a) to D(d) is wholly unfounded, misconceived and contrary to the record. At all material times, the Petitioners have made full and complete disclosures of all relevant facts, including drawal and energy injection data. All of these are within the knowledge of the Respondent.
- xxxi. The Petitioners have, in paragraph 15 of the Petition, expressly admitted that Petitioner No. 3 had, in 11 months in the 17 months' period from February 2024 to May 2025, drawn power marginally in excess of the contract demand. Such an express disclosure, made voluntarily and upfront by the Petitioners, is wholly inconsistent with any allegation of suppression.
- xxxii. The Petitioners reiterate that as per applicable orders, a consumer is allowed to draw in excess up to 120% of contract demand without any imposition of penal charges, and the Respondent cannot be allowed to circumvent established legal positions by vaguely referring to this provision as "a separate regulatory mechanism".

RESPONDENT'S FRIVOLOUS CONTENTION THAT THE ELECTRICITY (AMENDMENT) RULES, 2024 CAME INTO FORCE AFTER THE NOTIFICATION BY THE MPERC

- xxxiii. The Petitioners humbly in respect of paras E(a) to E(e) submit that the Electricity

(Amendment) Rules, 2024 ("Amendment Rules") have been framed by the Central Government in exercise of powers conferred under Section 176 of the Electricity Act. Rule 1 of the said Amendment Rules expressly stipulates that the amendment shall come into force on the date of its publication in the Official Gazette, which publication admittedly took place on 10.01.2024 bearing number "G.S.R. 36 (E)".

xxxiv. Consequently, the Amendment Rules became operative and binding ipso jure from the date of such publication and did not require any further act, adoption, or corresponding amendment by State Commissions for their enforcement.

xxxv. The Respondent's contention that the Amendment Rules would apply only upon the notification of the MPERC(Terms and conditions for intra-state Open Access in Madhya Pradesh) (Revision-I) (Fourth Amendment) Regulations, 2024 is thus legally untenable and betrays established principles of hierarchy under the Electricity Act. Once the Central Amendment Rules validly framed under Section 176 comes into force, it has overriding effect and prevails over any inconsistent state regulations.

xxxvi. Section 176 of the Electricity Act categorically vests in the Central Government, the powers to make rules and such rules are binding on all State Commissions. The Respondent cannot be allowed to perpetuate an illegal levy merely on the specious ground that a regulatory alignment at the State level occurred at a later point in time.

xxxvii. The Petitioners submit that once the Amendment Rules came into force upon Gazette publication, any levy inconsistent therewith became ex facie unlawful, regardless of whether or when the State Regulations were amended. The Respondent's submissions regarding retrospectivity of the Rules are blatantly irrelevant.

PETITIONERS' CONTENTION REGARDING ABSENCE OF INHERENT SUBJECT MATTER JURISDICTION OF THIS HON'BLE COMMISSION & THE EXISTENCE OF AN ALTERNATIVE REMEDY FOR CONSUMER GRIEVANCE REDRESSAL

xxxviii. The Petitioners humbly submit that this Hon'ble Commission has the requisite jurisdiction to hear and adjudicate this instant dispute raised by the Petitioners under Section 86(1)(f) of the Electricity Act. The present dispute has been raised by a generator against a licensee. Further, Regulation 20 itself confers the power upon this Hon'ble Commission to remove difficulties in implementation of the Open Access Regulations. It is also pertinent to note that this Hon'ble Commission cannot delegate its' power to adjudicate disputes under Section 86 to any other person. Section 97 of the Act is extracted as below:

"Section 97. (Delegation): The Appropriate Commission may, by general or special order in writing, delegate to any Member, Secretary, officer of the Appropriate Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers to adjudicate disputes under Section 79 and Section 86 and the powers to make regulations under section 178 or section 181) as it may deem necessary."

- xxxix. With regards to paragraphs F(a) to F(G) and G(a) to G(i) of the Respondent's Reply to the Petition, the Petitioners admit that Section 86(1)(f) vests authority in the State Commission to adjudicate disputes between licensees and generating companies, the prayers in the Petition it clear that the reliefs respecting non-levy of additional surcharge and the other reliefs have been sought by the Petitioner No. 1, in the capacity of a generating company, at the behest of/ for the interests of Petitioner Nos. 2 and 3.
- xl. It is submitted that Petitioner Nos. 2 and 3 are necessary parties in this present dispute and in their absence, no valid adjudication can take place. The Hon'ble Supreme Court in *Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue*, [1962 SCC OnLine SC 130] has made it clear that a necessary party is one without whom no order can be made effectively. In the case of *Hardeva v. Ismail*, [AIR 1970 Raj 167], two tests were laid down for determining the question of whether a particular party is a necessary party to a proceeding:
- I. there must be a right to some relief against such party in respect of the matter involved in the proceeding in question; and
 - II. it should not be possible to pass an effective decree in absence of such a party.
- xli. The Petition makes it clear that the Respondent had been levying additional surcharge on Petitioner Nos. 2 and 3 from February 2024 in violation of the Amendment Rules and thus it is not possible for this Hon'ble Commission to adjudicate the present dispute without them being impleaded as parties.
- xlii. The Petitioners seek to draw the Hon'ble Commission's attention to the fact that Petitioner Nos. 2 and 3 are consumers drawing power from the Petitioner No.1 and hence the illegalities being committed by the Respondent in the form of wrongfully levying additional surcharge on the Petitioner Nos. 2 and 3 have a direct financial bearing on the Petitioner No.1, the generating company.
- xliii. It is humbly submitted that the Petitioner No. 1, who is rightfully entitled to approach this Hon'ble Commission under Section 86(1)(f) of the Electricity Act, has been vehemently affected by the acts of the Respondent in levying surcharge on its consumers which has been acting as an impediment to Petitioner Nos. 2 and 3 continuing to source power from the Petitioner No.1, thus directly harming Petitioner No.1's financial interests and constraining it to file this captioned Petition.
- xliv. To buttress this contention further, the Petitioners would like to highlight that it was Petitioner No. 1 that was addressing letters to the Respondent, dated 10.09.2024, 25.10.2024 and 17.04.2025, requesting the Respondent to stop the illegal levy of additional surcharge on its consumers, namely Petitioner Nos. 2 and 3.
- xlvi. In light of the aforesaid, the provision in the Electricity Act for the establishment of

a Consumer Grievance Redressal Forum ("CGRF") becomes completely irrelevant in the given context. The Petitioners vehemently submit that the presence of provisions in the Electricity Act for an alternative statutory remedy cannot strip the Petitioner Nos. 2 and 3 of their right to seek reliefs through Petitioner No. 1, which is a rightful applicant under Section 86(1)(f) of the Electricity Act. Under Section 97, only this Hon'ble Commission can adjudicate the present dispute.

- xlvi. The Petitioners, hence submit, that the Respondent is attempting to circumvent its legal obligations by raising such frivolous and hyper-technical issues.

REJOINDER TO THE REPLY ON MERITS

- xlvii. With respect to para 'a' of the Reply on Merits, it is submitted that the Petitioners have established it beyond doubt through the captioned Petition and this instant Rejoinder that the Respondent has been wrongfully levying additional surcharge on the Petitioner Nos. 2 and 3 in direct violation of the January 2024 Amendment Rules and the MPERC (Terms and conditions for intra-state Open Access in Madhya Pradesh) (Revision-I) (Fourth Amendment) Regulations, 2024.
- xlviii. Regards para 'b', the Petitioners reiterate that it has been well established that the Respondent is in direct violation of clauses 3.8 and 8.3(c) of the PPA which provides that excess units supplied by Petitioner No. 1 will be deemed sale to the Respondent. The Respondent's act of simply consuming the excess injected units without providing any credit to the Petitioner No. 1 conspicuously leads to unjust enrichment of the Respondent at the cost of the Petitioner No.1. Further, the Petitioners have, in this instant Rejoinder, already dealt with the Respondent's frivolous contentions regarding the existence of an arbitration clause.
- xlix. In regards to paragraph 'c', the Petitioners submit that they have already established above that the Amendment Rules came into force with its publication in the official Gazette on 10.01.2024 and the date of publication of the MPERC (Terms and conditions for intra-state Open Access in Madhya Pradesh) (Revision-I) (Fourth Amendment) Regulations, 2024 has no bearing on the enforcement of the Amendment Rules whatsoever. The Petitioners have also made it clear that the drawal with respect to Petitioner No.3 was well within the upper limit of 120% of contract demand.
- l. In paragraph 'd', the Respondent has baldly reiterated its contentions in paragraphs D(a) to D(d). The Petitioners have already dealt with these contentions above and the same is not being reiterated here for the sake of brevity.
- li. The contents of paras 'e' and 'f' are merely repetitions of points already dealt with and hence merit no response.

REJOINDER TO REPLY TO PRAYER

- lii. The Respondent has in paras 'a' and 'b' of the reply to the prayer made bald repetitions about the alleged untenability of the Petitioners' prayers without citing

any legal or factual grounds to substantiate the same.

- liii. In para 'c', the Respondent has repeated the contentions regards the applicability of additional surcharge, the retrospectivity of the Electricity Rules and the existence of an alternative redressal mechanism in the form of the Consumer Grievance Redressal Forum. These grounds are devoid of legal merit and have already been dealt with by the Petitioners in the instant Rejoinder.
- liv. With reference to para 'd', the Petitioners humbly submit that they have, through this instant Rejoinder, established beyond doubt that the Respondent was in violation of the Amendment Rules as well as subsequent state amendments in levying additional surcharge on Petition Nos. 2 and 3. The fact that the Respondent is statutorily bound to raise bills on the said Petitioners has not been contested by the Petitioners; the Petitioners have, through the captioned Petition, sought to impede the Respondent from illegally levying additional surcharge on the said Petitioners.
- lv. In para 'e', the Respondent has once again attempted to raise the frivolous ground of arbitrability of the said disputes in a bid to circumvent the explicit clauses of the binding PPA making the Respondent liable to compensate the Petitioner No.1 for excess energy units injected into the system. These contentions are in the nature of mere repetitions and ought to be dismissed in limine.
- lvi. In para 'f', the Respondent baldly contends that the Petitioners' reliance on this Hon'ble Commission's order in Petition no. 83/2004 dated 19.10.2004 is misplaced since the order is "factually ad legally distinguishable and has been superseded by subsequent regulatory developments and Tariff Orders". The Respondent does not mention any fact or statutory provision that frustrates the Petitioners' reliance on the said order, apart from raising these utterly frivolous and groundless contentions.
- lvii. The Petitioners submit that the contentions advanced in paragraph 'g' of the Respondent's Reply to the Prayers are legally untenable, wholly misconceived, and bereft of any substantive merit. The Petitioners have established a robust case that each prayer sought in the Petition is firmly anchored in statutory provisions, binding contractual obligations under the PPA, and settled legal principles. The Respondent's bald denials fail to engage with or rebut the specific legal grounds raised by the Petitioners, thus rendering its objections completely unsustainable.

REJOINDER TO THE REPLY TO THE INTERIM APPLICATION

- i. At the outset, the Petitioners categorically deny each and every averment, allegation, contention, and submission contained in the Reply to the Interim Application ("Reply to IA"), save and except those expressly admitted herein or evident from record. The Reply to IA is evasive, repetitive of preliminary objections already raised in the Reply to the main Petition, and is conspicuously silent on the illegalities pleaded by the Petitioners.

- ii. The Respondent has, in paras 3, 4 and 5 alleged that the Petitioners' IA seeks final relief in the guise of interim protection. The Petitioners deny the same as legally untenable and. The Petitioners seek interim protection against a continuing illegality in the form of the illegal levy of additional surcharge on the Petitioner Nos. 2 and 3, and not the adjudication of final rights.
- iii. The Petitioners humbly submit that where a levy is prima facie ultra vires, the impetus lies of the Hon'ble Tribunal to intervene and grant reliefs at the interim stage. In the present case, the levy of Additional Surcharge is not a one-time act but a continuing monthly imposition, directly contrary to the Electricity (Amendment) Rules, 2024. The Respondent has also been consuming excess units of power injected by the Petitioner No.1 monthly, without compensating the Petitioner as per the terms of the PPA. Permitting its continuance during pendency would render the Petition illusory and defeat the very purpose of this present adjudication by causing continuous financial harm to the Petitioners.
- iv. The Petitioners have, through the Petition and the instant Rejoinder, made out substantial grounds showcasing the blatant illegalities being committed by the Respondent at the cost of the Petitioners. It is an established fact that there exist serious disputed questions that are to be tried in the course of the adjudication. The Petitioners would like to put on record that the Respondent has already repaid certain portion of the additional surcharge to Petitioner No.2, thus establishing that the Respondent itself realizes the illegalities being committed on its part, and that the probability of the Petitioners being awarded the complete reliefs sought by them are also high. Such circumstances are ideal for the grant of interim reliefs [Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719].
- v. The Respondent's bald assertion that no prima facie case exists is demonstrably incorrect. The Petitioners have established a strong prima facie case by showing, inter alia, that:
 - 1. Rule 22(3) of the Electricity (Amendment) Rules, 2024 expressly prohibits levy of Additional Surcharge in the manner adopted by the Respondent;
 - 2. The Amendment Rules were notified under Section 176 of the Electricity Act and came into force upon Gazette publication on 10.01.2024;
 - 3. The Respondent has continued levying Additional Surcharge even after the said date, without statutory authority.
- vi. The burden lay on the Respondent to justify the levy of the additional surcharge and the consumption of the excess units of power. The Reply to IA does not cite a single provision authorizing continuation of the surcharge post the Amendment Rules or the continual consumption of units.
- vii. The Respondent's contention that balance of convenience favours it is equally misconceived. The Petitioners are being subjected to continuous and unlawful financial loss, month after month, without authority of law. On the other hand, the Respondent suffers no irreversible prejudice if interim relief is granted. Any amount ultimately found payable can always be recovered from the Petitioners,

whereas illegal collection of monies from consumers has cascading financial and operational effects. Further, continued levy places Petitioners Nos. 2 and 3 in an untenable position vis-à-vis sourcing power from Petitioner No. 1, thereby directly prejudicing the generating company as well. This cascading prejudice is not remediable by post-facto adjustment.

- viii. The Petitioners respectfully submit that the Interim Application satisfies all three limbs of the trinity test.
- ix. It is pertinent to place reliance on the judgment of the Hon'ble APTEL in IA No. 697/2024 in Appeal No. 231 of 2024 wherein it has been held that while adjudicating upon grant of interim relief, minimum of two conditions are required to be fulfilled by the applicant. The relevant extract of the order is as below:

"PRINCIPLES APPLICABLE FOR GRANT OF INTERIM RELIEF:

The grant or refusal of interlocutory relief is covered by three well established principles viz., (1) whether the Appellant has made out a prima facie case, (2) whether the balance of convenience is in their favour i.e., whether it would cause greater inconvenience to them if interim relief is not granted than the inconvenience which the opposite party would be put to if it is granted, and (3) whether the Appellant would suffer irreparable injury. With the first condition as a sine quo non, at least two conditions should be satisfied by the Appellant conjunctively, and a mere proof of fulfilment of one of the three conditions does not entitle them to the grant of interlocutory relief in their favour. (Nawab Mir Barkat Ali Khan v. Nawab Zulfiqar Jah Bahadur, AIR 1975 AP 187; Gone Rajamma v. Chennamaneni Mohan Rao, (2010) 3 ALD 175; Kishoresinh Ratansinh Jadeja v. Maruti Corpn, (2009) 11 SCC 229; Best Sellers Retail (India) Private Ltd. v. Aditya Birla Nuvo Ltd., (2012) 6 SCC 792; State of Mizoram v. Pooja Fortune Private Limited, 2019 SCC OnLine SC 1741)."

- x. In these circumstances, denial of interim relief to the Petitioners would amount to permitting the Respondent to continue acting in defiance of Central laws and the binding PPA, undermining both the rule of law and the directions of this Hon'ble Commission.
- xi. For the foregoing reasons, the Reply to the Interim Application deserves to be rejected in toto, and the Interim Application deserves to be allowed in the interest of justice, equity and good conscience.
11. At the hearing held on 21.01.2026, Ld. Counsel for the Petitioners concluded her arguments. Ld. Counsel for the Respondent sought brief adjournment of hearing for arguments and submission of sur-rejoinder, if required. The Respondent was granted one week's time for filing sur-rejoinder with a copy of same served to the Petitioners simultaneously. The Petitioners might file counter submissions, if any, within seven days thereafter. The case was fixed for arguments on 19.02.2026.
12. At the hearing held on 27.02.2026, Ld. Counsel for the Respondent concluded his

arguments. Ld. Counsel for the Petitioner sought some time for arguments to reply on the new issues submitted by the Respondent in his arguments. The case was fixed for arguments on 07.04.2026.

13. At the last hearing held on 07.04.2026, arguments completed by the parties. Parties were allowed one weeks' time to file written submissions. The case was reserved for order thereafter.
14. No written submissions were made by either party within stipulated period of one week. The Commission thus proceeds in the matter based on the pleadings concluded till the last date of hearing held on 07.04.2025.

Commission's observations and findings:

15. The Commission has observed the following from the petition and the submissions of the petitioners and Respondent in this matter:-
 - 15.1. The Respondent has raised preliminary objections on the maintainability of the present Petition on the following grounds that :-
 - (i) the Power Purchase Agreement dated 26.07.1999 contains a binding arbitration clause mandating resolution of disputes through arbitration;
 - (ii) the Petition suffers from misjoinder of parties and causes of action; and
 - (iii) this Commission lacks jurisdiction under Section 86(1)(f) of the Electricity Act, 2003, particularly in respect of Petitioners No. 2 and 3 who are consumers. The Respondent has further contended that the Petitioners ought to have availed alternative remedies under Section 42(5) of the Electricity Act, 2003.
 - 15.2. The Petitioners, on the contrary, have submitted that the present dispute is not limited to a purely contractual interpretation of the PPA but involves enforcement of statutory provisions and regulatory framework governing open access, including Rule 22(3) of the Electricity (Amendment) Rules, 2024 and Regulation 13.1 of the MPERC Open Access Regulations, 2021 (as amended), and therefore, it squarely falls within the jurisdiction of this Commission.
 - 15.3. The Commission has carefully considered submissions made by parties. At the outset, it is pertinent to note that the core grievance of the Petitioners pertain to the alleged wrongful levy of Additional Surcharge, which is an issue not merely on contractual interpretation, but also involving the interpretation as well as application and compliance of a statutory provisions by a distribution licensee. Such matters fall within the regulatory and adjudicatory power of this Commission.
 - 15.4. With respect to the objection based on the arbitration clause contained in the PPA, the Commission is of the considered view that while disputes arising purely out of contractual obligations may be referable to arbitration, but the existence of such a clause does not oust the jurisdiction of the Commission where the disputes also involve interpretation and enforcement of statutory provisions, tariff, and

regulatory compliance. The Commission, being a statutory body is entrusted with the duty to regulate and adjudicate upon matters arising under various provisions of Electricity Act and the jurisdiction of Commission cannot be limited merely on account of a contract between parties.

- 15.5. Further, the Commission does not find merit in the Respondent's contention regarding misjoinder of parties and causes of action. The claims raised by the Petitioners arise out of a common and interlinked set of facts, namely, supply of electricity through open access from Petitioner No. 1 to Petitioners No. 2 and 3, the billing and levy of Additional Surcharge by the Respondent, and accounting of energy under the same transaction framework. The issues relating to surcharge, billing, and energy settlement are connected thus adjudicating it in isolation may lead to multiple litigations. Therefore, joinder of parties in the present Petition is proper and necessary for complete and effective adjudication of the disputes.
- 15.6. With regard to the objection on jurisdiction under Section 86(1)(f) of the Electricity Act, 2003, the Commission observes that the dispute which involves a generating company and a distribution licensee, with the issues relating to open access supply, surcharge levy, and energy accounting is not a consumer's dispute within the jurisdiction of Electricity Consumer Grievance Redressal Forum (ECGRF) constituted under Section 42(5) of Electricity Act, 2003. The present dispute raises broader issues of interpretation and application of statutory Rules and Regulations governing Additional Surcharge and open access framework. The reliance placed by the Respondent on the limited scope of Section 86(1)(f) is, therefore, misplaced in the present factual matrix. The contention regarding availability of an alternative remedy under Section 42 of the Electricity Act is also not persuasive.
- 15.7. The Respondent has also contended that the levy of Additional Surcharge has been carried out in accordance with the applicable Regulations and tariff orders and that the benefit of exemption cannot be extended beyond the strict interpretation of the Regulations. It has further been argued that the amendments relied upon by the Petitioners are prospective in nature and that in cases where contract demand is exceeded, the exemption is not available.
- 15.8. Per contra, the Petitioners have submitted that in terms of Rule 22(3) of the Electricity (Amendment) Rules, 2024 and the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2021 (as amended), Additional Surcharge is not leviable on open access consumption to the extent of contract demand where fixed charges are being paid. It has been further contended by Petitioner that the Respondent has acted in violation of the statutory framework by levying surcharge on entire open access consumption without proper energy accounting and without segregating energy drawn within and beyond contract demand.
- 15.9. The Commission has examined the rival submissions in light of the applicable regulatory framework. The relevant provisions of MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2021 are as under: -

(i) Regulation 15 (effective from 17.12.2021)

“15. PRIORITY FOR ADJUSTMENT OF ENERGY CREDIT

The priority for adjustment of energy drawl by an open access customer from different sources shall be as per the following sequence of reducing priority and shall be implemented for each time block, upon adjustment of applicable losses:-

- a) Renewable Energy Generators;*
- b) Captive Generating Plant;*
- c) Banked Energy;*
- d) Long-term Bilateral purchase;*
- e) Medium-term open access;*
- f) Short-term inter-State open access including Power Exchange transactions;*
- g) Short-term intra-State Open access;*
- h) Standby energy from Distribution Licensee under Green Energy Open Access, if any; and*
- i) Distribution Licensee.*

Provided that energy credit from more than one source from the similar category shall be adjusted on pro-rata basis of the contracted generation capacity from such source.”

(ii) Relevant provisions of Regulation 13(B) (ii) effective from 16.01.2023 (through 1st amendment in MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2021)-

“13(B) (ii)- The Cross-subsidy surcharge shall be as per the provisions of tariff policy read with Electricity (Amendment) Rules 2022 notified by the Central Government under the Act:

Provided that the cross-subsidy surcharge for Green Energy Open Access Consumer purchasing green energy, from a generating plant using renewable energy sources, shall not be increased, during twelve years from the date of operating of the generating plant using renewable energy sources, by more than fifty percent of the surcharge fixed for the year in which open access is granted:

Provided further that the additional surcharge shall not be applicable for Green Energy Open Access Consumers, if fixed charges are being paid by such a consumer:

.....”

(iii) Relevant provisions of Regulation 13 (B)(ii) effective from 31.05.2024 (through 4th amendment in MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2021)-

Regulation 13 (B)(ii):

"Provided further that additional surcharge shall not be applicable in case of green energy open access consumer, if the power from green energy open access is availed up to the extent of his contract demand with Distribution Licensee and fixed charges thereof are paid to the Distribution Licensee:

Provided also that such additional surcharge shall be levied in case green energy open access consumer is availing power from open access over and above his contract demand with Distribution Licensee:

Provided also that additional surcharge shall be applicable only for the green energy open access consumers who are or have been consumers of the concerned Distribution Licensee."

(iv) Relevant provisions of Regulation 13.2 effective from 23.01.2026 (through 6th amendment in MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2021)-

"13.2 All consumers having contract demand with the Distribution Licensee and eligible for availing open access under the provisions of these Regulations, shall at the time of application for availing open access, specifically mention whether the open access is required by them (i) upto the contract demand, (ii) over and above the contract demand or (iii) a combination of both:

Provided that the existing open access customers may also apply for availing open access (i) upto contract demand, (ii) over and above contract demand or (iii) a combination of both:-

Provided further that if open access is granted upto the contract demand, adjustment of only open access energy shall be made in the total energy recorded in billing meter of such open access customer and no adjustment of open access demand shall be made in the billing demand:

Provided also that all the open access customers injecting power into the grid must make reasonable endeavours to ensure that their actual sent-out capacity at an inter-connection does not exceed the actual sent-out capacity for that inter-connection:

Provided also that for carrying out balancing and settlement of energy and demand at all entry and exit points relating to open access agreements, the Licensee shall strictly adhere to the Madhya Pradesh Electricity Balancing and Settlement Code, 2023, Madhya Pradesh Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar Generating

stations) Regulations, 2018, and Madhya Pradesh Electricity Grid Code, 2024, as may be applicable and as amended from time to time:

Provided also that Distribution Licensees shall provide the details of actual energy credited to consumer in 15 Minutes time block of Intra-State Renewables (Wind, Solar, Wind-Solar Hybrid with or without storage) to MP SLDC on weekly basis and on monthly basis by 3rd of every month, in case open access is availed by consumer."

15.10. In light of the above regulatory provisions, the issues related to billing of additional surcharge and payment towards surplus energy injected by Ascent Hydro are dealt with in the following paragraph.

15.11. From the submissions of the Petitioners and the Respondent, it is not clear whether, energy accounting has been made in every 15 minutes time block in respect of Petitioner No. 2 & 3 in accordance with Regulation 15 of the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2021. Respondent is required to carry out the energy accounting accordingly for segregation of energy drawn from Discom, open access energy credited to consumers in their HT bills and treatment of surplus energy. The surplus energy over and above contract demand has to be computed based on actual demand recorded in consumers' meter and actual injection (in KVA or kW) after due adjustment of losses upto consumer's level by all the RE Generators with whom, Petitioners have agreements for open access. The Commission has observed that currently there are no provisions in MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2021 regarding payment of surplus energy injected by a non-captive renewable generator. However, fact remains that the surplus energy injected by M/s Ascent Hydro has been utilised by the Respondent Distribution Company. The Commission holds that M/s Ascent Hydro is entitled for payment of surplus energy injected into the grid as per article 3.1 of PPA dated 26.07.1999 which stipulates as under:-

" Subject to and in accordance with the terms and conditions of this agreement, the company agrees to sell and deliver, and Board agrees to accept and purchase, the entire electricity output from the plant at the rate of Rs 2.25 per unit (kWh) in accordance with the GoMP notification dated 26.09.1994 , exclusive of statutory taxes, duties if levied."

15.12. The Commission has noted that the Regulation 13(B)(ii) of the Open Access Regulations, 2021 was amended through 1st amendment in Regulations effective from 16.01.2023. The 2nd proviso to regulation 13(B)(ii) provides as under: -

"Provided further that the additional surcharge shall not be applicable for Green Energy Open Access Consumers, if fixed charges are being paid by such a consumer"

The above provision was effective from 16.01.2023 to 30.05.2024. The Commission notes that Petitioner No. 2 & 3 made full payment of fixed charges during the said period, therefore, question to bill additional surcharge on open access energy during the said period does not arise. The Commission holds that

during the period from 16.01.2023 to 30.05.2024, additional surcharge is not leviable and recovery, if any made from Petitioner no. 2 & 3 be refunded to them.

Regarding the billing of additional surcharge from 31.05.2024 onwards, the Commission has noted that Regulation 13(B)(ii) was further amended through 4th amendment in Open Access Regulations, 2021 with effect from 31.05.2024 onwards as under: -

“Regulation 13 (B)(ii):

Provided further that additional surcharge shall not be applicable in case of green energy open access consumer, if the power from green energy open access is availed up to the extent of his contract demand with Distribution Licensee and fixed charges thereof are paid to the Distribution Licensee:

Provided also that such additional surcharge shall be levied in case green energy open access consumer is availing power from open access over and above his contract demand with Distribution Licensee:

Provided also that additional surcharge shall be applicable only for the green energy open access consumers who are or have been consumers of the concerned Distribution Licensee.”

In this case, Respondent has considered the open access upto the extent of contract demand of Petitioner No. 2, as only energy (kWh) of open access is adjusted however, no adjustment of open access demand (kVA or kW) has been made. There should be no case of billing additional surcharge on the open access energy drawn by Petitioner No. 2 i.e. M/s Piramal Pharma Limited from M/s Ascent Hydro which is a green energy renewable generator, so far, the open access energy is drawn upto the contract demand. The Commission holds that from 31.05.2024 onwards, in all such months where open access energy is drawn upto contract demand i.e. consumers demand not exceeded his contract demand, additional surcharge is not leviable and recovery, if any made from M/s Piramal Pharma Limited be refunded to the consumer.

- 15.13. The Commission has further noted that in the case of Petitioner No. 3 i.e. M/s VE Commercial Vehicle Limited also, Respondent has considered the open access upto the extent of his contract demand, as only energy (kWh) of open access is adjusted and no adjustment in open access demand (kVA or kW) has been made. It has been argued by the Petitioners that since the maximum demand of Petitioner no. 3 did not cross 120% of the contract demand and as per tariff order in force, they were entitled to draw power to the extent of 120% of the contract demand without attracting penal charges. Therefore, drawl of open access energy upto 120% of the contract demand should also be considered as open access power drawn within contract demand and no additional surcharge should have been billed. The Commission does not find any merit in the aforesaid interpretation of the Petitioners. The provisions in Retail Supply Tariff order regarding no penal charges for excess energy upto 120% of contract demand is strictly applicable to contract demand only and cannot be extended for open access transactions. The additional

surcharge is exempted for green energy open access upto contract demand. In the instant case, open access is considered by Respondent Discom upto contract demand only and Petitioners also did not object it , as such, energy drawn over and above the contract demand shall be considered as excess energy drawn by consumer from Distribution Licensee and cumulative injected power of the open access sources over and above contract demand shall be considered as surplus energy injected into the Grid and payment of such surplus energy shall be made by the Respondent Discom in terms of Article 3.1 of agreement dated 26.07.1999 executed between Ascent Hydro and erstwhile Board. The Commission holds that in all such 15 minutes time blocks where open access energy is drawn upto contract demand, additional surcharge is not leviable and recovery, if any made from Petitioner No. 3 i.e. VE Commercial Vehicles Limited has to be refunded to the consumer. The energy drawn over and above contract demand shall be considered as excess power drawn by the consumer and shall be billed as per the extent provisions of applicable Retail Supply Tariff order of the Commission.

- 15.14. The Commission therefore directs the Respondent Discom to recompute all the bills of Petitioner No. 2 & 3 with proper energy accounting and recompute the surplus energy. The Respondent Discom is also directed to make payment of surplus energy to Petitioner No. 1 within one month from the date of issue of this order. As decided above, the additional surcharge shall be withdrawn by Respondent Discom from the bills of Petitioner No. 2 & 3. Further, energy drawn over and above contract demand shall be billed as excess drawl as per the provisions of Retail Supply Tariff order of the Commission in force from time to time.

16. Conclusion

In view of the foregoing observations and findings, the Commission holds that the present dispute is maintainable before this Commission, as the same primarily involves interpretation, application and enforcement of the statutory provisions and regulatory framework governing open access, levy of Additional Surcharge and energy accounting by the Distribution Licensee. On merits, the Commission concludes that the Respondent was not justified in levying Additional Surcharge on open access energy drawn by Petitioner No. 2 within its contract demand, and any such recovery is liable to be refunded. In the case of Petitioner No. 3 also, the Additional Surcharge could not have been levied on the open access consumption upto the contract demand. The Commission further holds that the contention of the Petitioners seeking extension of the 120% contract demand limit applicable for non-imposition of penal charges under the retail tariff order to open access transactions is incorrect and not tenable. However, energy drawn over and above the contract demand shall be considered as excess energy drawn by consumers from Distribution Licensee and shall be dealt with as per provision under applicable Retail Supply Tariff order. Further, the cumulative injected power of the open access sources over and above contract demand shall be considered as surplus energy injected into the Grid for which Petitioner No. 1 is entitled to payment in terms of Article 3.1 of the Agreement dated 26.07.1999. Accordingly, the Respondent is required to undertake proper energy accounting in accordance with the applicable Regulations, recompute the bills of Petitioner Nos. 2 and 3, withdraw the Additional Surcharge wrongly levied, refund the amount recovered from Petitioner No. 2 & 3 wherever applicable, determine the

surplus energy injected by Petitioner No. 1, and make payment thereof within the period specified in this Order.

With the aforesaid observations and findings, the subject petition stands disposed of.

(Gajendra Tiwari)
Member

(Gopal Srivastava)
Acting Chairman