

**MADHAY PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL**

**Sub:** Appeal /Applications under clause 12 of the Balancing and Settlement Code ,2009 in pursuance to the Directions issued by the Hon’ble High Court of Madhya Pradesh , Bench at Indore vide its Order 12.02.2018 passed in Writ Petition 2162 of 2015 (Century Denim V/s State of MP & others), Writ Petition 2159 of 2015 ( M/s Century yarn V/s State of MP & others) , Writ petition no. 2004/2015 of (M/s Ritspin Synthetics Ltd. V/s State of MP & others) ,Writ Petition 1173 of 2016 (Hind Spinner V/s State of MP & others) , Writ petition 2494 of 2015 (Wearit Global Ltd. V/s State of MP & Others. P.No 22/2018 (Hind Spinner V/s West Discom); P.No. 29/2018 (M/s Ritspin Synthetics Ltd V/s West Discom); P.No. 30/2018 (Wearit Global Ltd V/s West Discom); P.No. 40/2018 (M/s Century yarn V/s West Discom) ; P.No. 41/2018 (M/s Century Denim V/s West Discom)

**Order**

**(Hearing through Video Conferencing)**

**Date of order: 03.08.2021**

1. M/s Hind Spinner;
2. M/s Ritspin Synthetics Ltd;
3. M/s Wearit Global Ltd;
4. M/s Century Yarn;
5. M/s Century Denim;

**Petitioners**

V/s

1. MP Paschim Kshetra Vidyut Vitran Co. Ltd. (West Discom)
2. MP MadhyaKshetra Vidyut Vitran Co. Ltd. ( Central Discom) :
3. MP State Load Dispatch Center (SLDC) , MPPTCL;

**Respondents**

- i. Shri Amit Upadhyay, Advocate appeared on behalf of the petitioners.
- ii. Shri Vijay Sharma Advocate and Shri Sanjay Malviya SE appeared on behalf of West Discom.
- iii. Shri S.S. Patel, Add. CE and Shri Anurag Mishra, EE appeared on behalf of SLDC.

1. Pursuant to the common order of Hon’ble High Court, Indore bench dated 12.02.2018 in subject matter, the petitioners viz. M/s Century Denim, M/s Century Yarn, M/s Ritspin Synthetics Ltd., M/s Hind Spinner and M/s Wearit Global Ltd have filed petition before the Commission. Hon’ble High Court, Indore bench vide its order dated 12.02.2018 disposed of their Writ petitions and directed the petitioners at para 22 of Judgment to approach the Commission who is a competent authority to resolve the controversy between petitioners & respondents West Discom/RAO under the provisions of Clause 12 (removal of difficulty) of Regulations viz. MPERC Balancing & Settlement Code 2009 & its amendments thereof. The Court further stated at para 23 of said Judgment that subsequent to decision of the Commission in the matter, the issue of applicability of Section 56(2) shall be dealt by it.
2. The petitioners in their petition have prayed before the Commission that the representation filed in the matter be allowed and it may be hold that Balancing and Settlement Code, 2009 which stand amended in June, 2010 by excluding the “Intra-State Open Access Customers” would be applicable on the applicant company.
3. The Petitioners have made following broad submissions (for sake of brevity and issues being common in nature, excerpts from M/s Hind Systex Ltd’s Petition is referred )

- i. *That, the applicant being engaged in the manufacturing process requires an uninterrupted supply of electricity and thus, has opted for Open Access (Inter and Intra State). Through open access the appellant/ applicant has the liberty and discretion to avail of the supply of electricity from either a Government Agency or a Private Distribution Generator or Licensee. The appellant/ applicant can access to interstate electricity provider.*
- ii. *That, it is pertinent to note that the facility is subject to terms and condition that requires paying Cross Subsidy, applicable wheeling charges, billing (Energy) charges and applicable Transmission loss as notified from time to time by the Madhya Pradesh Electricity Regulatory Commission. The appellant/ applicant avail the open access from the Central Transmission System, for which it had obtained necessary grid compliances and due permission from MPMKWCL, as well as Nodal agency State Load Dispatch Center, as per the guide lines given in Madhya Pradesh Open Access Regulation, (2005) Utility for which the Complainant has entered into an agreement with the Central Transmission Utility/SLDC. It is specifically mentioned that the appellant/ applicant has always paid its dues and bill on time and has never defaulted an)' payment. The appellant /applicant Company is also a consumer availing HT Power Supply at 33 kV for a contract demand 4200 kVA under the HT agreement on 31.03.2015.*
- iii. *That, vide its arbitrary impugned notice dated 21.01.2016 , MPMKVVCL informed the appellant/ applicant that the unist of electricity purchased by open access were recalculated by the Account Officer of MPMKVVCL from July 2013 i.e. for 2 years old supply and have raised the bill for the recovery as additional billing and has demanded the payment for availing power supply through open access as well as HT connection for the same premises where the said HT connection exist through the same supply arrangement for the period. It is pertinent to mention that the Respondents have already charged balance unit other than the open access HT tariff scheduled units (schedule issued by MPSLDC) at the rate of HT tariff.*
- iv. *That it is further submitted that the reason given for issuing the above impugned notice is as follows*  
*"As per the clarification of MP Electricity Regulatory Commission in case of mixed use of supply in the same premises i.e in case of use of supply from open access and also from connection the scheduled energy under open access is to be adjusted. first from the total consumption recorded in each 15 minutes' block is to be considered against the HT agreement and to be billed on the terms and conditions of the HT agreement and tariff order in force from time to time. The open access energy has been segregated from the total consumption recorded in HT billing meter for the entire period during which open access was availed by you in each 15 minute blocks and accordingly additional billing to be made in each month has been worked out for the unbilled energy as per enclosed statement"*
- v. *That, being aggrieved by the aforesaid demand notice petitioners had preferred a Writ Petition before the Hon'ble High Court of Madhya Pradesh, Bench at Indore. It is pertinent to mention here that similar petitions were also presented before the Hon'ble*

*Court by. the other companies which were registered as Writ Petition No. 2004/2015, 2159/2015, 2162/2015, 2494/2015, 1951/2015, 1173/2016.*

- vi. *That, the respondent Madhya Pradesh Pakshim Kshetra Vidut Vitran company replied the aforesaid petitions and has stated that applicant is drawing and .utilizing energy under Short Term Open Access (STOA) through Indian Energy Exchange and adjustment of energy drawn from IEX. In fact drawl of energy by petitioner as Open Access Consumer is performed through Availability Based Tariff (ABT) Complaint 0.2 Accuracy Class ME/meter where facility of recording energy at each 15 minute block time interval is available. The adjustment of actual energy availed through open access was to be given on the basis of 15 minute time interval data of ' energy drawl against schedule energy.*
- vii. *It was also contended that the supplementary bill in respect of unbilled energy computed for his respective period after segregating the total consumption of petitioner through open access and consumption of energy obtained from respondent under HT agreement in each 15 minutes block. The aforesaid demand was made in compliance of the direction Issued by the MPERC vide clarification letter dated 02.09.2009. Since there was an error in calculation and there is no dispute of consumption of electricity charges, therefore, the provisions of Section 56(2) of the Electricity Act, 2003 would not attract. Applicant is not disputing the consumption of quantum of energy but aggrieved by the mode of billing and delay in demand which has become time barred.*
4. The petitioners have stated in their petitions that in the earlier billing, respondent gave under drawal unit credit at the rate of UI charges (Unscheduled interchanges frequency based tariff) which vary credit by approximately 70 paise per unit while now respondent on 15 minutes basis again segregated the open access unit and balance unit treat at over drawal claim by charging HT tariff rate (approx.. Rs 4.30/ unit). It is stated by petitioner that over drawal and under drawal units should also be credited by the same rate.
5. During the motion hearing held on 02.06.2020, the Counsel for petitioners have made a submission that in compliance to the aforesaid order of the Hon'ble High Court, Indore bench dated 12.02.2018, the petitioners approached to the Commission by filing a representation/appeal under section 12 of the Balancing and Settlement Code, 2009 against the respondent Distribution Companies which is still a pending adjudication. The Counsel has further informed that aforesaid order of the Hon'ble High Court has been assailed through filing of a Writ Appeal bearing W.A No. 742/2018 by one of similarly situated company M/s. National Steel and Agro Industries Ltd. before the Hon'ble High Court, Indore bench which is still pending. The Counsel has submitted that validity of said order dated 12.02.2018 is under challenge and is yet to be adjudicated by the Division bench of the Hon'ble High Court, Indore bench. It is submitted by the Counsel that in light of aforesaid facts and circumstances and to avoid any conflicting situations contrary with the outcome of the writ appeal filed before the Hon'ble High Court, Indore bench, the hearing in the matter may be deferred, till final order passed by the Hon'ble Court, Indore bench in the pending Writ appeal.
6. Having heard the submission made by the Counsel for petitioners in the motion hearing, the Commission found it appropriate to admit the aforesaid petitions in pursuance of the Hon'ble High Court, Indore bench order dated 12.02.2018 and directives therein in the matter for further deliberations. The Commission also directed to club the aforesaid petitions together for further deliberations, being

similarly situated companies viz. P No. 4182018 (M/s Century Denim V/s. West Discom); P No. 40/2018 (M/s. Century Yarn V/s West Discom) P No. 29/2018 (M/s Ritspin Synthetics Ltd V/s West Discom), P No. 22/2018 (M/s Hind Spinner V/s West Discom) and P No. 3082018 (Wearit Globle Ltd V/s West Discom) respectively as disputes are common in nature. The Commission further directed to issue notices to West Discom, Central Discom and State Load Dispatch Centre for submission of their response on contention of petitioners' in the matter.

7. During the next hearing held on 05.01.2021, Respondents were directed to submit their reply within ten days after receipt of copy of petition from the petitioner. The copy of petition was served by the petitioners. Subsequently, respondents SLDC, Central Discom & West Discom have submitted their replies.
8. The SLDC in its reply has submitted that it had been issuing block wise deviation from the schedule of petitioners on monthly basis in line with regulatory provisions and clarification issued by the Commission on 02.09.2009. The submission made by SLDC is presented below in brief :-
  - i. *The State Commission has notified Balancing & Settlement Code, 2009 and implemented in the State of MP w.e.f. November 2009. This code stipulates the guidelines for scheduling & dispatch, revision in schedules, timelines and responsibilities of various Intra-state entities, energy metering, energy accounting & settlement and illustration for Balancing & Settlement Mechanism for Intra-state ABT regime.*
  - ii. *The State Commission has issued First Amendment to Madhya Pradesh Electricity Balancing and Settlement Code 2009 which was notified on 02.06.2010. Clause-2.2 of Section-2 of Principal Code was amended as below-*  
*“This Code shall apply within the geographical area of the State of Madhya Pradesh and shall apply to Intra – state Entities (Excluding Intra – State Open Access Customers ) in Madhya Pradesh in a manner as specified in this Code”*
  - iii. *In regard to above amendment, it is to submit that Intra-State Open Access Customers are those whose buyer & seller are connected with the State Grid and transacting power under Short Term Open Access and Long Term Open Access.*
  - iv. *Whereas, when either buyer or seller is connected with the State Grid and transacting power to other State through Inter State Transmission Network, comes under Inter-State Short Term Open Access, Medium Term Open Access and Long Term Access.*
  - v. *It is submitted that MPERC (Terms and Conditions for Intra State Open Access in Madhya Pradesh) Regulations 2005 provides for grant of Long Term Open Access and Short Term Open Access. The clause no. 13.1(d) “imbalance Charges” of the above Regulations is reproduced below-*  
*“The mismatch between the scheduled and actual drawal at drawal point(s) and scheduled and actual injection at injection point(s) shall be governed by Balancing and Settlement Code applicable to Intra State transactions,”*

- vi. Further, 3<sup>rd</sup> Para of Regulations 13.2 is reproduced below –  
“provided further that till such time the balancing & settlement Code is approved by Commission, the terms & conditions for energy and demand balancing as set out in existing agreement shall continue to apply”
- vii. It is to submit that in case of transaction of power between buyer & seller, injection schedule and drawal schedule is issued by the SLDC. As per provisions of IEGC and MPEGC, whenever drawal/ injection schedule is issued by the SLDC, deviation from schedule is necessarily required to be computed. If imbalance from schedule is not computed, this energy would be left unaccounted and affect the Transmission losses of the State Grid and would be violation of the regulatory provisions.
- viii. Further, it is submitted that SLDC has been computing the UI / DSM Charges for Inter-state as well as Intra-State Open Access Customers since transaction of power under Open Access is permitted by SLDC in compliance to MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005.
- ix. If Imbalance Settlement and schedule of Intra-state Open Access Customer is not done by SLDC, there would not be any control of SLDC over the transaction performed under Intra-state Open Access and shall affect the safe, secure & reliable operation of the Grid. When there is no monitoring of transaction of power within the State, the chances of gaming cannot be overruled.
- x. As per Section-32 (2) (c) of Electricity Act-2003, SLDC has to keep accounts of the energy transmitted through the State Grid. If transaction of power under Intra- state Short Term Open Access is not taken into account as per Amendment-1 of BSC-2009, it would be violation of above Section of Electricity Act, 2003.
- xi. Thus, the SLDC has been computing the UI / DSM Charges of Intra-state and Inter-state Open Access Customers.
- xii. Since, the imbalance settlement of Open Access Customers located within the State and purchasing / selling power outside the State is to be done in accordance with CERC (Open Access in Inter-State Transmission) Regulations 2008. The Petitioners had been purchasing power from the buyer located outside the State and hence shall be treated as Inter-State transaction and governed by the CERC Regulation-2008.
- xiii. It is to submit that SLDC had been preparing and issuing block-wise deviation from the schedule of the Petitioners on monthly basis in line with regulatory provisions and clarifications issued by the Commission on 02.09.2009.
- xiv. SLDC on request of Discoms, had been providing day wise off peak, Normal & Peak energy to the concerned Regional Account Officers of Discoms before the monthly energy billing date of the Petitioners for providing credit of the scheduled energy to the Petitioners in the monthly energy bill.

- xv. *It is to submit that SLDC had provided details of monthly, day wise and block wise energy drawn by the Petitioners against the contract demand of peak, off-peak and normal hours to the concerned Discoms. The Regional Account Officer of Discoms had been giving credit of energy to the Petitioners based on the monthly energy given by the SLDC. However, as per settlement procedure under ABT Regime, all the settlements were to be done at 15 minutes' block level.*
- xvi. *Subsequently, it had come to the notice of Discoms of Madhya Pradesh that settlement of energy against contract demand under Short Term Open Access was not being done on 15 minute time block basis and they revised the energy credit given to the Open Access Customer as per regulatory provisions existed at the time of transaction of power.*
- xvii. *SLDC had been computing UI/ DSM Charges of Intra-state Open Access Customers prior to notification of BSC-2015 else it may cause violation of provisions of Electricity Act, 2003, IEGC, MPEGC and Balancing & Settlement Code-2009 regarding Energy Accounting, Scheduling, Grid Security, Gaming, computation of Transmission Losses etc.*
9. Central Discom in its reply at para 7, has stated that impugned demand has arisen only in view of the error in calculating drawl of energy from two sources of consumption of energy and billing thereof as clarified by the MPERC. The matter has been set right by issue of aforesaid supplementary demand in respect of excess credit availed by the petitioner in respect of open access.
10. West Discom in its reply has stated that the petitioners have presented themselves as "Inter & Intra-State Open Access Customer" in their petitions and therefore MPERC balancing & settlement code 2009 is applicable to them. Further, pursuant to clarification issued by the MPERC dated 02.09.2009, the respondent had issued demand notice. Submission made by Respondent West Discom in the petition is presented below -
- i. *That, since subject matter of all the petitions is common, factual position has been considered with respect to petition no 40/2018. Statutory provisions are common with respect to all four petitions.*
- ii. *That, the petitioner was making mixed use of power supply in same premises from two sources i.e. (i) through open access from private producer and (ii) from respondent's under HT Agreement.*
- iii. *That, the petitioner is challenging respondents notice of demand dated 23.02.2015 & 13.07.2015 whereby demand for 04 months i.e. April-2013, August-2013, September-2013 & December-2014 towards deficit billing has been raised. A Copy of statement showing demand of Rs. 11, 83,065/- and period thereof has Attached in petition. The respondents have not issued any additional demand. The supplementary bill is issued only in respect of excess credit availed by the petitioner in respect of open access consumption.*

- iv. *That, the petitioner has been drawing and utilizing energy under Short Term Open Access (STOA) through Indian Energy Exchange (IEX) and adjustment of energy drawn from IEX under STOA was to be given in the HT Bill of petitioner. Earlier the petitioner's statement of Scheduled Energy and Actual Energy drawn was provided by State Load Dispatch Centre (SLDC) on daily/monthly basis. Drawl of energy by petitioner as Open Access Consumer is performed through Availability Based Tariff (ABT) Compliant 0.2 Accuracy Class ME/Meter where facility of recording energy at each 15 minutes block time interval as available in the meter. The adjustment of actual energy availed through open access was to be given on the basis of 15 minutes time interval data of energy drawl against scheduled energy.*
- v. *That, the above demand is a supplementary demand/bill in respect of unbilled energy computed for the respective period after segregating the total consumption of petitioner through open access and consumption of energy obtained from respondent under HT Agreement in each 15 minutes block.*
- vi. *That, the above impugned demand has been raised in view of the direction of M.P. Electricity Regulation Commission (MPERC) in its clarification dated 02.09.2009 in the matter of billing of consumers availing electricity supply from private producers and also from the respondent Vidyut Vitran Company.*
- vii. *That, the impugned demand has arisen only in view of the error in calculating drawl of energy from two sources of consumption of energy and billing thereof as clarified by the MPERC/Regulatory Authority. The matter has been set right by issue of aforesaid supplementary demand in respect of excess credit availed by the petitioner in respect of open excess consumption.*
- viii. *That, the petitioner is not disputing the quantum of consumption of electricity as such the impugned supplementary bill/demand arising on revising of billing due to error in calculation billing procedure of segregation of petitioner's consumption, is liable to be paid by the petitioner.*
- ix. *That, the submission regarding rising of demand retrospectively and applicability of Section 56 (2) of Electricity Act, 2003 is denied. The said provision does not come in the way of recovery of amounts of deficit billing due to error of calculation in the process of computation and billing of consumption. The petitioner has not disputed its consumption.*
- x. *That, there is no dispute as regards to the consumption of energy or quantum of consumption of energy, the petitioner is liable to pay the amount of supplementary bill/demand raised towards deficit billing as per prescribed Tariff rates of MPERC. Thus the supplementary bill/demand towards revised billing is in accordance with law and the petitioner is under statutory obligation to make payment of said demand/bill in respect of which excess credit has been availed by the petitioner.*

- xi. That, the petitioner could not be billed for actual amount as per applicable Tariff inadvertently and thus petitioner is liable to pay difference amount due to escaped/deficit billing as submitted hereinabove.*
- xii. That, the respondents have raised supplementary bill/demand in respect of difference of consumption only as per proper procedure clarified by the MPERC. The respondent's supplementary demand is legal, justified and raised within their jurisdiction as such any submission contrary to the same is vehemently denied.*
- xiii. That, the error in calculating the drawl of energy from two sources and its segregation for billing is always open fort correction. It is not the case of petitioner that higher bill has been issued against the lower quantum of consumption.*
- xiv. That, in the above circumstances the petitioner is liable to pay the amount of supplementary bill raised on recalculation of drawl and consumption of energy from two sources i.e. (i) through open access from private producer and (ii) from respondent's under HT Agreement.*
- xv. That, the petitioner is bound to make payment of supplementary demand that has arisen as result of revising of bills as per the terms and conditions prescribed in the Annual Tariff Orders framed by the State Commission. Petitioner is required to comply with the provisions of Electricity Act, 2003 M.P. Electricity Supply Code, 2013 and Annual Tariff Orders issued by MPERC.*
- xvi. That, thus even the principle of equity says that when a consumer has availed supply of energy but could not be billed and could not pay for the same due to technical/procedural reasons, his bona-fide would be to come forward and fairly discharge his obligation of making payment of the actual amount which could have been billed for the supply consumed in accordance with law. Thus under the scheme of statutory provisions enshrined in the Tariff Orders and the terms and condition HT Agreements, the petitioner is liable to make payment of supplementary demand of Rs. 11,83,065/- mentioned in Para 3 of this reply to the respondents. As such petitioner may be kindly directed to make payment of impugned demand as above or else, the petitioner would be liable to make payment along with surcharge there on as per rules.*
- xvii. That, the purpose of billing is as per instructions which the respondent is required to follow the provisions of Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related matters) Regulations, 2014 (w.e.f. from 17.02.2014) contained in Clause 2(b), (h) (o), and Clause 4 thereof.*
- xviii. That, the similar provision exist in the Madhya Pradesh Electricity Balancing and Settlement Code, 2009 (G-34 of 2009) in its Clause No. 3 (11), 3 (32), copy of Madhya Pradesh Electricity Balancing and Settlement Code, 2009 (G-34 of 2009).*



xix. *That, since there is no dispute about consumption the petitioner is liable to pay for the difference of billing as per required process of computation which is escaped/deficit billing.*

11. During the hearing held on 09.02.2021, the Counsel for petitioners has sought some time to file the rejoinder on Respondent's submission. The Commission granted two weeks' for filing rejoinder. Subsequently, office of the Commission received the additional submission of Counsel for petitioners whereby Counsel for the petitioners had reiterated their request to defer the case in light of the fact that one of the similar situated Company M/s National Steel & Agro Industries Ltd. has filed an Writ appeal before the division bench of Hon'ble High Court against the aforesaid judgment dated 12/02/2018 which is still pending. Petitioner also requested that till such time matter may be deferred. The request of the petitioners was not considered as there was no stay granted on the matter by the Hon'ble High Court.

12. During the next hearing held on 15.06.2021, the Commission heard the arguments put forth by the Counsels for Petitioners and Respondents. The Respondent West Discom has informed the Commission that in compliance to issue of MPERC Notification dated 02.09.2009, it has issued office circular dated 02/12/2014 to their field officers in the matter of billing of Open Access Consumers. The excerpts of aforesaid circular is presented below -

- i. *The Scrutiny of bills raised to the HT Open Access Consumers reveals that the energy drawn against their HT connection is being computed on the net HT consumption on the basis of ToD time blocks. However, as per clarification issued by MPERC, in case of drawl of open access energy by a HT consumer, scheduled open access energy in each 15 minutes block shall be adjusted first and balance energy is considered as drawn against HT connection. The calculation of energy against HT connection on the basis of ToD time blocks leads anomaly in billing.*
- ii. *It is advised that for segregation of energy drawn by a HT consumer under open access, the scheduled as intimated by the office of CE (SLDC), Jabalpur over mail/letter/Fax should be adjusted first in each 15 minutes block of billing period and balance energy should only be considered for billing against HT agreement as per the subsisting contract demand for the month subject to the provisions of HT agreement.*
- iii. *It is advised that the data of actually billed consumption in each ToD block must be verified by the concerned RAOs. It should be also be verified that adjustment of scheduled energy has been given in the energy bill of consumer.*
- iv. *It is advised to revise the billing of the HT consumers who have availed open access energy based on the revised consumption for the particular months. It may be noted that based on the revised consumption to be billed against HT agreement, load factor of the consumer shall change and demand for difference of charges needs to be raised to concerned HT consumers. A compliance report on recovery of the revised charges should be sent to this office promptly.*
- v. *It is advised that a notice regarding revision of bell should be issued to the concerning consumers through the concerning RAOs. The draft of the notice is*

*enclosed herewith as Annexure - I. In case, any consumer to provide computation for the same, it can be provided to the consumer.*

- vi. *It may be clarified that billing of cross subsidy surcharge, wheeling charges, electricity duty, energy development cess on open access energy should be made in the current month bill on receipt of information from SLDC office and credit of scheduled energy as intimated by SLDC office in TOD time blocks must also be given in the same current month without awaiting any approval as no approval is required for this purpose by the RAOs. Further, the billing against HT agreement should be made on the basis of 15 minute time block consumption. It may be noted very carefully that billing of HT consumption is to be made as per the provisions of HT agreement and tariff order in force strictly. The monthly load factor should be worked out on the basis of balance HT consumption net of open access energy on the basis of net energy after adjusting scheduled energy of open access, as per tariff order but average monthly power factor should be worked out on the basis of total KWh and KVAh recorded during the month without any adjustment of open access energy.*

13. The Commission vide daily order dated 18.06.2021, reserved the case for order.

#### **Commission's observations**

14. The Commission noted that the petitioners' contention raised in petitions primarily rest on fact whether the applicability of Balancing and Settlement Code, 2009 amended in June 2010 by excluding intra-state Open Access Customers is applicable to the Petitioners. It is also noted that Respondent West Discom has issued the supplementary bills in respect of energy consumed for respective period after segregating the total consumption of petitioners through open access and consumption of energy obtained from respondents under HT agreement in each 15 minutes time blocks in compliance of MPERC clarification dated 02.09.2009. The Commission vide letter dated 02.09.2009 has made following clarifications regarding drawal of power by Open Access Customer (OAC) under short term open Access in reference to queries made by SLDC vide their letter dated 11.08.2009

- i. *Any generator which is not required to provide injection schedule should not be charged the concerned scheduling charges by SLDC.*
- ii. *In case of drawal of power by Open Access Customers (OAC), the adjustment may first be done against OAC drawal viz a viz injection and the balance power if any may be adjusted against contract demand with the Distribution Licensee subject to the provisions of HT agreement executed by the consumers with the Licensee.*

15. The Commission has perused the submission made by Respondents SLDC and Discoms including the office Circular dated 02.12.2014 issued by West Discom to their field staff for billing of open access consumers referred at para 13 above. The Commission do not find any inconsistency in procedure adopted by the Respondent Discoms and observed that the petitioners could not be billed for actual amount as per applicable Regulations and Tariff due to absence of mechanism in place on the part of

Discoms and thus petitioner is liable to pay difference amount due to deficit billing being legitimate billing

16. Further, in regards to imbalance charges, the Regulation 13.1(d) of MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005 provided that i) the mismatch between the scheduled and the actual drawal at drawal point(s) and scheduled and the actual injection at injection point(s) shall be governed by Balancing and Settlement Code applicable to the intra-state transactions; and ii.) A separate bill for imbalance charges shall be issued to open access customers.

17. SLDC which is an apex body to ensure integrated operation of the power system in Madhya Pradesh, keeps accounts of the quantity of electricity transmitted through the State Grid as per power given under section 32 of the Electricity Act 2003. In its reply SLDC clearly mentioned that the petitioners had been purchasing power from the buyer located outside the State and hence such purchase of power shall be treated as Inter-State transaction and governed by the CERC Regulation 2008.

18. Accordingly, Clause 7.10 of the Balancing & settlement Code, 2009 as reproduced below shall be applicable on the petitioners :-

*Imbalances of Inter-State Open Access Customers (if any) embedded in the State system shall be settled as per the methodology specified in CERC (Open Access in Inter-State Transmission) Regulations, 2008. Till such time the Commission specifies the details of settlement of imbalances of Intra-State Open Access Customers (if any), the UI rate of Intra State Entity shall be 105% (for Over-Drawal or Under-Generation) and 95% (for Under-Drawals or Over Generation) of UI rate at the periphery of Regional Entity. UI payable / receivables to / from on the basis of rates applicable to Generating Companies shall be capped at 406 paise per kWh for all Generating Stations using Coal or Lignite or Gas supplied under Administered Price Mechanism (APM) as the fuel, in case when actual Generation is higher than the Scheduled Generation.*

19. It is pertinent to mention that the Commission has retained the aforesaid provisions in Balancing & Settlement Code 2015 at clause 10 as reproduced below :-

*Imbalances of Inter-State Open Access Customers (if any) embedded in the State system shall be settled as per the methodology specified in Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 and amendment thereof. Till such time the Commission specifies the details of settlement of imbalances of Intra-State Open Access Customers (if any), the Deviation rate of Intra State Entity shall be 105% (for Over-Drawal or Under-Generation) and 95% (for Under-Drawals or Over- Generation) of Deviation rate at the periphery of Regional Entity.*

20. It is also noted that in above referred CERC (Open Access in Inter-State Transmission) Regulations, 2008, it is provided at Regulation 5 that “unless specified otherwise by the concerned State Commission, UI rate for intra- State entity shall be 105% (for over drawals or under generation) and 95% (for under -drawals or over generation) of UI rate at the periphery of regional entity.

21. As narrated above, the Commission observed that as the petitioner were inter-state open access customers during the disputed period, hence first amendment notified on 11.06.2010 to MPERC (Balancing and Settlement Code), 2009, which is for Intra-State Open Access Customer, shall not be applicable to the petitioners and methodology for UI settlement in case of Inter- State Open Access customers shall be applicable on the petitioners which is as per the MPERC (Balancing and Settlement Code) 2009 and amendments thereof. The Commission noted that the petitioners could not support their contention with any cogent reasons. Further, in light of the directions given by the Hon'ble High Court Bench Indore in its order dated 12.02.2018, the Commission has not dealt with the issue of applicability of Section 56(2) in the matter. Accordingly, the issues raised by the petitioners are devoid of merit and hence petition stands dismissed and disposed of.

-Sd/-  
**(Shashi Bhushan Pathak)**  
**Member (Law)**

-Sd/-  
**(Mukul Dhariwal)**  
**Member**

-Sd/-  
**(S.P.S. Parihar)**  
**Chairman**