



**JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA AND UNION TERRITORIES
GURUGRAM**

CORAM

Shri M.K. Goel, Chairperson

Petition No. 49/2021

Date of Hearing: 08.07.2021

Date of Order : 19.08.2021

In the matter of:

Petition under Section 66, 86(1)(e), 86(1)(k) of the Electricity Act, 2003 read with Regulations 5.2(1)(b), Regulation 9.8 of the JERC (Open Access in Intra-State Transmission and Distribution) Regulations, 2017 and other applicable provisions, seeking appropriate directions to resolve the inevitable practical difficulties associated with setting up and operating solar captive power plant(s) in the State of Goa, for supplying power to its captive user(s), on account of the current method of computation of Admissible Drawal for a partial open access consumer who is procuring power from DISCOM apart from taking power under open access from a renewable captive project.

And in the Matter of:

M/s AMP Energy Distributed Generation Two Private Limited &Anr.
309, 3rd Floor, Rectangle One,
Behind Sheraton Hotel,
Saket, New Delhi-110017

..... Petitioner...1

And

M/s AMP Energy Green (C&I) Private Limited
309, 3rd Floor, Rectangle One,
Behind Sheraton Hotel,
Saket, New Delhi-110017

..... Petitioner...2

Versus

The Electricity Department
Government of Goa (EDG)
Vidyut Bhavan, Panaji, Goa

..... Respondent...1

Goa Energy Development Agency
5th Floor, Goa IDC Building Patto,
Panaji, Goa

..... Respondent...2

Cipla Limited
Cipla House, Peninsula Business Park,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai-400013

.....Performa Respondent...3

Present

For the Petitioners

1. Mr. Aniket Prasoon, PLA Advocate
2. Ms. Akanksha Tanvi, PLA Advocate
3. Mr. Anirban Mondal, AMP Energy
4. Mr. Soumya Maiti, AMP Energy
5. Ms. Rakshika, AMP Energy
6. Ms. Priyam Nandy, AMP Energy

For the Respondent

1. Mr. Stephen Fernandes, Superintending Engineer, Electricity Department, Goa
2. Mr. Avinash Varre, Feedback Infra, Consultant Electricity Department, Goa
3. Mr. Animesh Jain, Cipla Limited

ORDER

The petitioner through this petition has prayed as under-

1. Grant relaxation from the applicability of the Regulation 5.2(1)(b) of the JERC OA Regulations to the captive user of the Petitioner No. 1's proposed Solar Project, being Proforma Respondent No. 3 and other similarly placed captive users of Petitioner No. 2's Solar Park, by way of directing that the restriction of Admissible Drawal as envisaged in the said regulation and the consequential imposition of Imbalance Charges in case of drawal beyond the Admissible Drawal, will not be applicable to the Petitioners' Solar Project as well as Solar Park;
2. Grant exemption from Admissible Drawal and the consequent restriction/reduction of Contract Demand for partial open access consumers procuring power from solar generating units with respect to withdrawal of power beyond the Admissible Drawl;
3. Pass consequential directions to the Respondents in terms of prayer 1 and 2 above; and
4. Pass such further and other orders, as this Hon'ble Commission may deem fit and proper in the interest of justice and in view of the facts and circumstances of the case.

The Commission heard both the Petitioner and the Respondent at length on dt. 08.07.2021. Both the Petitioner and Respondent have advanced their arguments in detail.

The Petitioner's contentions are as under:-

1. It is submitted that if an open access consumer with a contract demand of 10 MW has been given an approval for a maximum open access quantum of 6 MW, then the Admissible Drawal of electricity from the DISCOM during any time block will be only 4 MW.
2. The aforesaid modality of restricting the quantum of drawal of electricity by a partial open access consumer from the DISCOM during any block in a day upto Admissible Drawal creates an insurmountable practical problem as a captive open access user who is procuring power from a captive solar power project cannot draw necessary power upto its Contract Demand from the DISCOM during the daytime (as solar generation is based

on bell curve) and in addition during night hours when solar generation ceases, on account of the fact that its drawal capacity is going to be restricted to Admissible Drawal as per Regulation 5.1(b) of the JERC OA Regulations.

3. The Petitioners therefore are seeking appropriate relief from this Hon'ble Commission pertaining to the relaxation of the applicability of the Regulation 5.2(1)(b) of the JERC OA Regulations, thereby allowing the Respondent No. 3 to withdraw power upto its Contract Demand from Respondent No. 1 during any time block of the day without being restricted in any manner in drawing capacity upto the Admissible Drawal as envisaged under the aforesaid regulation. In other words, the restriction of Admissible Drawal be not applied to supply of power from the Petitioner No.2's Solar Park and the various solar projects to be set up in the Park, including especially to Petitioner No.1's Solar Project intending to supply power to Respondent No. 3 and any other similarly placed captive users. Effectively, the Respondent No. 3 and any other similarly placed captive users of the various solar projects to be set up by the associated companies/SPVs of Petitioner No. 2, be exempted from payment of any Imbalance Charges in case of drawl of electricity beyond the Admissible Drawal as stipulated in Regulation 5.2(1)(b) of the JERC OA Regulations and thereby promoting the RE sector in the State of Goa.

4. That the Electricity Act, amongst other things, provides for regulatory interventions for the promotion of renewable energy sources, through determination of tariff, specifying renewable purchase obligation (RPO), facilitating grid connectivity and promotion and development of market. Section 3 of the Electricity Act provides that the Central Government shall, from time to time, prepare the National Electricity Policy and Tariff Policy, in consultation with the State Governments and the Authority for development of the power system based on the optimal utilisation of resources such as *inter alia* hydro and renewable sources of energy. The relevant portion of Section 3 is reproduced herein below:

“Section 3. (National Electricity Policy and Plan) --- (1) The Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy

5. It is further submitted that Section 61(h) of the Electricity Act enjoins the Appropriate Commission [the Central Electricity Regulatory Commission (“CERC”) and SERCs respectively] to specify terms and conditions for determination of tariff for *promotion of*

cogeneration and generation of electricity from renewable sources of energy. Section 66 of the Electricity Act also empowers the Regulators to take measures for the development of market in electricity which is inclusive of the renewable energy segment of the sector. The relevant portion of Section 61 and 66 is reproduced herein below:

Section 61. (Tariff regulations): The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

(h) the promotion of co-generation and generation of electricity from renewable sources of energy; ...

Section 66. (Development of market): The Appropriate Commission shall endeavour to promote the development of a market (including trading) in power in such manner as may be specified and shall be guided by the National Electricity Policy referred to in section 3 in this regard. ...

6. Further, Section 86(1)(e) of the Electricity Act provides for the SERCs to promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a DISCOM. The relevant portion of Section 3 is reproduced hereinbelow:

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

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee,”

7. In terms of Section 9(2) of the Act read with fifth proviso to Section 42, every person who establishes a captive power project shall have right to open access which cannot be granted only if there are system constraints. Accordingly, unless there are technical constraints thwarting grant of open access, any person/company setting up captive projects is entitled

to grant of open access as a matter of right. Right of a captive user to have open access is enshrined unambiguously and explicitly under the Electricity Act.

8. In addition to the above, on 12.02.2005, the Central Govt/ Ministry of Power (“MoP”) in compliance with Section 3 of the Electricity Act, notified the National Electricity Policy, 2005 (“NEP”) which envisaged clear provisions dealing with promotion of renewable power projects/non-conventional sources of energy with private participation as well as development of captive power projects. The relevant excerpt from the NEP have been reproduced hereinbelow for the ease of reference:

“Non-conventional Energy Sources

5.2.20 Feasible potential of non-conventional energy resources, mainly small hydro, wind and bio-mass would also need to be exploited fully to create additional power generation capacity. With a view to increase the overall share of non-conventional energy sources in the electricity mix, efforts will be made to encourage private sector participation through suitable promotional measures.

...

5.8 FINANCING POWER SECTOR PROGRAMMES INCLUDING PRIVATE SECTOR PARTICIPATION

.... 5. 8. 4 Capital is scarce. Private sector will have multiple options for investments. Return on investment will, therefore, need to be provided in a manner that the sector is able to attract adequate investments at par with, if not in preference to, investment opportunities in other sectors. This would obviously be based on a clear understanding and evaluation of opportunities and risks. An appropriate balance will have to be maintained between the interests of consumers and the need for investments

5.12 COGENERATION AND NON-CONVENTIONAL ENERGY SOURCES

5.12.1 Non-conventional sources of energy being the most environment friendly there is an urgent need to promote generation of electricity based on such sources of energy. For this purpose, efforts need to be made to reduce the capital cost of projects based on non-conventional and renewable sources of energy. Cost of energy can also be reduced by promoting competition within such projects. At the same time, adequate promotional measures would also have to be taken for development of technologies and a sustained growth of these sources.

5.12.2 The Electricity Act 2003 provides that co-generation and generation of electricity from non-conventional sources would be promoted by the SERCs by providing suitable measures for connectivity with grid and sale of electricity to any person and also by specifying, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. Such percentage for purchase of power from non-conventional sources should be made applicable for the tariffs to be determined by the SERCs at the earliest. Progressively the share of electricity from non-conventional sources would need to be increased as prescribed by State Electricity Regulatory Commissions. Such purchase by distribution companies shall be through competitive bidding process. Considering the fact that it will take some time before nonconventional technologies compete, in terms of cost, with conventional sources, the Commission may determine an appropriate differential in prices to promote these technologies”

9. The NEP under the head “Captive Generation” from paragraphs 5.2.24 to 5.2.26 provides as follows:

“Captive Generation

...

5.2.24 The liberal provision in the Electricity Act, 2003 with respect to setting up of captive power plant has been made with a view to not only securing reliable, quality and cost effective power but also to facilitate creation of employment opportunities through speedy and efficient growth of industry.

5.2.25 The provision relating to captive power plants to be set up by group of consumers is primarily aimed at enabling small and medium industries or other consumers that may not individually be in a position to set up plant of optimal size in a cost effective manner. It needs to be noted that efficient expansion of small and medium industries across the country would lead to creation of enormous employment opportunities.

5.2.26 A large number of captive and standby generating stations in India have surplus capacity that could be supplied to the grid continuously or during certain time periods. These plants offer a sizeable and potentially competitive capacity that could be harnessed for meeting demand for power. Under the Act, captive generators have access to licensees and would get access to consumers who are allowed open access.

Grid inter-connections for captive generators shall be facilitated as per section 30 of the Act. This should be done on priority basis to enable captive generation to become available as distributed generation along the grid. Towards this end, non-conventional energy sources including co-generation could also play a role. Appropriate commercial arrangements would need to be instituted between licensees and the captive generators for harnessing of spare capacity energy from captive power plants. The appropriate Regulatory Commission shall exercise regulatory oversight on such commercial arrangements between captive generators and licensees and determine tariffs when a licensee is the off-taker of power from captive plant.”

10. Thus, from the review of the relevant provisions of the Electricity Act, NEP, and the Tariff Policy, the premise which gets reinforced is that it is a statutory right of any person/company to own and operate renewable power projects/parks to supply power to its consumers under third party sale as well as under captive generation mode. Further, it is clear that it is endeavour of the Government to encourage private players to develop clean RE power and aims at providing encouraging regulatory infrastructure for the same.
11. GEDA, issued the Goa State Solar Policy, 2017 (“Solar Policy”), which specifically recorded that owing to: (i) solar energy being the most secure of all energy sources; (ii) challenges posed by the climate change and global warming resultant from burning of fossil fuels; (iii) State of Goa is entirely dependent upon importation of power from other States; (iv) ever increasing demand of power in the State, the Govt. of Goa decided to promote solar power generation. Thus, it is clear that the said Solar Policy has been issued to promote development of solar power projects in the State of Goa *inter alia* to reduce dependence on importation of power from outside the State of Goa.
12. In addition, the Solar Policy also encourages the engagement of private players in the State of Goa’s RE Sector. The Solar Policy promotes the private solar power developers to generate and sell power to third parties. The relevant excerpt from the Solar Policy have been reproduced hereinbelow for the ease of reference:

“7. Third Party Sell Solar Power

The State shall promote development of solar power plant sale of electricity to third party other than GED. The producers who are intending to set up the solar power plant within the State and sell the solar power so generated to the third party beside GED would have their own private power purchase agreement with any third private party.

The producer will have to pay the wheeling charges as per JERC rates. However, the State Government/GED reserve the right to procure 10 percent of the power so generated at the agreed price between solar producer and third-party buyer or at JERC tariff for that year or the reserve bidding price identified for that plant size, whichever is lower.”

13. Further, the Solar Policy also mandates GEDA to facilitate the development of solar power projects in the State of Goa. The relevant excerpt from the Solar Policy have been reproduced hereinbelow for the ease of reference:

“13. ROLE OF STATE NODAL AGENCY GEDA

...

- c) Facilitation in Development of Solar Power Plant : The Nodal Agency shall, facilitate the project developers in Setting up of solar projects including sanctions/clearances from number of Government agencies/departments. The State Government will provide requisite clearances through a “Single Window Clearance Mechanism”. It will be operated through GEDA.”*

14. In terms of Regulation 5.2(1)(b) of the JERC OA Regulations, the maximum quantum of power that can be drawn by a partial open access consumer from the DISCOM is limited up to its ‘Admissible Drawal’ which in effect is defined as the difference of Contract Demand and the maximum quantum of open access for which approval has been granted by the Nodal Agency. An illustration provided in the JERC OA Regulations is as follows:

If an open access consumer has a contract demand of 10 MW and an approved open access capacity of 6 MW then its Admissible Drawal at any time block during the day would be limited to 4 MW (contract demand – capacity approved for open access). Meaning thereby, that the consumer will be able to draw 6 MW power through open access from solar power sources and only 4 MW power from DISCOMs during any time block of the day. However, the same will create difficulty for open access consumers procuring power from solar parks/plants, as they will not be able to meet its entire contract demand from solar sources and power from DISCOMs, either during the day and moreover during the nights, given the infirm nature of solar generation.

15. The issue with respect to this provision is that in case of a solar project, during any time block when it is unable to produce entire power approved for the open access consumer and specifically during the night hours when the power generation from a solar project entirely stops, it would not be able to supply any power to its open access consumer. However, the contract demand/load demand of such open access consumer does not stop

during such time blocks and it would still require the requisite amount of power in order to meet its entire contract demand. In such a scenario, if the drawal of power from the DISCOM is subject to Admissible Drawal at all the time blocks of the day then this would, in effect, amount to surrendering/reduction/revision of the contract demand as the open access consumer is being forced to revise/restrict its drawal of power from the DISCOM up to the difference between its contract demand and the maximum quantum of approved open access withdrawal.

16. This provision would apply inequitably on the partial open access consumer because during any time block of a day, when the solar generation is relatively less and as a result, such consumer is unable to fulfil its load requirements, the consumer would not be able to materialize anything out of its maximum quantum of approved open access withdrawal, which would inevitably result in the consumer not meeting its entire contract demand. In furtherance to the aforementioned illustration, the Petitioners would like to state that if the contract demand of the open access consumer is 10 MW, out of which up to 6 MW is being met through its open access arrangements with a solar generating unit, the same cannot be materialized during all time blocks of the day considering the bell curve generation of solar power and specifically during night hours in view of nil generation during such period.
17. Therefore, if the Admissible Drawal is limited to only 4 MW (10 MW – 6 MW) during all 96 time blocks of the day (00:00 hrs to 24:00 hrs), the entire contract demand of 10 MW cannot be met by the partial open access consumer. This, in effect, is amounting to the revision of contract demand or in a way surrendering of contract demand which inevitably would prove extremely prejudicial to such partial open access consumer and will inevitably create a deterrent effect on the existing and potential open access consumers and the solar power generators to supply power through third-party sale or under the captive consumption mode. Moreover, it is very significant to clarify that the Respondent No. 3 would continue to pay the fixed charges arising out of his contract demand to the Respondent No. 1/DISCOM, even when it procures solar power under open access. Accordingly, the Respondent No. 1 is going to recover the entire fixed charges/ capacity charges from such partial open access consumer meeting its load requirements, and the Respondent No. 1 is not subjected to any loss, whatsoever.
18. In addition to the same, the Regulation 5.2(1)(b) also states that till the implementation of Intra-State ABT, the charges shall be regulated as per the provisions of JERC OA Regulations. In this regard, it is submitted that the availability-based tariff (“ABT”) is not applicable on renewable generation and such power generation sources have been usually exempted

from the applicability of ABT under the relevant regulations by various State Electricity Regulatory Commissions (SERCs). To further clarify the same, ABT generally consists of a two-part tariff comprising of fixed charges and variable charges and in addition, the Unscheduled Interchange (UI) charges based on deviation from the schedule. Under the ABT mechanism, the fixed charges are linked to availability and variable charges to the scheduled energy.

19. However, as is common knowledge, renewable power generating sources are only paid the single part tariff on the basis of energy/units actually supplied. Therefore, as such the renewable power generators are usually exempted from applicability of ABT. In case of renewable power generation, deviation charges are governed by separate regulations/orders of the relevant Commission dealing with Deviation Settlement Mechanism (DSM).
20. The aforesaid position of renewable generation being not covered under the ABT mechanism is reinstated by the review of Regulation 3(1)(I) of the Rajasthan Electricity Regulatory Commission (Intra-State ABT) Regulations, 2006 ("*RERC Intra-State ABT Regulations*") which states that wind and solar power stations are exempted from the applicability of ABT. The relevant excerpt of the said Regulation is reproduced herein below, for ease of reference:

"3. Applicability of ABT. - Intra-state ABT is applicable to the users, required to give daily schedules to the State Load Despatch Centre (SLDC), unless excluded from the applicability of ABT under these Regulations and fulfilling the following specific conditions during the period of its operation:

Provided, the ABT applicability will remain suspended for the period of Grid disturbance, islanded mode of grid operation conveyed by SLDC as per grid Code provisions.

(1) Generating Stations. - A generating station except the following gets covered by intra-state ABT, if:-

(I) Covered by inter-state ABT, or

(II) Nuclear, Wind and Solar Power Stations, or

(III) Run of River Hydro Power Stations without storage facility, and hydro power stations of Rajasthan Rajya Vidyut Utpadan Nigam Limited (RVUN) and its partnership projects

(IV) Power Plants of capacity below 10 MW capacity:

Provided, intra state ABT will not be applicable to a generating station or trading licensee or distribution licensee effecting supply to open access consumer unless, such generating station or a trading licensee is governed by the inter-state ABT or intra-state ABT, as the case may be:"

21. It is submitted that as and when Intra State ABT Regulations are notified by this Hon'ble Commission, renewable power generation ought to be exempted from the applicability of the same. Therefore, effectively, the renewable generation such as that of Petitioners' Solar Park/Solar Project be not subjected to any additional rigour on that count.
22. Apart from the practical difficulties mentioned hereinabove in the applicability of Regulation 5.2(1)(b) of the JERC OA Regulations, the extant Regulation also states that, if the Captive User/OA consumer draws power from the DISCOM in excess to the admissible drawl, then the OA consumer is required to furnish additional fixed charges and the temporary tariff to the extent of the quantum of power drawn by it beyond the Admissible Withdrawal. The same would severely affect the financial viability of the concerned solar project/solar park. The relevant excerpt from the JERC OA Regulations stipulating the Imbalance charges for overdrawal beyond the Admissible Drawal have been reproduced herein below for the ease of reference:

"5.2 Imbalance Charges

1. *Settlement of Energy at Drawal Point in Respect of Open Access Consumer, or Trading Licensee on Behalf of Open Access Consumer*

...

- b. Open Access Consumer, who is also a Consumer of the Distribution Licensee*

...

- i. Overdrawal*

The overdrawal by an Open Access Consumer who is a Consumer of the Distribution Licensee shall be settled as under:

- i. *Fixed Charges on the Admissible Drawal of electricity by the Open Access Consumer from the Distribution Licensee, even if there is no drawal from the Distribution Licensee.*
- ii. *Energy charges corresponding to drawal from a Distribution Licensee by the Open Access Consumer limited to Admissible Drawal of electricity by the Open Access Consumer, at the applicable energy charge rates of the Distribution Licensee.*
- iii. *Additional fixed charges at the rate of 125% of normal fixed charges, for demand above the Admissible Drawl of electricity by the Open Access Consumer.*
- iv. *Energy charges on any drawal above the Admissible Drawal of electricity by the Open Access Consumer at the rate of charges for temporary connection for the same category.”*

23. This in effect means that the partial open access consumer will be required to pay the following charges over and above the fixed charges and energy charges in cases where it draws more power than its Admissible Drawal from the DISCOM:

- a. Additional fixed charges at the rate of 125% of normal fixed charges, for the demand above the Admissible Drawal; and
- b. Energy Charges on any drawal above the Admissible Drawal at the rate of charges for temporary connection for the same category, which is generally at the rate of 125% of the normal energy charges.

Therefore, the partial open access consumer will incur huge amounts in case it draws power from the DISCOM more than its Admissible Drawal. This would in effect deter such open access consumers to procure power from solar captive projects and thereby deter the growth of the renewable sector in the State of Goa.

24. The Petitioners are constrained from making any significant financial or legal commitments until and unless relaxation in terms of implementation of Regulation 5.2(1)(b) of the JERC OA Regulations, is provided by this Hon’ble Commission *vis-à-vis* the Petitioner No. 2’s upcoming Solar Park and the Petitioner No.1’s Solar Project to be set up therein. The Petitioner No. 1 will not be able to enter into an agreement to set up a captive power

project with any potential captive users till the time the aforesaid clause continues to force partial open access consumers to effectively surrender/revise their contract demands.

25. As per the Regulation 9.8 of the JERC OA Regulations, this Hon'ble Commission has the power to relax any provision of these Regulations on grounds of public interest. The relevant excerpt from the OA Regulations has been reproduced herein below for the ease of reference:

"9.8 Power of Relaxation

The Commission may in public interest and for reasons to be recorded in writing, relax any of the provision of these Regulations."

26. It is relevant to state that the Appellate Tribunal of Electricity ("APTEL" / "Tribunal") vide its judgment dated 20.12.2012 in *Tata Power Company Limited v. Jharkhand State Electricity Regulatory Commission & Ors* (in Appeal No. 189 of 2011) stipulated the principles for exercising the *Power of Relaxation* by the Electricity Regulatory Commissions. The relevant excerpt from the judgment has been reproduced herein below for the ease of reference:

"29. The principles relating to the exercise of power of relaxation laid down in the above decisions referred to above are as follows:

- (a) The Regulation gives judicial discretion to the Commissions to relax norms based on the circumstances of the case. Such a case has to be one of those exceptions to the general rule. There has to be sufficient reason to justify relaxation which has to be exercised only in the exceptional case where non-exercise of the discretion would cause hardship and injustice to a party.*
- (b) If there is a power to relax the regulation, the power must be exercised reasonably and fairly. It cannot be exercised arbitrarily to favour some party and to disfavour some other party.*
- (c) The party who claims relaxation of the norms shall adduce valid reasons to establish to the State Commission that it is a fit case to exercise its power to relax such Regulation. In the absence of valid reasons, the State Commission cannot relax the norms for mere asking. When the State Commission has given reasoned order as to why the power for relaxation*

cannot be exercised, the said order cannot be interfered with by the Appellate Forum.

- (d) *The power of the Appellate Authority cannot be exercised normally for the purpose of substituting one subjective satisfaction with another without there being any specific and valid reasoning for such a substitution."*

27. Further, the Hon'ble Tribunal vide its judgment dated 25.03.2011 in *Ratnagiri Gas Power Private Limited vs. Central Electricity Regulatory Commission*, (2011) ELR (APTEL) 532, ruled that the '*Power of Relaxation*' is exercised in case any regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, then the regulation can be relaxed. The relevant excerpt from the judgment has been reproduced hereinbelow for the ease of reference:

"10.7 The above Regulations and the decision give the judicial discretion to the Central Commission to relax norms based on the circumstances of the case. However, such a case has to be one of those exceptions to the general rule. There has to be sufficient reason to justify relaxation. It has to be exercised only in exceptional case and where non-exercise of the discretion would cause hardship and injustice to a party or would lead to unjust result. In the case of relaxation of the Regulations the reasons have to be recorded in writing. Further, it has to be established by the party that the circumstances are not created due to act of omission or commission attributable to the party claiming the relaxation."

28. From bare perusal of the above, it can be safely inferred that this Hon'ble Commission can justifiably exercise their power of relaxation in the present case as the applicability of Regulation 5.2(1)(b) of the JERC OA Regulations is severely affecting the financial viability of the Petitioner No. 2's Solar Park and the Petitioner No. 2's Solar Project to be setup therein and is causing severe hardship and injustice to the Petitioners. It is being applied inequitably on the Captive User/OA consumer as well, as it is forcing it to surrender its contract demand.
29. That the Regulation 5.2(1)(b) of the JERC OA Regulations is not in consonance with the letter and spirit of the provisions of the Electricity Act [Section 3, Section 61(h), Section 66 and Section 86(1)(e)], NEP and the Tariff Policy. The said provision is significantly affecting the financial viability of the solar projects/parks which intend to supply power to their off-takers/captive users through open access (*i.e., through third-party sale, or under captive consumption mode*). Thus, this provision is creating hindrance in the growth of the RE

sector in the Union Territories and in the State of Goa and thereby is in contravention to the intention and purpose of the Act, NEP and the Tariff Policy.

30. That Regulation 5.2(1)(b) of the JERC OA Regulations in its current form and modality is also defeating the purpose of the facility of banking which is an essential facility for RE generation considering the infirm nature of the source of power i.e., solar irradiation. It is pertinent to highlight herein that this Hon'ble Commission itself has recognized and introduced the provision of banking in the JERC OA 1st Amendment by virtue of Regulation 7A.1 read with definition of term '*Banking of Energy*'. Based on such introduction of the facility of banking, it can be inferred that the intention of this Hon'ble Commission is clear that it wants to promote the facility of banking to support the viability of the RE based plants, including those supplying power under captive mode and to third-party consumers.
31. That the condition of Admissible Drawal introduced by this Hon'ble Commission is negating the benefits provided by way of introduction of the concept of banking of power as it is essentially revising the contract demand of partial open access consumers who are availing power from solar generating units. While this Regulation can create the desired effect for the consumers availing power from conventional sources or from wind generating units, the same will severely affect the financial viability of the solar generating units and also inevitably reduce the contract demand of their partial open access consumers.
32. That if this Regulation continues to operate in the same manner then the potential solar power developers would not be in a position to set up their solar projects/parks in the State of Goa as there would be some serious questions pertaining to the financial viability of such projects/parks in light of the applicability of Regulation 5.2(1)(b) of the JERC OA Regulations. Consequently, this will result in huge losses to the State, as setting up of a solar project/park would create employment opportunities for thousands of its residents and would also help the State of Goa in meeting its Renewable Purchase Obligation (RPO). Further, this would also help in bringing down the pollution levels in the State of Goa.
33. Various Hon'ble State Electricity Regulatory Commissions (SERCs) have exempted RE based generation from applicability of revision of contract demand. This position is reinstated by the Regulation 64(a) of the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 ("*HERC RE Regulations*") which states that "*if there are any provisions contained in any of the regulation relating to reduction of contract demand shall not be applicable to Solar PV plants*". Hon'ble Haryana Electricity Regulatory Commission ("*HERC*") while deliberating

and finalising the HERC RE Regulations, in its Suo Motu Order dated 30.06.2018 has categorically clarified that the reduction in Contract Demand shall not be applicable to Solar PV Power and no such provision is envisaged under HERC RE Regulations on the restriction of capacity of solar plant upto the contract demand, as under:

“The Commission has considered the issues raised above and is of the considered view that Regulation relating to reduction of contract demand shall not be applicable for Solar PV Power. Further, no provision is envisaged in the RE Regulation on the restriction of capacity of solar plant upto the contract demand”.

34. Regulation 4 of the Maharashtra Electricity Regulatory Commission (Distribution Open Access) First Amendment Regulations, 2019 (*“MERC Open Access 1st Amendment Regulations”*) also states that in case of renewable energy (*“RE”*) based open access transactions, no revision of contract demand shall be made applicable. In the said amendment, the levy of incremental demand charges/ fix charges is waived off for RE based open access transaction. The relevant extracts of the MERC DOA 1st Amendment Regulations have been reproduced herein below:

“4. Amendment in Regulation 4 of the Principal Regulations:

.....

4.2 Revision of Contract Demand:

.....

Provided further that no such condition of Notional CD and levy of incremental Demand Charges thereof, shall be applicable in case of RE based OA transactions.”

35. Maharashtra Electricity Regulatory Commission (**“MERC”**) while deliberating and finalising the MERC Open Access 1st Amendment Regulations, has categorically held and clarified in the Statement of Reasons dated 03.06.2019 that due to the infirm nature of renewable energy, the reduction/ revision in Contract Demand shall not be applicable to RE based open access transactions, as under:

“For RE based STOA, MTOA and LTOA:

RE based OA transactions, which are subject to seasonal and diurnal variation, will not be amenable to reduction/revision in Contract Demand. Several objections were received on this count which have been duly noted by the Commission. Hence, no such condition of Notional CD and levy of incremental Demand Charges thereof, shall be applicable in case of RE based OA transactions. In case, open access consumer simultaneously avails the open access using RE and Non-RE sources, then the

condition of notional CD and incremental Demand Charges thereof, shall be applicable only considering open access using Non-RE sources.”

36. No adverse implication on respondent no. 1 *vis a vis* DSM charges. It is submitted that the Respondent No. 1 in paragraph 4 of its Reply dated 22.06.2021 in the captioned matter and even during hearing before this Hon’ble Commission on 08.07.2021 has submitted that *any variation in the schedule energy drawal at the Goa periphery will attract Deviation Settlement Mechanism (DSM) charges payable by ED-Goa which subsequently increases the power procurement cost.* In this regard, it is most humbly submitted that the Respondent No. 1 is not incurring any DSM charges as it has fairly underdrawn power in the past one year and has in fact only overdrawn in three (3) months, i.e., August, September and November 2020. In fact, the Respondent No. 1 has received Rs. 8.80 Crores towards DSM charges for the period June 2020 to May 2021. Therefore, the Respondent No. 1 is not incurring any losses due to DSM charges, at present. In this regard, reliance is placed on the Table prepared by the Petitioners from the data available on the website of Western Regional Load Despatch Centre (“**WRLDC**”) and Western Regional Power Committee (“**WRPC**”) which depicts the Deviation Summary for the period June 2020 to May 2021:

Deviation Summary for June 2020 to May 2021							
Month	Schedule (MU)	Schedule (in terms of MW)	12% Permissible limit (MW)	Number of Block Deviated	Max OD (MW)	Max UD (MW)	DSM Charges Paid/ (Received) [Rs.]
Jun-20	256	359.15	43.10	304	97	142	-119255
Jul-20	256	359.15	43.10	187	75	57	-3467317
Aug-20	247	346.52	41.58	234	94	120	529447
Sep-20	262	367.56	44.11	115	60	88	1906245
Oct-20	282	395.62	47.47	179	102	199	-4771554
Nov-20	284	398.43	47.81	157	86	71	557892
Dec-20	305	427.89	51.35	166	86	172	-8771281
Jan-21	314	440.52	52.86	179	109	83	-10034626
Feb-21	269	377.38	45.29	145	118	50	-26743095
Mar-21	361	506.45	60.77	470	136	204	-18360384
Apr-21	341	478.40	57.41	247	116	262	-11254107
May-21	296	415.26	49.83	335	129	343	-7488978
Total							- 88017013

37. As per Regulation 5.2(1)(a) of the JERC OA Regulations, billing, collection and disbursement of any amounts shall be in accordance with this Hon'ble Commission's orders on Intra-State ABT. However, till the time Intra-State ABT mechanism is not notified by the Commission, any underdrawal or overdrawal shall be settled as per DSM Regulations. As per Regulation 5(1)(iv) of the DSM Regulations, the Respondent No. 1 will be liable to pay absolutely no DSM charges for deviation from its schedule, which is in excess of 12% of the schedule given by it or 150 MW, whichever is less.
38. From the data provided in the Table hereinabove, it is clear that Respondent No. 1 on average have scheduled 406 MW of power for the period June 2020 to May 2021. Now, in terms of Regulation 5(1)(iv) of the DSM Regulations, 12% of 406 MW is 48.72 MW. Hence, since 48.72 MW is less than 150 MW, the same will be considered as the threshold for the imposition and calculation of deviation charges. It is understood that the Respondent No. 1 will not be liable to incur any DSM charges, for deviation upto 48.72 MW from its schedule.
39. Therefore, from the above analysis, it is clear that allowing the Petitioners to draw full amount of its contract demand from the Respondent No. 1 to meet its entire load demand, considering the intermittent nature of renewable sources, will not, in any manner whatsoever, adversely affect the scheduling of power by the Respondent No. 1 and they will not incur DSM charges on account of over-drawal. As during majority of the months in a year, the Respondent is underdrawing and for them to incur any DSM charges, the same has to first overcome the underdrawal and reach zero and thereafter, over and above that, they would still be allowed to deviate up to 48.72 MW from its schedule. Thus, there is clearly a significant window available, and in the prevailing facts and circumstances as the data demonstrates, the Respondent will not be adversely impacted on account of this Hon'ble Commission allowing the present Petitioners prayers as sought in the present Petition.
40. It is most humbly submitted that the Respondent No. 1 made certain new factual submissions, for the first time during the course of arguments in the captioned matter on 08.07.2021, which it had not raised in its Reply submitted on 22.06.2021. In this regard, it is submitted that the Respondent No. 1 cannot raise factual issues for the first time during the course of final arguments without first raising the same in its Reply and making submissions in support of the same, as the same is in direct and complete breach of the

norms of pleadings which is rooted in adversarial proceedings before adjudicatory/quasi adjudicatory forums like this Hon'ble Commission.

41. It is submitted that the object and purpose of pleadings and framing issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. It is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration.
42. The limited defence raised by the Respondent No. 1 in its Reply dated 22.06.2021 (and specifically in paragraphs 4) is that "*... any variation in the schedule energy drawal at the Goa periphery will attract the Deviation Settlement Mechanism (DSM) charges payable by ED-Goa which subsequently increases the power procurement cost.*" Further, the Respondent No. 1 in paragraph 5 of its Reply submitted that "*on the other hand since the renewable energy is intermittent in nature and the availability of the power varies from time to time, in such situations it will hamper the scheduling of the power which may result in paying the DSM charges by ED-Goa.*" In view of the foregoing, the Respondent No. 1 in paragraph 5 prayed to this Hon'ble Commission by stating that "*in view of the above, there shall be some mechanism on capping the contract demand whereby the imbalance charges will be applicable on exceeding the capping of contract demand.*" Thus, it is clear beyond any doubt that the only limited ground raised in the Reply was with respect to possibility of imposition of DSM charges on the Respondent No. 1 on account of intermittent nature of renewable/solar project as a result of which it may have to draw more power beyond its allowable threshold from outside the State of Goa to meet the demand of partial open access consumers and in that view, it rather prayed to this Hon'ble Commission to devise some mechanism.
43. Accordingly, it can be stated with certainty that no pleading whatsoever was made by Respondent No. 1 stating that allowing the reliefs sought by the Petitioners in the present Petition would pose a threat to their business viability on account of them requiring to buy costly power (in terms of power procurement cost) which was argued by Respondent No.1 during the course of arguments on 08.07.2021. In view of the foregoing, all the arguments made by the Respondent No. 1 dealing with procurement of high-power cost required to replace solar generation, beyond the aspect of imposition of DSM charges ought not be considered by this Hon'ble Commission.

44. Without prejudice to the aforesaid submission based on the premise that this Hon'ble Commission ought not to consider submissions made by Respondent No. 1 during the course of hearing on 08.07.2021 which are extraneous and beyond its Reply, the Petitioners in deference to this Hon'ble Commission's direction during the hearing to deal with the submissions in a consolidated manner in the present matter, is also providing their submissions on the new arguments raised by the Respondent No. 1 during the course of hearing on 08.07.2021 for the first time.
45. In this regard, it is to be noted that the Respondent No. 1 during the course of arguments on 08.07.2021, submitted before this Hon'ble Commission that the *Respondent No. 1 buys cheaper power during the daytime/solar generating hours from the power exchanges/open market at approximately Rs. 1.5 per unit and hence, the Respondent No. 1 does not stand to benefit from the Petitioners Solar Park/Solar Project*, as it already has access to cheaper power during the course of the day. In other words, the Respondent No. 1 stated that costly power is not going to be replaced with cheaper solar power, given that it is already procuring cheap power from the power exchanges/open market during the said period. Furthermore, according to the Respondent No. 1, with regard to evening peak hours, i.e., from 06:00 PM till 11:00 PM, when the power demand is at its peak in the State of Goa, even then the Respondent No. 1 does not stand to benefit from setting up of Petitioners Solar Park/Solar Project, as solar projects don't generate during the off-peak hours during 06:00 PM till 11:00 PM and that for fulfilling the demand during night peak hours, it procures power from non-renewable/conventional sources at a high cost of approximately Rs. 9 per unit.
46. Furthermore, with regard to Respondent No. 1's oral submissions regarding procurement of costly power during the evening peak hours, i.e., from 06:00 PM till 11:00 PM, when there is no solar generation, it is submitted that the same has no co-relation with intermittency of solar power, as practically there is no generation from solar power projects during the off-peak power. Therefore, the Respondent No. 1 will have to, irrespective of the intermittency of solar power generation, continue to procure such costly power from other sources, as it has been doing over years to fulfil and meet the power demand in the State. Therefore, if at all, the Respondent No. 1's oral submissions support the Petitioner's case in the present scenario.
47. It is most humbly submitted that the oral submissions made by the Respondent No. 1 during the course of final arguments, is self-contradictory and moreover, further supports the case of the Petitioners, that the Respondent No. 1 stands to bear no loss, financial or otherwise and in fact would instead benefit from the same.

48. Benefits to the respondent no.1 of the petitioners set up Solar Park/Solar Project in the State of Goa is that:

(a) Alleviation of overall power deficit scenario prevailing in the State of Goa: The State of Goa has an overall power deficit scenario and due to the same that it has to purchase additional power from power exchanges/open market to meet its entire demand, which has also been noted by this Hon'ble Commission in its Tariff Order for Electricity Department, Govt. of Goa dated 30.03.2021 ("*Tariff Order 2021-22*"), in which the Hon'ble Commission estimated a deficit of 295.65 MU for FY 2021-22 to be procured from Open Market by the Respondent No. 1. However, if the Petitioners set up its power plant in the State of Goa, the same will be beneficial and assist the Respondent No. 1 in meeting its deficit power demand and they will not have to rely and procure the same on short term basis from power exchanges/open market and resultantly have a surplus power scenario in the State.

(b) Assistance in compliance of RPO Obligations: It is submitted that the Respondent No. 1 has submitted before this Hon'ble Commission as noted in its order dated 05.07.2021 in Suo Moto Petition No. 61 of 2012, that despite making all-out efforts to achieve the RPO targets, the Respondent No. 1 was unable to do so and resultantly, the non-compliance of RPO has been recorded to tune of 66.94 Mus (shortfall) for FY 2020-21. In the aforesaid order, this Hon'ble Commission suggested that the Respondent No. 1 should strive to achieve the targets of its Solar RPO for the FY 2021-22 and directed the Respondent No. 1 to continue its efforts for 100% compliance of Solar RPO. The Hon'ble Commission further noted that the Respondent No. 1 will be able to meet full compliance of its Solar and Non-solar RPO if it succeeds in executing the action plan for FY 2021-22 as submitted by it. As per the action plan, for complying with its RPO Obligation for the FY 2021-22, the Respondent No. 1 will meet 193 MUs of its Solar RPO obligation out of total of 393.80 MUs (326.86 + backlog of 66.94 MUs), through purchase of RECs for which the Respondent No. 1 will have to incur approx. Rs. 19.30 Crores. Therefore, if the Petitioners setup the Solar Park/Plant in the State of Goa, the same will assist the Respondent No. 1 in fulfilling and meeting its Solar RPO and save significant costs towards purchase of RECs for fulfilment of its Solar RPO, in accordance with Regulation 3.2 of JERC (Procurement of Renewable Energy) Regulations 2010 inserted vide Second Amendment dated 22.12.2015 read with relevant provisions.

(c) Power from Petitioners' project will help Respondent No. 1 in replacing costly power being procured from conventional sources of energy: From perusal of the power purchase cost approved by this Hon'ble Commission for FY 2019-20 to FY 2021-22, it is clear that apart from purchasing power from open market, the top three most expensive power from which the Respondent No. 1 is procuring are Solapur, Mouda and TAPS thermal power plants, i.e., cumulatively 203.9 MU, 203.9 MU and 210.8 MU of power has been procured for FY 2019-20, 2020-21 and 2021-22 respectively. However, if the Petitioners are allowed to supply power to the captive user (Proforma Respondent), it effectively will result into replacement of costly power from other costly sources like the aforesaid plants, to the extent of solar power generation. In essence, if the Respondent No. 1 reduces procurement of expensive power from these three generating stations and replace the same with procurement from intra-state solar power generating stations like the instant project, there would inevitably be significant benefit to the Respondent No. 1. It is to be noted that the approved weighted average cost from the aforesaid three sources is Rs. 3.73/kwh, which when added up with the REC cost; wheeling charges and losses, culminates into a net gain of Rs. 3.21/ kwh for the Respondent No. 1, after deducting the cross-subsidy surcharge.

49. Accordingly, rather than facing any financial losses, the Petitioners reasonably believe that the Respondent No. 1 shall have only significant financial advantages apart from attracting investment in the State which will not only create direct and in-direct jobs but also contribute to the national mission for sustainable development and help in meeting the overall target.

50. The entire set of new arguments made by the Respondent No. 1 during the hearing on 08.07.2021, only revolved around the premise that allowing setting up of renewable projects as are being sought by the present Petitioners for supplying power to captive users in the State of Goa, is likely to increase the economic burden of the Respondent No. 1 and in turn the consumers. In addition, as explained hereinabove, the procurement of costly power during peak hours is irrespectively going to continue even if solar projects as are proposed by the Petitioners are set up or not and thus, setting up solar projects does not in any manner result in increase in power procurement cost of the Respondent No. 1 and thereby, the question of creation of any additional burden on the Respondent No. 1 and in turn on the consumers, does not arise.

51. Without prejudice to the above, the Petitioners deem it appropriate to highlight that even if setting up of solar projects as being proposed by them would have caused certain

additional economic burden on the Respondent No. 1 and in turn the consumers, such factor could not and should not be considered as the sole and pivotal factor for the purpose of disallowing setting up of such projects for the following reasons:

- (i) Firstly, the Respondent No.1's arguments completely overlook the intangible but significant positive considerations/ benefits of developing such environmentally benign projects in the State of Goa. The entire argument of the Respondent No. 1 is only premised on the economics of power purchase costs and it does not at all take into account the key aspects associated with development of sustainable environment which can be achieved, in the present facts and circumstances, by way extensive development of green power projects.
- (ii) Secondly, as mentioned earlier, setting up of such projects within the State of Goa is going to be completely in sync with objectives of the Goa Solar Policy which promotes development of such projects within the State of Goa and also the mandate under Electricity Act, NEP and Tariff Policy respectively.
- (iii) Thirdly, development of such projects will lead to development of internal generation capacity within the State of Goa which is currently almost non-existent. Moreover, development of any fossil fuel-based plant within the State of Goa is going to be very detrimental to the ecology of Goa and therefore, any form of internal generation capacity is more suited to be developed based on non-conventional sources like the solar projects being proposed by the Petitioners.

52. The sustainability that is ensured through renewable generation, needs to be appreciated and a myopic approach of weighing the advantages of the same in just economic/financial terms, i.e., just comparing the per unit prices from renewable and non-renewable sources and financial cost, if any(which as mentioned above is specifically denied), associated with intermittent nature of renewable sources, and completely ignoring the long term and overall benefits of the procurement of renewable energy, needs to be reevaluated.

53. Overall power deficit scenario prevailing in goa will get alleviated due to petitioners' setting up the project: In addition to the same, it is respectfully submitted that the other relevant factor/ground that needs to be considered is that the State of Goa has an overall deficit of power and that it has to purchase additional power from power exchanges/open market to meet its entire demand. In support of same, reliance is placed on Tariff Order for Electricity Department, Govt. of Goa dated 30.03.2021 ("**Tariff Order 2021-22**"), as per which the following becomes evident:

Energy Balance Approved by JERC at State Periphery (Table -54) [Tariff Order 30th March 2021]		
	Approved in MYT Order	New Approved by Commission
Energy Required	4892.83	4552.39
Availability	4417.68	4256.74
Deficit/(Surplus)	475.15	295.65
The Commission estimates a deficit of 295.65 MU for FY 2021 -22 to be procured from Open Market by the ED-Goa.		

54. In view of the above, it is clear that if the Petitioners set up its power plant in the State of Goa, the same will be beneficial and assist the Respondent in meeting its deficit power demand and they will not have to procure the same on short term basis from power exchanges/open market and resultantly have a surplus power scenario in the State. Hence, setting up of the power plant by the Petitioners will only bring about a positive impetus for the power scenario in the State of Goa and will in no manner be prejudicial to the interests of the Respondent.

55. Setting up of project by petitioners will also assist the respondent in compliance of its RPO obligation. Allowing the Petitioners to set up their Solar Park/Plant in the State of Goa, will also help the Respondent to fulfil and comply with its Renewable Purchase of Obligation ("**RPO**") as the Respondent has been purchasing Renewable Energy Certificates ("**RECs**") to comply with its RPO Obligation. It is stated that the Respondent has submitted before this Hon'ble Commission as noted in its order dated 05.07.2021 in Suo Moto Petition No. 61 of 2012, that despite making all-out efforts to achieve the RPO targets, the Respondent was unable to do so and resultantly, the non-compliance of RPO has been recorded to tune of 66.94 MUs for FY 2021-21.

56. In the aforesaid order, this Hon'ble Commission suggested that the Respondent should strive to achieve the targets of its Solar RPO for the FY 2021-22 and directed the Respondent to continue its efforts for 100% compliance of Solar RPO. The Hon'ble Commission further noted that the Respondent will be able to meet full compliance of its

Solar and Non-solar RPO if it succeeds in executing the action plan for FY 2021-22 as submitted by it, which is as follows:

RPO	Sales (MU)	RPO Target (MU)	Backlog for FY 2020-21 (MU)	Cumulative RPO Target (MU)	First Quarter (Apr 21- Jun 21) (MU)			Second Quarter (July 21- Sept 21) (MU)			Third Quarter (Oct 21- Dec 21) (MU)			Fourth Quarter (Jan 22- Mar 22) (MU)			Total RPO Compliance (MU)
					Generation	REC	Power Purchase	Generation	REC	Power Purchase	Generation	REC	Power Purchase	Generation	REC	Power Purchase	
Solar	4085.77	326.86	66.94	393.80	3.5	0	46.85	3.5	75	21.8	3.5	75	42.24	3.5	43	43.31	361.2
Non-Solar		367.72	0	367.72	0	0	98.99	0	0	139.94	0	23	50.37	0	0	55.37	367.67
Total		694.58	66.94	761.52	3.5	0	145.84	3.5	75	161.74	3.5	98	92.61	3.5	43	98.67	728.86

57. As is clear from the review of the above, the Respondent will meet 193 MUs of its Solar RPO obligation out of total of 393.80 MUs (326.86 + backlog of 66.94 MUs), through purchase of RECs for which the Respondent will have to incur significant amount. At this stage, it is relevant to state that the actual cost incurred by the Respondent for buying RECs to meet its RPO obligation for FY 2021-22 was Rs. 19.30 Crores.

Source	RPO Quantum (MU)	Total Cost (Cr)
FY 2021-22		
Solar REC	263.36	26.34
Non-Solar REC	59.12	5.91
Total	322.48	32.25
FY 2020-21		
Solar REC	55.02	5.50
Non-Solar REC	34.96	3.50
Total	89.99	9
FY 2019-20		
Solar REC	125.94	12.59
Non-Solar REC	119.66	11.97
Total	245.60	24.56

58. Furthermore, the table prepared by the Petitioners from the data available in JERC Tariff Order for FY 2021-22 dated 30.03.2021, JERC Tariff Order for FY 2020-21 dated

19.05.2020, JERC Tariff Order for FY 2019-20 dated 20.05.2019 respectively, clearly depicts the projected RPO and REC trajectory by the Respondent. The above data clearly depicts that the Respondent has been consistently incurring heavy costs towards purchase of RECs for fulfilling and complying with its Solar RPO. Therefore, if the Petitioners are allowed to setup the Solar Park/Plant in the State of Goa, the same will assist the Respondent in fulfilling and meeting its Solar RPO and save significant costs towards purchase of RECs for fulfilment of its Solar RPO, in accordance with Regulation 3.2 of JERC (Procurement of Renewable Energy) Regulations 2010 inserted vide Second Amendment dated 22.12.2015 read with relevant provisions.

- (i) Power from petitioners' project will help in replacing costly power being procured by the respondent. A perusal of the power purchase cost approved by this Hon'ble Commission for FY 2019-20 to FY 2021-22, apart from purchasing power from open market, it is understood that the top three most expensive power which the Respondent is procuring are from Solapur, Mouda and TAPS, i.e., cumulatively 203.9 MU, 203.9 MU and 210.8 MU for FY 2019-20, 2020-21 and 2021-22. It is stated that if the Petitioners is allowed to supply power to the captive user (Proforma Respondent), it effectively will result into replacement of costly power from other costly sources like the aforesaid plants, to the extent of solar power generation. Therefore, if the Respondent reduces procurement of expensive power from these three generating stations and replace the same with procurement from intra-state solar power generating stations like the instant project, there would inevitably be significant benefit to the Respondent. It is to be noted that the approved weighted average cost from the aforesaid three sources is Rs. 3.73/kwh, which when added up with the REC cost; wheeling charges and losses, culminates into a net gain of Rs. 3.21/ kwh for the Respondent, after deducting the cross-subsidy surcharge. A detailed representation showing the potential gain to the Respondent, considering the replacement of most expensive power with the intra-state solar power is set out herein below:

Details	Value in Rs/Unit
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Average power purchase cost from top 3 sources	₹ 3.73
Income: REC Cost	₹ 1.02
Income: Wheeling Charge	₹ 0.23
Income: Wheeling Loss	₹ 0.17
Total: Accruals from OA Transaction	₹ 5.15
Loss: Cross Subsidy	-₹ 1.94
Net Gain to ED Goa	₹ 3.21

- (ii) Accordingly, rather than facing any financial losses, the Petitioners reasonably believe that the Respondent shall have only significant financial advantages apart from attracting investment in the State which will not only create direct and in-direct jobs but also contribute in the national mission for sustainable development and help in meeting the overall target.

59. That a renewable energy open access consumer should not be subjected to restriction or surrender of its contract demand and they should be exempted from payment of any Imbalance Charges in case of drawal of electricity beyond its Admissible Drawal as stipulated in Regulation 5.2(1)(b) of the JERC OA Regulations, thereby promoting the RE sector in the State of Goa. In view of the submissions made above, it is denied that by allowing the Petitioners to setup Solar Park/Plant in the State of Goa will hamper the scheduling of power which will result in payment of DSM charges, as alleged. It is submitted that the Respondent has been under drawing power during majority of the year and as such has been receiving substantial amount towards deviation charges on account underdrawal, and as much as Rs. 8.80 Crores in the past one year itself. Furthermore, as has been explained in detail above, the Respondent has enough head room to reach and exceed the allowable band, i.e., 12% of the schedule or 150 MW, whichever is less. It is vehemently denied that DSM charges shall be passed on to the partial open access consumer whose open access quantum is from renewable sources, as alleged. It is submitted that such practice will be highly prejudicial to the renewable power generators and for the entire renewable market as well and will deter the development of renewable market in the State of Goa, in total disregard of the aims and objectives of the Goa State Solar Policy, 2017 ("**Solar Policy**"), which promotes solar power integration

and clean source of power in the State of Goa in order to make the State self-reliant in power generation. In any event, it is also significant to state that development of renewable projects is part of the overall objective of achieving sustainable development as has been mentioned in the Solar Policy and various national policies including Tariff Policy, 2016. Therefore, even if certain minor challenges come in the way on account of the inherent intermittent nature of such generation projects, such challenges cannot be allowed to restrict the development of such renewable projects. In other words, deterrent condition like passing on impact of DSM variation charges (which as mentioned above is not likely) on the partial open access consumer whose open access quantum is from the renewable sources, ought not be directed as being sought by the Respondent. The aspect of grid management can be handled by introducing other measures like day ahead scheduling etc.,

60. Moreover, it is also submitted that in most of States, the Forecasting, Scheduling and Deviation Settlement of Solar & Wind Generators Regulations envisage that no charges will be levied for deviation upto 15% band and that only deviation beyond that is payable. Thus, there is no payment of any compensation by renewable generators to the Discoms upto 15% deviation and only if there is deviation beyond the permissible limit, if the renewable generator liable to pay deviation charges as per the rates prescribed in the aforesaid regulations. In other words, there is no direct co-relation of DSM charges suffered by Discoms and payment of deviation by renewable generators i.e., there is no penny to penny co-relation. Thus, it is humbly submitted that such liability of payment of DSM charges and/ or Imbalance Charges by the partial open access consumer ought not be considered and/or allowed by this Hon'ble Commission.

The contentions of the Respondent No. 1 are as under:-

61. In accordance with the JERC (Connectivity and Open Access in Intra-State Transmission and Distribution) Regulations, 2017 and its amendment, an Open Access consumer can have a part of the contracted load with DISCOM and remaining part of the contracted load of own choice other than prevailing DISCOM, then such Open Access consumers are known to be partial Open Access consumer. Whereas full open access consumer not having any part of the contracted demand with the DISCOM and complete contract demand is met through a different source other than the DISCOM.
62. Imbalance charges are basically settlement between the scheduled energy and actual energy. The JERC (Connectivity and Open Access in Intra-State Transmission and Distribution) Regulations, 2017 are applicable for all types of open access consumers. In accordance with the Regulations 4.9 of the afore mentioned regulations refers to the

applicability of the Open Access charges for short-terms, Medium-term and Long-term open access consumers. With reference to the regulation 5.2(1)(b), if a consumer of Contract Demand 15 MW opts for partial open access quantum of 10 MW from a solar power plant, then in accordance with the Regulation 5.2(1)(b) JERC Open Access Regulations 2017, the admissible drawal of electricity from the DISCOM during any time block will be 5 MW. So in this scenario the partial Open access consumer would be able to meet the load demand through open access arrangement and rest load demand through the DISCOM. However, the power from the solar power plant is infirm in nature, where by its very nature it can generate only during day time and there will be no generation at night.

63. So the partial Open Access consumer to meet the load demand during night will be unable to procure power from the solar plant and required to draw power from the DISCOM over and above the admissible drawal which will attract over drawal charges as mentioned in the Regulations. In this regard it is appropriate that the complete contract demand of partial open access consumer, who are procuring open access quantum from the renewable sources, shall be maintained with the DISCOM and the DISCOM shall recover the fixed charges on the contract demand from the partial Open Access consumer. However, it is pertinent to mention that the ED-Goa procures majority of the power from the central generating stations and have no control over generation of power.
64. Further any variation in the scheduled energy drawal at the Goa periphery will attract DSM charges payable by ED-Goa which subsequently increases the power procurement cost. Since the power from the RE source is intermittent in nature and whenever there is non-availability of open access renewable power, then the open access consumer shall draw full/partial quantum of the open access capacity from ED-Goa for the entire time period to meet the load demand.
65. Therefore, it will affect the Scheduling of Power by ED-Goa during peak and off peak hours and will have no control of the same. In view of above, there shall be some mechanism on capping the contract demand whereby the imbalance charges will be applicable on exceeding the capping of the contract demand. On other hand since the RE is intermittent in nature and the availability of the power varies from time to time in such situations it will hamper the scheduling of the power which may result in paying the DSM charges by ED-Goa. Such DSM charges during that time block shall be passed on to the partial Open Access consumer whose open access quantum is from the renewable sources.

66. The Statement of Reasons of the first Amendment of the Open Access Regulations, the Commission was of the view that an Open Access consumer can only apply for Open Access for capacity maximum upto its Contract Demand. The relevant excerpt of the same is reproduced herein below for the ease of reference:

Stakeholder's Comments/Suggestions:

4.1 Amplus Energy Solution Private Limited (AESPL) submitted that solar power projects operate at lower CUF (16% to 19%) and generate lower energy due to its intermittent nature. Therefore, to meet the needs of energy requirement a Consumer would set up a larger project than its sanctioned Contract Demand while limiting its drawl (MWh) to its Contract Demand as existing transmission system were designed considering the Contract Demand of the Consumer. In case of Excess energy generation if any, shall be banked with the DISCOM and drawn by the Consumer later payment of applicable Banking Charges.

4.2 Therefore, Amplus has requested to the Commission to clarify that Open Access Consumer can apply for Open Access capacity beyond its Contract Demand or not.

Analysis & Commission Decision:

4.3 The Commission is of the view that an Open Access consumer can only apply for Open Access for capacity maximum upto its Contract Demand. This will not only help the distribution / transmission licensee to carryout effective network planning but will also help in maintaining grid discipline. In case the Open Access is allowed for the capacity beyond the Contract Demand, it will adversely affect the grid.

4.4 Further, Regulation 5.2 1 (b) of JERC (Connectivity and Open Access in Intra-State Transmission and Distribution) Regulations,2017, clearly provides for the treatment of the over / under drawal by a partial open access consumer of a distribution Licensee.

71. The Electricity Department of Goa doesn't have its own generation, so major chunk of power is procured from the central generating stations and have no control over generation of power. Further any variation in the schedule, energy drawal at the Goa

periphery will attract the Deviation Settlement Mechanism (DSM) charges payable by ED-Goa which subsequently increases the power procurement cost. Since the power from the renewable energy source is intermittent in nature and whenever there is non-availability of open access renewable power, then the open access consumer shall draw full/partial quantum of the open access capacity from ED-Goa for the entire time period to meet the load demand. Therefore, it will affect the Scheduling of Power by ED-Goa and will attract penalties in terms of Deviation Settlement Mechanism. Also, the penalties in such scenario will always remain upon ED-Goa and sometimes the penalties are very high and depend on the grid frequency and the power demand in such penalty conditions. Further ED-Goa submits that during the off peak load hours ED-Goa has surplus energy, where ED-Goa is forced to sell the Surplus power at much lower rate at exchanges or back down the power generation from the NTPC station however ED-Goa still have to pay the fixed charges for allocated power. During peak load hours i.e. 18:00 hrs to 23:00 hrs, ED-Goa has deficit energy where it procures power from the open market at higher rate to cater the load demand of the consumers. Moreover during the peak load period of ED-Goa there is no availability of the solar power and the demand of such open access consumer shifts to ED-Goa which burdens ED-Goa to buy power at much higher rate and subsequently increases the power purchase cost which is against the interest of the consumers. This also poses challenges in power purchase planning and effective distribution grid management. ED Goa also submits that the distribution infrastructure is planned based on the contract demand (including that of Open Access) of all its consumers and in case of overdrawl by any consumer, the entire infrastructure gets overloaded and put all other consumers at risk of interruption of power. In general, when a HT consumer migrates to Open Access, the Discom is negatively impacted due to loss of its revenue (part or full) from such consumer, while still incurring certain fixed costs.

Moreover, the loss to Discom is higher when consumers opt for open access under captive or renewable type of open access power. Further, in case the consumers do not retain their contract demand with Discoms, the impact on Discom increases due to loss of fixed revenue also in addition to the loss of revenue from energy charges. Lower tariff recovery from domestic and agricultural categories is compensated by way of higher tariff from industrial and commercial consumers. Considering the existing level of cross subsidies in the consumer tariff, the Hon'ble Commission has allowed to recover surcharge in order to compensate the Discoms for loss of cross subsidies due to migration of consumers to open access. Therefore, the JERC (Connectivity and open Access in Intra-State Transmission and Distribution) Regulations, 2017 are framed in such a manner that this

loss is generally recovered by way of various open access charges as framed by the Hon'ble Commission so that the sustainability of the DISCOM is not jeopardized

72. Further considering the intermittent nature of the renewable energy, in accordance with the Regulation 7A.1(2) of the JERC (Connectivity and Open Access in Intra-State Transmission and Distribution) (First Amendment) Regulations, 2020, the Hon'ble Commission has extended the banking facility to all captive Renewable Energy based Generating Stations and Renewable Energy based Generating Stations supplying power to Third Party Consumer through Open Access and withdrawal of banked energy from day ahead scheduling. The banking of the renewable energy, upto 20% of the total energy generated by renewable energy generating station can be banked with the distribution licensee with banking charges. This banking provision shall provide the open access consumer to adjust this banked power during unavailability of solar power with the open access quantum.

Month	UI OverDrawl		UI UnderDrawl		NetOverdrawl/(UnderDrawl)	
	Units (MUs)	Payable (Rs.Cr.)	Units (MUs)	Receivable (Rs.Cr.)	Units (MUs)	Payable/(Receivable) (Rs.Cr)
Apr-20	2.67	0.75	1.11	0.07	1.56	0.67
May-20	2.58	0.78	1.96	0.30	0.62	0.47
Jun-20	0.92	0.35	1.19	0.19	-0.27	0.16
Jul-20	0.98	0.33	1.69	0.37	-0.71	-0.04
Aug-20	1.47	0.48	0.92	0.21	0.56	0.28
Sep-20	2.59	0.95	0.83	0.18	1.76	0.77
Oct-20	3.54	1.02	2.29	0.54	1.25	0.48
Nov-20	4.23	1.26	1.18	0.34	3.04	0.93
Dec-20	1.50	0.41	2.72	0.69	-1.22	-0.28
Jan-21	2.63	0.87	4.36	1.15	-1.72	-0.28
Feb-21	3.94	1.71	3.67	1.04	0.28	0.68
Mar-21	1.64	0.69	10.61	1.47	-8.97	-0.77
Total	28.70	9.62	32.53	6.55	-3.82	3.07

73. The e-hearing held on 8th July, 2021, during the course of argument the Petitioner argued that the ED-Goa is not incurring any DSM charges and mostly the power is under drawn. The details of DSM charges for FY 2020-21 is shown in the below table:
74. ED-Goa is payable of INR 3.07 Cr.towards DSM charges during FY 2020-21 (as per table above). Moreover, the ED-Goa shares this information with the Hon'ble Commission every quarterly along with FPPCA and its respective bills. Hence it is requested to not relax the imbalance charges and continue with the action of the over/under drawal by a partial open access consumer of a DISCOM in accordance with the Reg 5.2(1)(b) of the JERC (Connectivity and Open Access in Intra-State Transmission and Distribution) Regulations, 2017.

The Commission has considered the submissions of both the Petitioners and Respondent No. 1. It has also examined the Petition and the entire record placed before it along with reply of the Respondent and rejoinder filed by the Petitioner. Further the written arguments filed by both the parties are also considered by the Commission.

Besides above the Commission has also examined the specific provisions of the Act, the relevant provisions of the JERC (Connectivity and open Access in Intra State Transmission and Distribution) Regulations, 2017 and other rules and regulations made thereunder.

Regulation 2.1 provide as under:-

2.1 Phasing of Open Access

1. *Open Access shall be allowed to all Consumers where the maximum power to be made available at any time exceeds the threshold level of 1 MVA subject to the satisfaction of the conditions contained in these Regulations:*

Provided that the Commission may allow Open Access to Consumers seeking Open Access for capacity less than 1 MVA through a separate Order at such time as it may consider feasible having regard to operational constraints and other factors.

Regulation 5.2 Imbalance Charges

1. *Settlement of Energy at Drawal Point in Respect of Open Access Consumer, or Trading Licensee on Behalf of Open Access Consumer*
 - a. *Open Access Consumer, who is not a Consumer of the Distribution Licensee*

Deviations between the scheduled and the actual drawal in respect of a Full Open Access Consumer shall come under the purview of the Intra-State ABT, as notified by the Commission and shall be settled based on the composite accounts for imbalance transactions issued by SLDC on a weekly cycle based on net metering in accordance with the Deviation Charges specified by the Commission. Billing, collection and disbursement of any amounts under the above transactions shall be in accordance with the Commission's Orders on Intra-State ABT, as may be applicable from time to time:

Provided that till the time Intra-State ABT mechanism is not notified by the Commission, any under drawal shall be settled in accordance with the provisions of the Deviation Settlement Mechanism notified by CERC from time to time:

Provided that till the time Intra-State ABT mechanism is not notified by the Commission, any over drawal shall be settled at higher of the applicable deviation rates (as notified in the CERC Deviation Settlement Mechanism Regulations 2014 amended from time to time) or the temporary tariff applicable for the Consumer category as determined by the Commission from time to time:

Provided that if the Commission has not specified temporary tariff for a category, charges at the rate of 125% of the normal category shall be applicable.

b. Open Access Consumer, who is also a Consumer of the Distribution Licensee

In case of deviation between the schedule and the actual drawal in respect of an Open Access Consumer who is a Consumer of Distribution Licensee shall come under the purview of the Intra-State ABT, as notified by the Commission and shall be settled based on the composite accounts for imbalance transactions issued by SLDC on a weekly cycle in accordance with the Deviation Charges specified by the Commission. Billing, collection and disbursement of any amounts under the above transactions shall be in accordance with the Commission's Orders on Intra-State ABT, as may be applicable from time to time.

Till the implementation of Intra-State ABT, the charges shall be regulated as below:

The quantum of drawal of electricity by a partial Open Access Consumer from the Distribution Licensee during any Time Block of a Day should not exceed the “Admissible Drawal” of electricity by the Open Access Consumer which is the difference of Contract Demand and maximum quantum of Open Access for which approval has been granted by the Nodal Agency.

[Illustration: If an Open Access Consumer with a Contract Demand of 10 MW has been given an approval for a maximum Open Access quantum of 6MW for a period of 3 Months, the Admissible Drawal of electricity from the Distribution Licensee during any Time Block shall be 4 MW for any Day during a period of 3 Months.]

i. Overdrawal

The overdrawal by an Open Access Consumer who is a Consumer of the Distribution Licensee shall be settled as under:

i. Fixed Charges on the Admissible Drawal of electricity by the Open Access Consumer from the Distribution Licensee, even if there is no drawal from the Distribution Licensee.

ii. Energy charges corresponding to drawal from a Distribution Licensee by the Open Access Consumer limited to Admissible Drawal of electricity by the Open Access Consumer, at the applicable energy charge rates of the Distribution Licensee.

iii. Additional fixed charges at the rate of 125% of normal fixed charges, for demand above the Admissible Drawal of electricity by the Open Access Consumer.

iv. Energy charges on any drawal above the Admissible Drawal of electricity by the Open Access Consumer at the rate of charges for temporary connection for the same category.

ii. Underdrawal

In case of underdrawal with respect to scheduled energy, Open Access Consumer shall not be paid any charges by the Distribution Licensee.

5.2 3. *Settlement of Energy at the Injection Point in respect of a Generating Company or a Trading Licensee on Behalf of a Generating Company*

Any under-injection or over-injection with respect to the schedule approved by the SLDC by a generating company or a Licensee shall be settled in accordance with the CERC Deviation Settlement Mechanism Regulations 2014 amended from time to time.

Section 9 (captive generation):

- (1) *Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:*

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

[Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under subsection (2) of section 42.]

- (2) *Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:*

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.”

Section 42 of the Electricity Act, 2003

(3) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that 1[such open access shall be allowed on payment of a surcharge] in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee :

Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

3[Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.)

(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.

The Petitioner has approached the Commission by way of present Petition filed under Sections Section 66, 86(1)(e), 86(1)(k) of the Electricity Act, 2003 read with Regulations 5.2(1)(b), Regulation 9.8 of the JERC (Open Access in Intra-State Transmission and Distribution) Regulations, 2017 and other applicable provisions, seeking appropriate directions to resolve the inevitable practical difficulties associated with setting up and operating solar captive power plant(s) in the State of Goa, for supplying power to its captive user(s), on account of the current method of computation of Admissible Drawal for a partial open access consumer who is procuring power from DISCOM apart from taking power under open access from a renewable captive project for seeking following reliefs:

1. "Grant relaxation from the applicability of the Regulation 5.2(1)(b) of the JERC OA Regulations to the captive user of the Petitioner No. 1's proposed Solar Project, being Proforma Respondent No. 3 and other similarly placed captive users of Petitioner No. 2's Solar Park, by way of directing that the restriction of Admissible Drawal as envisaged in the said regulation and the consequential imposition of Imbalance Charges in case of drawal beyond the Admissible Drawal, will not be applicable to the Petitioners' Solar Project as well as Solar Park;
2. Grant exemption from Admissible Drawal and the consequent restriction/reduction of Contract Demand for partial open access consumers procuring power from solar generating units with respect to withdrawal of power beyond the Admissible Drawal;

The Present Petition is a peculiar case wherein the Petitioners have approached the Commission to grant relaxation and/or exemption in respect of certain provisions of JERC (Connectivity and Open Access in Intra-State Transmission and Distribution) Regulations, 2017 without any real cause necessitating indulgence by the Commission.

The Petitioners have no grievance on account of any regulations and omissions regarding implementation of these regulations on the part of the Electricity Department, State of Goa which has been impleaded as a Respondent No. 1 in the present petition. It is also not the case of the petitioners that they have been put to any hardship due to implementation or interpretation of the said Open Access Regulations in a particular manner. At the same time there is no challenge to any provision of the said Regulations. In fact, the only attempt of the petitioners

in the present case have been to grant relaxation and or exemption in respect of the certain provision of the Open Access Regulations, 2017. Shorn of verbosity, the present petition is bereft of any real cause of action for approaching the Commission.

In its own words, the Petitioners have preferred the present petition to seek relaxation and or exemption to the petitioners in relation to the applicability of the Open Access Regulations particularly on renewable energy/solar plant projects before the petitioners and its associates establish solar plants in the State of Goa. The petitioner and its associates, if desirous of establishing solar generating plants in the State of Goa to operate as captive power plants, may take the decision based on applicability of Open Access Regulations 2017.

The Commission, to say the least, has been vested with wide jurisdiction under Section 86 of the Electricity Act, 2003 and is also empowered under Section 181 to make regulations by notification consistent with this Act and the rules generally to carry out the provisions of this Act. The Open Access regulation, 2017 is applicable not only to the State of Goa but also applicable to other UTs under jurisdiction of this Commission. Hence, the grant of exemption and or relaxation to the petitioners on the grounds of this petition without any real cause is not consistent with the Open Access Regulation, 2017. The petitioners may take its commercial decision as per the present applicable Open Access Regulations,2017.

For the reasons stated above, the Commission does not find it necessary to discuss the arguments of the petitioners in detail. In the event, the petitioners are aggrieved by the Open Access Regulations, 2017 or any part of it, the petitioners are within its right to approach appropriate forum. The Commission is not inclined to accept the arguments advanced by the petitioner and is of the opinion that the Open Access Regulations, 2017 have no ambiguity.

It is pertinent to mention here that the Constitutional Bench of the Hon'ble Supreme Court in the matter "PTC Vs. CERC & others have decided that the Regulations are not the pre condition for the Commission to discharge its function as per the Electricity Act, 2003. However, if the Commission has made any regulation with respect to any specific provision of the Electricity Act, 2003 and there should be strict adherence to those regulations not only by the stakeholders but also by the Commission. Thus, the Commission is of considered view that as there is no ambiguity in the Open Access Regulations, 2017. Therefore, there is no need to grant any exemption to the Petitioners from any provision of Open Access Regulation.

The Commission is convinced with the arguments made by the Respondent No. 1.

In view of the above, the Commission hereby dismisses this Petition.

Ordered accordingly.

Sd/-

(M.K Goel)
Chairperson

Certified Copy



(Rakesh Kumar)
Secretary