

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

HERC/Petition No. 10 of 2025

Date of Hearing : 10.07.2025
Date of Order : 05.08.2025

In the Matter of

Petition Under Section 86 of the Electricity Act, 2003, read with regulations 7 (1), 10, and 13 of the Haryana Electricity Regulatory Commission (Green energy open access) Regulations, 2023 and regulations 65 to 67 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 seeking refund of the balance banked units as on 30.04.2024

Petitioner

1. M/s. Merino Industries Ltd.

Respondents

1. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL)
2. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL)
3. Haryana Vidyut Prasaran Nigam Ltd (HVPNL), Panchkula
4. Haryana Renewable Energy Development Agency (HAREDA)

Present on behalf of the Petitioner

1. Shri Amal Nair, Advocate

Present on behalf of the Respondents

1. Ms. Sonia Madan, Advocate for R-1
2. Mr. Lovepreet Singh, Advocate for R-1
3. Ms. Abha, XEN/Commercial, UHBVNL

Quorum

Shri Nand Lal Sharma
Shri Mukesh Garg

Chairman
Member

ORDER

Brief Background of the case

1. The present petition has been filed by M/s. Merino Industries Ltd seeking refund of the remaining banked units as on 30.04.2023, along with banking charges at the rate of ₹1.50 per unit paid for such units with interest till the date of actual payment;
2. **Petitioner's submissions:-**
The petitioner has submitted as under:-
 - 2.1 That Merino Industries Limited, manufactures versatile interior solutions, having its manufacturing unit at 44 KM Stone, Delhi-Rohtak Road, Village Rohad, Bahadurgarh, Distt. Jhajjar in the State of Haryana.
 - 2.2 That the Petitioner has established and operates a 5 MW solar generating plant at village Burak, Dist. Hisar in the State of Haryana for its captive use, in terms of the

Haryana Solar Power Policy, 2016 notified on 14.03.2016 and also the regulations framed by this Hon'ble Commission. The Petitioner has also registered its Project under the Solar Policy with Respondent No. 4 – HAREDA on 08.03.2019.

- 2.3 That the Project is located within the area of operation of Respondent No. 2 - DHBVNL and is connected to the grid of Respondent No. 3 - Haryana Vidyut Prasaran Nigam Limited at 33 KV at Burak Sub-station. The Project has been established as a captive power plant wherein the entire power generated is consumed by the Petitioner at its manufacturing premises at village Rohad, Bahadurgarh in the State of Haryana, which is within the area of operation of the Respondent No. 1 - UHBVNL.
- 2.4 That the Connection Agreement came to be signed on 21.02.2018 and the Long-Term Open Access Agreement ("LTOA") for the conveyance of electricity from the Project to the place of consumption was granted by HVPNL on 20.03.2018. The LTOA Agreement therefore came to be signed between the Petitioner, HVPNL, and DHBVNL on 11.06.2018.
- 2.5 That the Petitioner was granted LTOA in accordance with the provisions of the Haryana Electricity Regulatory Commission (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 ("HERC OA Regulations 2012").
- 2.6 That the Project was commissioned by the Petitioner on 18.06.2018, from which date the Petitioner has been injecting power into the grid and drawing power at its place of consumption in terms of the LTOA granted.
- 2.7 That the Petitioner also maintains a contracted demand with the distribution licensee i.e., UHBVNL at its place of consumption, which is revised as per the requirements from time to time. At the stage of the LTOA application, the Petitioner was maintaining a contract demand of 1.8 MVA with the distribution licensee. Subsequently, the Petitioner had on multiple occasions sought for a revision in the contract demand, which was considered and approved by HVPNL, UHBVNL, and DHBVNL. The details are as under:

S. No.	Date of Application for Change in Load	Existing Load (MVA)	Revised Load (MVA)	Date of Approval of Load Change
1.	12.12.2017	1.8	2.5	15.02.2018
2.	30.09.2018	2.5	3.5	27.12.2018

- 2.8 That, this Commission notified 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 on 24.07.2018 ("HERC RE Regulations 2017"). Regulation 58 of the HERC RE Regulations 2017, permitted a generator or a captive generator or a consumer in the

state to carry forward banked energy from month to month. Relevant extract of Regulation 58 of the 2017 HERC Regulations is as under:

“58. Banking of RE Power. – A generator or a captive power producer or a Consumer in the State may bank power on payment of the banking charges along with the transmission and distribution losses for availing the open access on the transmission or distribution network of the licensees for banking and drawl of banked power from the Discoms after entering into the banking agreement with the concerned Discoms at the terms and condition specified in the agreement, as follows:

.....

2. The Energy Banked shall be permitted to be carried forwarded from month to month. The banked power shall be utilized within the same financial year failing which the unutilized energy at the end of the financial year shall lapse, and no compensation whatsoever shall be claimed/ paid for such lapsed banked energy, provided the solar energy banked during the last quarter of the financial year shall be carried forward to the next financial year.”

- 2.9 That this Hon'ble Commission notified the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 on 30.04.2021 (“HERC RE Regulations 2021”), which continued with the provision of carrying forward of the banked energy from month to month. Relevant extract of Regulation 66 of the 2021 HERC Regulations is as under:

“66. Banking of RE Power. – RE based captive generating plants of owner / consumer with 100 per cent equity holding in the CPP may bank power, up to contract demand for captive/own use on payment of the banking charges along with the transmission and distribution losses (Technical loss) for availing the open access on the transmission or distribution network of the licensees for banking and drawl of banked power from the Discoms after entering into the banking agreement with the Discoms concerned at the terms and condition specified as under:

.....

2. The Energy Banked shall be permitted to be carried forwarded from month to month. The banked power shall be utilized within the same financial year failing which the unutilized energy at the end of the financial year shall lapse, and no compensation whatsoever shall be claimed/ paid for such lapsed banked energy, provided the solar energy banked during the last quarter of the financial year shall be carried forward to the next financial year.”

- 2.10 That this Hon'ble Commission notified the Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023 on 24.04.2023 (HERC Green Energy Regulations 2023) which came into effect on 02.05.2023.
- 2.11 That Regulation 7(1) of the HERC Green Energy Regulations 2023 discontinued the practice of carrying forward of the banked energy from month to month. Relevant extract of Regulation 7(1) of the 2023 HERC Green Energy Regulations is as under:
"7. Banking: RE based captive generating plants, in which not less than twenty six per cent of the ownership is held by a single captive user, may bank power, up to contract demand for captive/own use on payment of the banking charges along with the transmission and distribution losses (Technical loss) for availing the open access on the transmission or distribution network of the licensees for banking and drawl of banked power from the Discoms after entering into the banking agreement with the Discoms concerned at the terms and condition specified as under:
(1) The energy banked shall not be permitted to be carried forwarded to next billing cycle. The banked power shall be utilized within the same billing cycle failing which the unutilized energy at the end of the billing cycle shall lapse, and no compensation whatsoever shall be claimed/ paid for such lapsed banked energy and the renewable energy generating station shall be entitled to get renewable energy certificates to the extent of the lapsed banked energy."
- 2.12 That at the end of April 2023, 583308.07 banked units were lying in the account of the Petitioner. This was during the currency of the erstwhile HERC RE Regulations 2021.
- 2.13 That following the implementation of the HERC Green Energy Regulations, 2023, the petitioner's energy account was not adjusted for the months of May 2023 and June 2023 to reflect the adjustment of the banked units at the end of April 2023. In fact, no solar adjustment sheets were provided by UHBVNL in this regard.
- 2.14 That upon inquiry, UHBVNL informed the petitioner that its energy account was not being adjusted/ finalized. This was because UHBVNL was in the process of filing a petition before this Hon'ble Commission seeking substantive clarifications regarding the implementation/ applicability of the ibid Regulations.
- 2.15 That UHBVNL again neither adjusted Petitioner's energy account nor issued the solar adjustment sheets for the months of July 2023 and August 2023.
- 2.16 That upon inquiry, UHBVNL reiterated its position, stating that due to uncertainty regarding the applicability of the 2023 Green Energy Regulations, it was not adjusting or finalizing the Petitioner's energy account. UHBVNL further informed that it was in the process of filing a petition seeking substantive clarifications before this Hon'ble Commission. UHBVNL then filed HERC/Petition No. 49 of 2023.

- 2.17 That on 10.11.2023, this Hon'ble Commission passed an Order in HERC/Petition No. 49 of 2023 and provided substantive clarifications regarding the implementation/application of the HERC Green Energy Regulations 2023. It is reiterated that the clarifications sought for and provided had nothing to do with the issue of adjustment of banked units as was being requested by the Petitioner.
- 2.18 That following the issuance of the Order dated 10.11.2023 passed in Petition No. 49 of 2023, UHBVNL commenced with the adjustment of the energy account and issued solar adjustment sheets for the period from May 2023 to September 2023 only in January 2024. However, the adjustment sheet for the month of May 2023 did not provide any adjustments of the banked units.
- 2.19 That the present petition has been filed, being aggrieved by the "retrospective" ineligibility for the adjustment of the energy account, the Petitioner was forced to forego 5,83,308.07 units, amounting to Rs. 38,78,998.66 (calculated at the HT Tariff of Rs. 6.65 per unit), as the banked units as on 30.04.2023 had lapsed.
- 2.20 That HERC Green Energy Regulations 2023 was published on 02.05.2023. In terms of Regulation 1(2), the HERC Green Energy Regulations 2023, come into force from the date of the publication in the Gazette. Relevant extract of the Regulation 1(2) of the 2023 HERC Green Energy Regulations is as under:
"1. Short title, commencement, extent of application and interpretation:
.....
(2) These regulations shall come into force on the date of their publication in the Haryana Government Gazette.
- 2.21 That during the month of April 2023, the regulations which were applicable to the procedure for carrying forward of the banked energy was the HERC RE Regulations 2021, which allowed the carrying forward of the banked units from month to month.
- 2.22 That unless a contrary intention appears, legislation is presumed not to be intended to have retrospective operation. This is because parties may not be able to assume enactment of a new law. In the present case, till at least 24.04.2023, the Petitioner could not have anticipated that banked units would not be allowed to be carried forward to the next month i.e., May 2023. The idea behind the rule is that a current law should govern current activities. It is assumed in law that a party is entitled to arrange its affairs by relying on the existing laws and should not find that his actions have been retrospectively upset.
- 2.23 That coming into force of the HERC Green Energy Regulations 2023, have an effect where the units banked in the month of May 2023 onwards would not be allowed to be

carried forward and not that the units banked in the month of April 2023 would stand lapsed.

- 2.24 That the Petitioner was already benefiting from connectivity and open access before the HERC Green Energy Regulations 2023 came into effect. The HERC Green Energy Regulations 2023 do not repeal or amend the HERC RE Regulations 2021. Instead, the 2023 Regulations are supplementary to the 2021 Regulations, as evident from the third proviso to Regulation 1 (4) and Regulation 8 of the HERC Green Energy Regulations 2023. Therefore, the eligibility conditions in the 2023 Regulations apply only to the "grant" of open access for "new" consumers from 02.05.2023 onwards and do not have retrospective application to existing LTOA consumers.
- 2.25 That there was a lack of clarity on the part of UHBVNL in implementing the provisions of the HERC Green Energy Regulations 2023. The Petitioner, in good faith, made multiple inquiries regarding the issuance of solar adjustment sheets and sought clarity on the adjustments to its energy account. Despite these efforts, it was UHBVNL decision to withhold the adjustment of the Petitioner's energy account until the final outcome of Petition No. 49 of 2023 was determined. It is stated that the clarification pending in Petition No. 49 of 2023 was in relation to the fate of the units banked on the last day of a month and nothing else. The Petitioner was, therefore, left in uncertainty regarding the status of its energy account, which remained unresolved due to UHBVNL decision to delay adjustments until the petition was settled. Therefore, the Petitioner is also entitled to a claim of interest on the principal amount.
- 2.26 That the accumulated units represent energy that the petitioner had rightfully generated and banked, and the inaction of UHBVNL should not penalize the petitioner. Thus, the Petitioner should be entitled to the benefits associated with the energy units accrued prior to the regulatory clarifications, as the inability to adjust these accounts was not due to any fault on the part of the petitioner, but rather a consequence of the ambiguous position taken by UHBVNL. Therefore, it is imperative that the petitioner is allowed to retain the benefits of the accumulated energy units.
- 2.27 That the following prayers have been made: -
- a) Allow the refund of the benefit of the remaining banked units as on 30.04.2023, along with banking charges at the rate of ₹1.50 per unit paid for such units with interest till the date of actual payment;
 - b) Pass any other order(s) and /or direction(s) as may be deemed fit and proper by the Hon'ble Commission in the facts and circumstances of the present case.

Proceedings in the Case

3. The case was initially heard on 07.05.2025. Upon hearing the parties, the Commission directed the respondents to file their reply on or before 23rd May, 2025. The petitioner was also allowed to file its rejoinder on or before 07th June, 2025.

4. **The reply filed by Respondent No. 1 (UHBVNL):-**

UHBVNL filed its reply on 21.05.2025, submitting as under:-

THE PRESENT PETITION IS PREMATURE AND UNTENABLE IN VIEW OF NON-COMPLIANCE WITH ARTICLE 14 OF THE LONG-TERM OPEN ACCESS AGREEMENT:

4.1 That the present petition is premature and not maintainable in its present form, as the Petitioner has failed to follow the mandatory dispute resolution mechanism expressly provided under Article 14 of the Long-Term Open Access Agreement dated 11.06.2018. Article 14 unequivocally stipulates that any disputes arising out of the said Agreement or under the provisions of the Electricity Act, 2023, must first be resolved in accordance with Clause 53 of the Haryana Electricity Regulatory Commission (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 ("Open Access Regulations"). For ready reference, Article 14 is reproduced below

"Article 14. Settlement of Disputes

Disputes relating to Open Access arising under this agreement or under the provisions of Electricity Act, 2023 shall be got resolved as per clause 53 of the Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-state transmission and distribution system) Regulations, 2012."

4.2 That further, Regulation 53 of the Open Access Regulations, 2012 clearly mandates that all disputes and complaints arising under the said Regulations must, in the first instance, be adjudicated by the Coordination Committee within a period of 30 days from the date of receipt of the application by the concerned party. It is only thereafter, in the event of being aggrieved by the decision of the Coordination Committee, that a party may prefer an appeal before the Hon'ble Commission. The relevant excerpt of Regulation 53 of the Open Access Regulations, 2012 is reproduced below for ready reference:

"53. Dispute resolution. - All disputes and complaints arising under these regulations shall be decided by the coordination committee within a period of 30 days from the date of receipt of application from the concerned party. Appeal against the decision of the coordination committee shall lie with the Commission. The decision of the Commission shall be final and binding."

("Emphasis Supplied")

- 4.3 That a conjoint reading of Article 14 of the Long-Term Open Access Agreement and Regulation 53 of the Open Access Regulations leaves no room for doubt that the dispute resolution process is a condition precedent to invoking the jurisdiction of the Hon'ble Commission. However, in the present case, the Petitioner has circumvented the mandatory dispute resolution mechanism envisaged under Regulation 53 of the Open Access Regulations, 2012. As such, the present petition is liable to be dismissed being premature as the petitioner has straightaway approached the Hon'ble Commission without making any reference of dispute before the Coordination Committee.

THE BANKING ADJUSTMENTS HAVE BEEN RIGHTLY MADE BY THE RESPONDENT IN TERMS OF THE PREVAILING REGULATIONS:

- 4.4 That the contention of the Petitioner that owing to the 'retrospective ineligibility', they are constrained to forego 5,83,308.07 units, amounting to Rs. 38,78,998.66 (calculated at the HT Tariff of Rs. 6.65 per unit). In this respect, the Petitioner has raised the following averments:
- i. As of 24.04.2023, the Petitioner could not have anticipated that the banked units would not be permitted to be carried forward to the month of May 2023.
 - ii. Legislations which modify accrued rights, or which impose obligations or impose new duties or attach a new disability must be construed as prospective in operation, unless there is a clear legislative intent indicating that the enactment is to have retrospective effect.
 - iii. The eligibility conditions in the 2023 Regulations apply only to the "grant" of open access for new consumers from 02.05.2023 onwards and do not have retrospective application to existing LTOA consumers.
- 4.5 That the Petitioner has been declared ineligible in terms of GEOA Regulations, 2023 only after the same has come into force.
- 4.6 That specific declaration of the ineligibility of the Petitioner on a subsequent date owing to coming into force of a new law does not amount to "retrospective ineligibility".
- 4.7 That as per the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 ('2021 HERC RE Regulations'), the energy banked was permitted to be carried forwarded from month to month. The banked units of the last quarter of any financial year were allowed to be carried forward to the next year. However, the carry forward adjustment within a financial year had to be made on month-to-month basis. Based on this provision, the eligible banked units of each open access consumer at the end of FY 2022-23 were

duly carried forward to April 2023. The month-to-month adjustment thereafter throughout the year was however, subject to regulatory framework.

The Green Energy Open Access (GEOA) Regulations were published in the Official Gazette on 02.05.2023. Accordingly, open access consumers were permitted to utilize the banked units from the previous financial year up to 01.05.2023. After this date, as per the GEOA regulations, while carrying out adjustment of accounts subsequently, the banked units were considered as lapsed since as per the extant regulations, banked units were not permitted to be carried forward to the next billing cycle.

4.8 That as regards the purported contentions of the Petitioner that GEOA Regulations, 2023 pertains only to the grant of the open access to new consumer from 02.05.2023 onwards, the said contention is wrong and hence denied. GEOA Regulations are squarely applicable to the case of the Petitioner. The following aspects point towards the applicability of the GEOA Regulations, 2023 to the existing OA consumers:

- a. Throughout the Regulations, the term '*green energy open access consumers*' has been used which entails within its domain all the existing as well as future consumers. It has nowhere been mentioned that the provisions relating to Banking and other charges shall apply only to prospective or new open access consumers. No such distinction has been created by virtue of any provisions in the Regulations. As such, there is no requirement of specifically providing any clarification with respect to the applicability of the Regulations to the existing LTOA consumers.
- b. Regulation 6(9) of the GEOA Regulations, 2023 relates to the curtailment of priority. It is submitted that there cannot be separate priority list for old and new open access consumers.
- c. Regulation 9 relates to the issuance of Green Certificate. It is submitted that in case the argument of the Petitioner is accepted, the same would result in an anomalous situation wherein the existing Green Open Access Consumers would not be entitled to Green Certificate and only the new consumers would be entitled to Green Certificate for supply of energy beyond the Renewable Purchase Obligation.
- d. As per Regulation 7(7) of GEOA Regulations, 2023, HVPNL is required to prepare a Detailed procedure for banking. The said Detailed Procedure is also applicable on all the green open access consumer alike.

4.9 That it is further apposite to highlight the observations made by the Hon'ble Commission vide its Suo-Moto Order dated 24.04.2023 reproduced below:

"Commission's view: The Commission has considered the above-mentioned objections filed by the transmission licensee / HVPNL. At the onset, the Commission,

given the importance attached to promoting rapid integration of green power, has considered it appropriate to frame a separate set of Regulations for promoting Green Open Access, instead of amending the existing OA provisions. A separate set of Regulations will give more clarity to the entire mechanism. However, a cross-reference to OA Regulations, 2012 and DSM Regulations is required as it is incidental to open access per se.”

The GEOA Regulations, 2023 are in addition and are to be read in conjunction with the other prevalent Regulations. It is wrong and denied that the GEOA Regulations pertains only to the grant of the open access to new consumer from 02.05.2023 onwards. It goes without saying that the argument raised by the Petitioner by way of the present petition that GEOA Regulations, 2023 are applicable only to prospective consumers is an afterthought only to obtain undue benefit.

WAIVER OF RIGHT TO OBJECT AT THE RELEVANT TIME/ ACQUIESCENCE ON THE PART OF THE PETITIONER:

- 4.10 That the contention raised in the present Petition are besides being misplaced and misrepresented are effectively in the nature of challenging the applicability of regulations. Admittedly, the Petitioner had never raised any such objection to the HERC Green Energy Regulations, 2023, at the appropriate stage when public comments, objections, and suggestions were specifically invited by the Hon'ble Commission. The Regulations are framed by a State Commission under Section 181 of the Electricity Act following a mandatory consultative process with the stakeholders. Having failed to exercise their right at the relevant time, the Petitioner is now estopped from bringing up the said issues at this belated stage. The GEOA Regulations, 2023, have since been conclusively decided and thus, is binding on all stakeholders, including the Petitioner. The present attempt to reopen settled issues amounts to an afterthought and deserves outright rejection.
- 4.11 That the requirement of publication of draft regulations, inviting objections and suggestions is not an empty formality, but is with an intention to enable persons likely to be affected to be informed, so that they may put forth their objections/suggestions thereto, which are to be taken into consideration before issuing a final notification. Before the notification and coming into effect of the Green Energy Open Access Regulations, 2023, a public notice dated 22.03.2023, inviting comments/ suggestions/ objections from the stakeholders on the Draft Regulations was published in the newspapers and also hosted on the website of the Hon'ble Commission. The comments/ suggestions/objections were to be submitted by 31.03.2023. Thereafter, a public

hearing dated 06.04.2023 was granted to the stakeholders, in pursuance of which an order dated 24.04.2023 was passed by the Hon'ble Commission in the following terms: "10. A public hearing was held on 06th April, 2023. The representatives of intervenors present during the hearing, mainly reiterated the contents of their written comments, which has been reproduced at relevant places in the present order and discussed at length. Hence, for the sake of brevity the same have not been discussed herein again. **The issues raised by the intervener have been addressed in the preceding paras in this order and the suggestions, wherever considered justifiable, have been incorporated in the final Regulations.**

Accordingly, the Commission approves the Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023, as per annexure "A" attached to the present order.

The same be sent for Gazette Notification at the earliest."

(Emphasis Added)

The Petitioner cannot be permitted, at this stage, to reopen the matter that stands decided by the Hon'ble Commission. It is humbly submitted that it would be unjustifiable for a Court of Equity to confer a remedy to the Petitioner when his earlier acts/omissions would indicate a waiver of his right to object. It would be unreasonable to facilitate a challenge before the Court made by the Petitioner who has failed to raise any objections against the GEOA Regulations, 2023, at the appropriate time.

- 4.12 That in this regard, it is apposite to refer to the judgment of the Hon'ble Delhi High Court in the matter of ***Juniper Hotels (P) Ltd. v. Delhi Electricity Regulatory Commission, 2023 SCC OnLine Del 7100, (Decided on 03.11.2023)*** wherein the Hon'ble High Court opined that they did not find force in Petitioner's submission on the ground of challenge relating to lack of due process. The Hon'ble High Court further noted that Respondent 1 (DERC) adopted a transparent process and floated public notices in newspapers and on its website regarding the draft regulations at several instances for each draft version. Suggestions, comments, and objections were invited from stakeholders before the 2021 Regulations were enacted. However, Petitioner had not controverted this categorical assertion and never sent in any objections, comments, or suggestions in response to these draft regulations and rather, at this stage, after finalization of the 2021 Regulations, challenge was being raised on non-existent and invalid grounds. The relevant excerpts of the same are reproduced herein below-

"9. The Petitioner emphasises that a transparent bidding process was not adopted as stipulated in Section 63 of the Act. This provision has a non-obstante

clause, which allows the Commission to override Section 62 (determination of tariff) if a transparent process of bidding has been adopted for determination of tariff. Sections 62 and 63 provide as follows

.....

10. A plain reading of the afore-noted provision makes it evident that Section 63 does not provide for bidding as the only mechanism for determination of tariff. **We thus find no force in the submission of the Petitioner on the ground of challenge relating to lack of due process. Furthermore, we also note that Respondent No. 1 adopted transparent process and floated public notices in newspapers and on its website regarding the draft regulations at several instances for each draft version, true copies of which have been annexed to the counter-affidavit. Suggestions, comments and objections were invited from stakeholders before the Regulations were enacted. The Petitioner has not controverted this categorical assertion and never sent in any objections, comments or suggestions in response to these draft regulations. Rather, at this stage, after finalisation of the Regulations, challenge is being raised on non-existent and invalid grounds.**

(“Emphasis Supplied”)

- 4.13 That in view of the foregoing submissions, it is not wrong to suggest that the Petitioner consciously abstained from participating in the consultative process and raising any objections to the Draft Regulations. By its conduct, the Petitioner has waived its right to object and has acquiesced to the finalization of the Regulations. The Petitioner is estopped from now challenging the issue/matter that has already been decided by the Hon’ble Commission. As such, in view of the doctrine of acquiescence, the Petitioner is required to be non-suited outrightly, for belatedly calling upon this Hon’ble Commission to re-open a settled issue.
- 4.14 That the relief now sought by the Petitioner, pertaining to the refund of 583,308.07 banked units as on 30.04.2023, together with banking charges at the rate of Rs. 1.50 per unit and interest thereon, stands squarely covered and conclusively adjudicated by the Hon’ble Commission. The said issue has already been duly considered and decided by the Hon’ble Commission, firstly at the time of passing of the Suo-Moto order dated 24.04.2023 and thereafter vide order dated 10.11.2023 in PRO No. 49 of 2023 preferred by Uttar Haryana Bijli Vitran Nigam Ltd. As such, the petition is liable to be dismissed on the sole ground that the Petitioner is seeking to re-open the issues which have already been dealt and settled by the Hon’ble Commission on separate occasions.

- 4.15 That in response to the averment made by the Petitioner that the clarifications sought and provided by the Hon'ble Commission in its Order dated 10.11.2023 passed in PRO No. 49 of 2023 had no bearing on the issue of adjustment of banked units, it is submitted that the contention of the Petitioner is misconceived and contrary to the express findings of the Hon'ble Commission. The Hon'ble Commission, while adjudicating upon the said matter, has categorically clarified that unutilized banked energy shall lapse at the end of the billing cycle and cannot be carried forward. The relevant excerpts of the said Order is reproduced herein below for ready reference-

"5.4 Clarification regarding time period for the adjustment of banking:-

The petitioner has sought clarification regarding whether the banking shall be counted on daily basis or slot wise basis, as if the banked energy is counted in 15-minute slots, then the energy banked by the consumer in any time slot of last day of the month will be available to utilize from very next time slot of the same day.

The petitioner has submitted that the energy banked by the consumer on the last day of the billing cycle cannot be utilized by the consumer because it will be accounted for at the end of the day, and its validity will also expire due to the end of the billing cycle. This situation leads to a loss for the consumer since the energy they have banked on the last billing day will always lapse.

In this regard, the Commission observes that regulation clause 7 of HERC (Green Energy Open Access) Regulations, 2023, provides as under: -

"(1) The energy banked shall not be permitted to be carried forwarded to next billing cycle. The banked power shall be utilized within the same billing cycle failing which the unutilized energy at the end of the billing cycle shall lapse, and no compensation whatsoever shall be claimed/ paid for such lapsed banked energy and the renewable energy generating station shall be entitled to get renewable energy certificates to the extent of the lapsed banked energy.

....

(5) The RE power shall be adjusted on a first charge basis in order of consumption of energy by a consumer. The banking will be counted on daily basis for the purpose of monthly account."

Thus, it has been expressly provided in the HERC (Green Energy Open Access) Regulations that the banking will be counted on daily basis for the purpose of

monthly account and the unutilized banked energy at the end of the billing cycle shall lapse. Therefore, nothing remains to be clarified in this order.”

(Emphasis Supplied)

- 4.16 That the Hon'ble Commission has recently reaffirmed the above issue passed in the matter of ***M/s. Orbit Resorts Limited v Haryana Vidyut Prasaran Nigam Limited (HVPNL) & Ors bearing Petition No. 9/2024 (Decided on 25.11.2024)*** wherein the Hon'ble Commission has categorically held and observed as under-

“11. Consequently, the Commission, in line with the HERC GEOA Regulations in vogue i.e. Regulation 7 of the ibid Regulations holds that the power banked shall not be carried over from one billing cycle to the other and the credit for the banked power remaining undrawn shall lapse at the end of the billing cycle. Consequently, the prayers of the petitioner seeking carrying forward of banked energy during the last week of the billing cycle to the next billing cycle, allowing drawl of banked energy during peak hours, increase the maximum banking facility from thirty percent to higher percentage, relaxation of the minimum captive consumption requirement for captive generation status, are rejected as devoid of merit as well as against the extant provisions of the Electricity Rules.

.....

18. Having discussed as above, in conclusion, the prayers of the petitioner seeking carrying forward of banked energy during the last week of the billing cycle to the next billing cycle, allowing drawl of banked energy during peak hours, increase the maximum banking facility from thirty percent to higher percentage, relaxation of the minimum captive consumption requirement for captive generation status, are rejected as devoid of merit as well as against the extant provisions of the Electricity Rules.”*(Emphasis Supplied)*

- 4.17 That along with the Petitioner, there are 5 others similarly placed consumers. Out of such consumers, M/s KRBL and Asian paints, whose banked units pending before the notification of the GEOA regulations, were also treated as lapsed as per the prevailing regulations. Further, M/s KRBL duly participated in the public hearing for discussion of draft regulations and objected to lapse of banking units, which was explicitly rejected by the Hon'ble Commission in the Order dated 24.04.2023. The Objection raised by the OA consumers as regards lapse of banking units and the ruling of the Hon'ble Commission clears beyond doubt that the GEOA regulations as regards Baking of energy is applicable to all existing OA consumers and the contentions now raised by the Petitioner are untenable and clearly an afterthought to set up a frivolous case.

- 4.18 That no specific response was required to the communication of the petitioner dated 14.03.2024, as the Petitioner was well aware that the HERC Green Energy Regulations, 2023 came into effect, which explicitly provided that the banked units would lapse. The attempt of the Petitioner to reopen and re-agitate a settled position is wholly misconceived and merits outright rejection.

RELIEF CLAIMED BARRED BY THE SPECIFIC TERMS AND CONDITIONS
SUBSISTING BETWEEN THE PARTIES/ AGREED UPON BY THE PETITIONER:

- 4.19 That it is submitted that the Petitioner has been duly informed time and again that the Regulations issued by Hon'ble HERC as amended from time to time shall be made applicable to the case of the Petitioner. Attention in this regard is brought towards the following documents:

- a. Letter dated 08.03.2019, vide which approval was granted to the Petitioner's proposal for setting up Solar Power Project for captive consumption under Haryana Solar Power Policy, 2016, specifically states as under:
*".....The said proposal for setting up of the Captive Generating Solar Power Project of 05 MW capacity of 05 MW capacity at Vill. Budak, Hisar has been approved for availing waivers of wheeling & transmission charges subject to fulfilment of the conditions mentioned in the guidelines enclosed as Annexure-I. Haryana Solar Power policy, 2016 with amendments and **HERC Regulations issued from time to time.** The Power Utilities shall ensure that the power generated from this project be utilised for captive consumption only.*
- b. Similarly as per clause (viii) of the letter dated 20.03.2018 whereby intra-state long term open access was granted to the Petitioner it has been stated that-
*"The applicants shall abide by the provisions of all applicable Regulations, Notifications, Guidelines, Acts, Orders, Codes, Rules and amendments thereof from **time to time** including Electricity Act, 2003, CERC Regulations & HERC Regulations."*
- c. Further, attention is brought towards the following clauses of the LTOA Agreement dated 11.06.2018:
"Recitals

.....
*And where the Long Term Open Access Customer vide their application dated 19.08.2017 is desirous to avail Long Term Open Access in accordance with **Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and Open Access for intra-State transmission and distribution system) Regulations, 2012 as amended from time to time.***

.....

Words & expression used and defined in the LTOA shall have the same meaning as assigned to them under the Electricity Act, 2003, Haryana Grid Code, Indian Electricity Grid Code, **Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and Open Access for inter-State transmission and distribution system) Regulations, 2012, as amended from time to time.**

Article 2. Terms and Conditions Governing Agreement for Open Access:

HVPNL agrees to provide LTOA to LTOA customer in accordance with the provision of Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and Open Access for intra-State transmission and distribution system) Regulations, 2012, **as amended from time to time along with conditions as specified by HERC from time to time.** The Open Access grant shall further be subject to fulfilment of terms & conditions specified by HVPNL vide letter dated 20.03.2018.

Article 3. Charge for Open Access

(i) The Long Term Open Access Customer has agreed to pay all the Transmission charges and all other applicable charges as per **Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 as amended from time to time** for the use of Intra State Transmission/Distribution system in line with the tariff decided by HERC.

.....

Article 5. Compliance and Grid Discipline

.....

(iv) **During the tenure of this agreement, if any, of the covenants and conditions recited in this agreement found inconsistent with the provisions of the Electricity Act, 2003 and/or applicable notification/rules/regulations issued either by HERC as per the provisions of the Electricity Act then notwithstanding anything contained in this agreement, the said rules and regulations shall prevail over the Rules & Regulations mentioned in this Agreement.**

.....

Article 11. Alteration:

.....

*The present Agreement is being signed subject to condition that **any changes proposed by HERC & CERC is being signed subject to condition that any changes proposed by HERC & CERC relevant to this agreement will be binding on all the parties.***

.....

Article 13. Defaults & Termination:

(i).....

(ii) **Any change in the terms and conditions of Open Access notified by the Commission shall have the overriding effects on the provisions of this agreement to the extent of their applicability.”**

- 4.20 That reliance is placed upon the judgment passed by Hon’ble APTEL in the matter of **Swasti Power Limited v. UERC APPEAL NO. 287 OF 2015 (Decided on 23.04.2019)**, wherein the Hon’ble Tribunal had categorically held that once a party accepts supply, connectivity, or open access under regulatory frameworks, it is bound by the applicable regulations as they exist on the date of transaction and as amended from time to time. The Hon’ble Tribunal emphasized that regulatory provisions, once incorporated by reference into an agreement or approval letter, continue to bind the parties in their amended form. Any modifications made to the regulations by the competent authority must be given an overriding effect, even if the original contract or approval referred to an earlier regulation. The relevant excerpt of the said Order is reproduced herein below for ready reference:

“1.1 The Appellant has raised the following Questions of Law for our consideration:

.....

d. Whether in law, the Power Purchase Agreement dated 03.07.2009 executed between the Appellant and the Respondent No.2 can over-ride the provisions of the Uttarakhand Electricity Regulatory Commission (Tariff and Other terms for Supply of Electricity from Non – conventional and Renewable Energy Sources) Regulations, 2008 and Uttarakhand Electricity Regulatory Commission (Tariff and Other terms for Supply of Electricity from Renewable Energy Sources and non- fossil fuel based Co-generating Stations) Regulations, 2010, framed by the Respondent No.1?

XXXXXXXX

2.12...

.....

That the recital part of the PPA dated 03.07.2009

.....

That the PPA defines the term “**Regulation**” as under:- “**1.13 ‘Regulations** means the Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms For Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2008, as amended from time to time.”

2.13. That a perusal of the aforementioned Clause would make it clear that the Appellant and the Respondent No.2 had agreed to comply with the Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms for Supply of Electricity from Non –Conventional and Renewable Energy Sources) Regulations, 2008, (“Regulations, 2008) for the purposes of payment of tariff under the PPA and further, agreed to comply with all the Regulations as notified by the Respondent No.1 from time to time.

XXXXXXX

3.4 On 06.07.2010, R-1 notified Uttarakhand Electricity Regulatory Commission (Tariff and other terms for Supply of Electricity from Non-conventional and Renewable Sources and non-fossil fuel based co-generating stations) Regulations, 2010 (“Regulations, 2010”), which provided that PPA’s of generators would need to be amended to make them in line with these Regulations (as amended from time to time), failing which the provisions of these Regulations shall be deemed to have been incorporated in their PPA’s and will have overriding effect over any of the previous provisions.

XXXXXX

3.8 Application of provisions of Regulations, 2008 and Regulations, 2010 upon the PPA dated 03.07.2009:-

i. Because, Recital 2 of the Regulations, 2010, itself provided that PPA’s of generators would need to be amended to make them in line with these Regulations (as amended from time to time), failing which the provisions of these Regulations shall be deemed to have been incorporated in their PPA’s and will have overriding effect over any of the previous provisions. Thus, the provisions of the Regulation 23 and 24 of Regulations, 2010 shall be deemed to have been effective and have application on the facts of the case. Thus, any amendment to the aforesaid Regulations as notified by the Respondent No.1 would automatically govern the provisions of the PPA and the same would be binding upon the parties.

ii. Because Hon’ble Apex Court in the matter of PTC India Ltd V/s Central Electricity Regulatory Commission; (2010) 4 SCC 603 (Copy enclosed as Annexure A-2) was pleased to hold that, “A regulation under Section 178, as a

part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities in as much as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations.” It is thus submitted that PPA dated 03.07.2009 is subjected to the Regulations, 2008 & 2010 as framed by the State Commission, and provisions of the Regulations would override the conditions of the PPA, in law.

.....

4.2 The principal issue running through the four claims is the applicability of the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations 2010 [“2010 Regulations”]

.....

.....

..... From the above, it is apparent that the if a legally valid PPA have been entered into with the distribution licensee by the RE generator or the financial closure of the project has taken place prior to coming into force of these Regulations on the basis of previous Regulations/Orders of the Commission, the PPAs of such generators would need to be amended to make them in line with the RE Regulations, 2010 failing which the provisions of these Regulations shall be deemed to have been incorporated in their PPAs and will have overriding effect over any of the previous provisions.

XXXXXX

We are of the considered view that once it is established and held by the State Commission that the Appellant gets covered under the prevailing Regulations then all claims after 10.01.2013 shall be dealt with in accordance with the governing Regulations only.”

(“Emphasis Supplied”)

- 4.21 That as such, the question of applicability of GEOA Regulations, 2023 cannot be raised in view of the fact that the Agreement expressly provides that all HERC regulation, as amended from time to time shall be applicable. The Regulations notified by this Hon’ble Commission has the force of law and are binding on all concerned for transactions made in the applicable regime.

THE ENERGY ACCOUNT OF THE PETITIONER WAS NOT ADJUSTED IN VIEW OF THE PENDENCY OF THE PETITION BEARING PRO NO. 49 OF 2023 PREFERRED BY THE ANSWERING RESPONDENT SEEKING CLARIFICATION WITH RESPECT TO THE GEOA REGULATIONS, 2023.

- 4.22 That the Answering Respondents could not on its own adjust the account of the Petitioner when the clarification from the Hon'ble Commission was being sought. Once the issue was clarified/determined by the Hon'ble Commission, the account of the Petitioner was adjusted forthwith. All actions were taken by the Answering Respondent in compliance of the directions of the Hon'ble Commission. Even otherwise, as per Article 3(vi) of the Agreement for LTOA dated 11.06.2018 subsisting between the parties, any change in the energy accounting methodology shall be binding on the parties. The provisions of Article 3(vi) of the Agreement for LTOA dated 11.06.2018 is reproduced herein below for ready reference:

"3. Charges for Open Access

(i)...

(ii)...

(iii)....

*(iv) The LTOA customer agrees to accept the Energy account bills issued by HVPNL without any reservations & conditions and make full payment of bills. **Any change in the Energy Account methodology shall also be binding in all cases.**"*

Commission's Analysis and Order

5. The case was called for arguments on 10.07.2025, wherein the Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by the parties. The petitioner as well R-1 have agreed that other respondents are not the essential parties; hence may be proceeded ex-parte against them.
6. The petitioner herein has approached this Commission seeking refund equivalent to the remaining 583308 banked units as on 30.04.2023 amounting to Rs. 38,78,998.66, calculated at the HT Tariff of Rs. 6.65 per unit, along with banking charges at the rate of ₹1.50 per unit paid for such units, on the ground that Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023 (GEOA Regulations 2023), which restricts the carried forward of banked units to next month, was notified on 02.05.2023; hence has applicability on the units injected after this date and cannot have retrospective applicability. Prior to the notification of the GEOA Regulations, 2023, the provisions of banking of RE power were governed by Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 (RE Regulations, 2021), which had allowed carry forward of banked units from month to month and adjustments were allowed till the end of the financial year.

7. In order to examine the issue, the Commission considered it appropriate to examine the relevant clauses of the ibid regulations i.e. GEOA Regulations 2023 as well as RE Regulations, 2021. The relevant clauses are reproduced hereunder:-
Regulation clause 66 of HERC RE Regulations, 2021, provides as under:-

“66. Banking of RE Power. –

RE based captive generating plants of a owner/consumer with 100 per cent equity holding in the CPP may bank power, up to contract demand for captive/own use on payment of the banking charges along with the transmission and distribution losses (Technical loss) for availing the open access on the transmission or distribution network of the licensees for banking and drawl of banked power from the Discoms after entering into the banking agreement with the Discoms concerned at the terms and condition specified as under:

- 1. The RE power shall be allowed to be banked with the distribution licensee(s), upto the cumulative contract capacity of 100 MW only, by levying banking charges @ Rs. 1.50/unit, after which the Commission shall review the provisions of banking taking into consideration of the financial impact on distribution companies.*
- 2. The Energy Banked shall be permitted to be carried forwarded from month to month. The banked power shall be utilized within the same financial year failing which the unutilized energy at the end of the financial year shall lapse, and no compensation whatsoever shall be claimed/ paid for such lapsed banked energy, provided the solar energy banked during the last quarter of the financial year shall be carried forward to the next financial year.*
- 3. Banked energy not drawn as per schedule, shall be considered as dumped energy & shall lapse.*
- 4. The banking shall be allowed throughout the year, however, the drawl of banked power shall not be allowed during the peak months (May to September).*
- 5. The drawl of banked power shall also be not allowed during peak load hours as mentioned in the ToD tariff approved by the Commission.*
- 6.”*

(Emphasis supplied)

Further, Regulation clause 7 of GEOA Regulations 2023, notified on 02.05.2023, provides as under:-

“7. Banking: RE based captive generating plants, in which not less than twenty six per cent of the ownership is held by a single captive user, may bank power, up to contract

demand for captive/own use on payment of the banking charges along with the transmission and distribution losses (Technical loss) for availing the open access on the transmission or distribution network of the licensees for banking and drawl of banked power from the Discoms after entering into the banking agreement with the Discoms concerned at the terms and condition specified as under:

(1) The energy banked shall not be permitted to be carried forwarded to next billing cycle. The banked power shall be utilized within the same billing cycle failing which the unutilized energy at the end of the billing cycle shall lapse, and no compensation whatsoever shall be claimed/ paid for such lapsed banked energy and the renewable energy generating station shall be entitled to get renewable energy certificates to the extent of the lapsed banked energy.”

(Emphasis supplied)

Thus, GEOA Regulations, 2023 has restricted the utilization of banked energy to the same billing cycle, which under RE Regulations, 2021 was allowed to be carried forward for utilization in subsequent months till the end of the financial year.

The Commission has also examined the date of applicability of GEOA Regulations, 2023. The relevant clause of the ibid regulations is reproduced hereunder:-

“1. Short title, commencement, extent of application and interpretation:

- (1) These Regulations may be called the Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023.*
- (2) These regulations shall come into force on the date of their publication in the Haryana Government Gazette.*
- (3) ”*

Thus, the provisions of the GEOA Regulations, 2023 are abundantly applicable from the date of their publication in Haryana Government Gazette, which is 02.05.2023.

8. From the examination of the above, there is not an iota of doubt that in respect of units banked till 30.04.2023, the provisions of regulations existing on that date i.e. regulation clause 66 of RE Regulations, 2021, shall prevail. Which means that the units banked till 30.04.2023 shall be allowed to be adjusted till 31.03.2024, as per the provisions of RE Regulations 2021. Needless to add that the petitioner is not allowed to claim what has not been provided in the ibid regulations. Therefore, the claim of the petitioner seeking refund of Rs. 38,78,998.66 towards equivalent cost of banked units on the presumption that had the carried forward of banked units would have been allowed at the relevant time, they would have consumed the same, does not stand validated tested on the anvil of the ibid regulations. Further, the relief sought for refund of banking

charges of Rs. 1.50/unit levied in line with regulation clause 66 of HERC RE Regulations, 2021, does not sustain.

Conclusion:-

Having answered the above issues, the Commission directs UHBVNL to allow adjustment of 583308 units banked till 30.04.2023 in the subsequent months of the FY 2023-24 and grant refund to the petitioner on account of excess bill amount charged without adjusting banked units, within 30 days from the date of issue of this order. Further, in line with the principle of restitution, interest @ 9.58% p.a. i.e. the rate of interest on working capital allowed to UHBVNL in the ARR order dated 28.03.2025, shall also be payable from the date the refund was due (which is the end of the month in which banked units shall be adjusted) to the date of actual payment.

9. In terms of the above discussion, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 05.08.2025.

Date: 05.08.2025
Place: Panchkula

(Mukesh Garg)
Member

(Nand Lal Sharma)
Chairman