BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/Petition No. 35 of 2026

Date of Hearing	**:**	**02.09.2026**
Date of Order	**:**	**13.10.2026**

In the Matter of

Petition under section 86 (1) (e), (f) & (k) of the Electricity Act, 2003 read with Regulation 55 and 59 of HERC (Terms and conditions for grant of connectivity and open access for intra-state transmission and distribution system) Regulations, 2012 and Regulation 65, 66 and 67 of the HERC (Conduct of Business) Regulations, 2019 for directing DHBVNL to consider the energy supplied by the generator during period between 28.09.2024 to 23.11.2024 and accordingly revise the deviation settlement records for said time period.

Petitioner (s)

1. Gurgaon Infospace Ltd., through its Authorized Representative Having its Registered Office at F-83, Profit Centre, Gate No. 1, Mahavir Nagar, Near Pizza Hut, Kandivali (W).
2. Transition Cleantech Services Pvt. Ltd., through its Authorized Representative Having its registered office at Unit 702, 7th Floor, Tower 3, Equinox Business Park, Off Bandra Kurla Complex, L.B.S Marg, Kurla West Kurla, Mumbai- 400070.
3. Candor Kolkata One Hi-Tech Structures Pvt. Ltd., through its Authorized Representative Having its Registered Office at F-83, Profit Centre, Gate No. 1, Mahavir Nagar, Near Pizza Hut, Kandivali (W), Mumbai-400067.
   aditya.singh@dentonslinklegal.com, divyansh.singh@dentonslinklegal.com

Respondent(s)

1. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Through its Managing Director, Vidyut Sadan, Vidyut Nagar, Hisar-125005 Email: md@dhbvn.org.in
2. Haryana Vidyut Prasaran Nigam Limited (HVPNL), Through its Managing Director Shakti Bhawan,Plot No.C-4,Panchkula-134109.Email: md@hvpn.org.in

Present on behalf of the Petitioner(s)

1. Mr. Aditya K. Singh, Advocate
2. Mr. Mridul Gupta, Advocate
3. Mr. Vineet Gupta, Advocate

Present on behalf of the Respondent(s)

1. Mr. Raheel Kohli, Advocate
2. Mr. Gaurav Singhal, AEE, HVPNL
3. Mr. Sunny, AEE, HVPNL

Quorum

Shri Mukesh Garg	**Officiating Chairman**
Shri Shiv Kumar	**Member**

ORDER

Brief background of the case

1. The present petition has been filed by Gurgaon Infospace Limited (Petitioner No. 1) and Transition Cleantech Services Private Limited (Petitioner No. 2), and Candor

Kolkata One Hi-Tech Structures Private Limited (Petitioner No. 3) as petitioner(s) and Dakshin Haryana Bijli Vitran Nigam Ltd. (R1), and Haryana Vidyut Prasaran Nigam Limited HVPNL(R2) as the respondent(s), for directing DHBVNL to consider the energy supplied by the generator during period between 28.09.2024 to 23.11.2024 and accordingly revise the deviation settlement records for said time period.

2. The petitioner has submitted as under: -

2.1. The present petition is being filed by Gurgaon Infospace Limited ("Petitioner No. 1" or "Consumer") and Transition Cleantech Services Private Limited ("Petitioner No. 2" or "Generator"), and Candor Kolkata One Hi-Tech Structures Private Limited ("Petitioner No. 3" or "Consumer- 2") hereinafter collectively called as ("Petitioners"), praying the Commission to direct Dakshin Haryana Bijli Vitran Nigam Limited ("Respondent No. 1" or "DHBVNL" or "Discom" or "Distribution Licensee") to consider the energy supplied by the generator during period between 28.09.2024 to 23.11.2024 and accordingly revise the deviation settlement records for said time period.

2.2. It is relevant to highlight that Petitioner No. 2 being the Generator has been supplying the green energy to Petitioner No. 1 through interstate bilateral open access, as part of the long-term Power Purchase Agreement ("PPA"), from its Solar Power Plant ("Project") located in the State of Rajasthan since July 2024.

2.3. While the Petitioner No. 2 continues to supply power from its Project, for the time period from 28.09.2024 to 23.11.2024, the said Petitioner came to note (recently) that Respondent No. 1 has not settled the power for the days wherein Petitioner No. 1 has not maintained the constant power in continuous 12-time blocks of 15 minutes each, while punching the schedules onto Respondent No. 1's portal for D-1 day.

2.4. Accordingly, the Petitioner No. 2 at once proceeded to issue a letter dated 08.05.2025 to the Superintending Engineer, CBO of Respondent No. 1 drawing the attention of Respondent No. 1 to the aforementioned issue and requested the intervention of Respondent No. 1 for the purposes of settling the energy schedule. Further, it is critical to highlight that vide the said letter, Petitioner No. 2, highlighted the following:

2.4.1. Petitioner No. 2 has been supplying power to Petitioner No. 1 though its Project located in the State of Rajasthan though open access;

2.4.2. Petitioner No. 1 has inadvertently, not maintained constant power in 12 continuous 12 time slots during the period between 28.09.2024 and 23.11.2024;

2.4.3. Additionally reference was made to the Final Order dated 10.11.2023, passed by this Hon'ble Commission in Petition No. 49 of 2023, wherein this Hon'ble Commission was pleased to settle the pressing issue of availment of benefit of power drawn through Green Energy Open Access, particularly when the consumer (like Petitioner No. 1 in the present case) fails to meet the requirement of continuous drawl for 12-time blocks of 15 minutes each in any particular day, and held that such consumers shall be eligible to avail the benefit of power drawl through green energy open access, subject to applicable settlement mechanism.

2.4.4. In line with the above, Petitioner No. 2 has paid the applicable Deviation settlement penalty;

2.4.5. Accordingly, Petitioner No. 1 is entitled to receive the credit of the energy, particularly, when Petitioner No. 2 has paid the applicable Deviation settlement penalty;

2.5. That Section 86(1) (e) of the Act provides for this Hon'ble Commission to promote generation of electricity from renewable energy sources. Section 86(1)(k) empowers this Hon'ble Commission to discharge its functions in accordance with this Act. For ready reference, the relevant provisions reproduced herein:

"Section 86. Functions of State:

(1) The State Commission shall discharge the following functions, namely:--…

(e) <u>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</u>;

(f) <u>adjudicate upon the disputes between the licensees and generating companies</u> and to refer any dispute for arbitration;

…

(k) <u>discharge such other functions as may be assigned to it under this Act</u>."

["<u>Emphasis Supplied</u>"]

2.6. Additionally, Regulation 55 and 59 of this Hon'ble Commission's (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 enshrines the inherent power of this Hon'ble Commission along with the power to relax the provisions of the said regulations. For ready reference, the relevant provisions reproduced herein:

"55. Saving of inherent powers of the commission. - Nothing contained in these regulations shall limit or otherwise affect the inherent powers of the Commission from adopting a procedure, which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstances of the matter or in public interest or class of matters and for reasons to be recorded in writing, deems it necessary or expedient to depart from the procedure specified in these regulations.

59: 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."

["Emphasis Supplied"]

2.7. Furthermore, Regulations 65, 66 and 67 of this Hon'ble Commission's (Conduct of Business) Regulations, 2019 also enshrine this Hon'ble Commission's inherent power to dispense Justice. For ready reference, the relevant provisions reproduced herein:

"Saving of inherent power of the Commission

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

66. Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act a procedure at variance with any of the provisions of these Regulations if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

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

["Emphasis Supplied"]

2.8. That on 11.01.2012, the Commission issued Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 ("Connectivity Regulations") in exercise of its powers vested under section 181 of the Electricity Act, 2003. The said regulations were applicable in cases where applications have been made for grant of connectivity for the purpose of open access to the intra-state

transmission and or distribution system or for long term, medium term and short-term open access. As per the Connectivity Regulations, the STU will be the Nodal Agency for grant of connectivity and open access. The eligibility criteria for grant of open access to embedded open access consumers under Regulation 42.

2.9. Thereafter, on 03.12.2013, the Commission issued Haryana Electricity Regulatory Commission (Terms and Conditions for grant of connectivity and open access for intra-State transmission and distribution system) (1st Amendment) Regulations, 2013 ("1st Amendment"). It is pertinent to highlight that the objective of the said amendment was to strike a balance between the interests of various stakeholders involved in open access.

2.10. Subsequently, the Commission vide Notification dated 24.03.2023 proceeded to issue the Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023 ("Green Energy Open Access Regulations") which facilitates green energy open access supply and consumption ("Transactions") undertaken by Petitioners are in terms of and in furtherance of the Green Energy Open Access Regulations.

2.11. For ready reference, the relevant extracts of the said Regulations reproduced herein:

"2. Scope and extent of application: These regulations shall apply where an application has been made for grant of connectivity for the purpose of open access to the intra-State transmission and/or distribution system and/or where an application has been made for long-term open access, medium-term open access or short-term open access for use of the intra-State transmission and/or distribution system or <u>where an application has been made for obtaining no objection or standing clearance, as the case may be, of the STU for open access to inter-State transmission system when the intra-State transmission and distribution system is to be used in conjunction with inter-State transmission system.</u>

…

11. Application procedure for open access: (1) All applications for open access shall be made in the prescribed Form and submitted to the nodal agency in accordance with these regulations and the detailed procedure….

(3) STU with Headquarter at Panchkula in Haryana shall be the Nodal Agency. Applications for open access and connectivity shall be received and processed at STU headquarter in accordance with the detailed procedure. STU shall strive to introduce on-line acceptance and on-line conveyance of consent/no objection/standing clearance etc. through internet for inter-state as well as intrastate open access at the earliest possible but not later than six months from the date of notification of these regulations.

…

16. Consent by STU or Distribution licensee:-

A. For Inter-State open access:

(1) STU, in respect of a consumer connected to state transmission / distribution network seeking inter-State long–term or medium-term open Access, shall convey its consent or otherwise as per the provisions of Central Electricity Regulatory Commission Regulations, 2009, or its statutory re-enactments, as amended from time to time.

(2) In respect of a consumer connected to state transmission / distribution network seeking inter-state short-term open access, STU shall convey its consent or otherwise as per the provisions of Central Electricity Regulatory Commission Regulations, 2008, or its statutory re-enactments, as amended from time to time as detailed hereunder:-.

(a) An applicant seeking inter-state short-term open access shall submit his application to STU along with the requisite fee for issue of no objection/standing clearance for a period not exceeding three months at a time. The STU shall, acknowledge receipt of the application, either by e-mail or fax, or any other usually recognized expedient mode of communication, within twenty-four hours from the time of receipt of the application.

Provided that where the application has been submitted in person, the acknowledgement shall be provided at the time of submission of the application.

(b) While processing the application for concurrence or 'no objection' or standing clearance, as the case may be, the STU shall verify the following, namely-

(i) existence of infrastructure necessary for time-block-wise energy metering and accounting in accordance with the provisions of the Haryana Grid Code in force, and

(ii) availability of required capacity in the transmission and/or distribution network.

(c) Where existence of necessary infrastructure and availability of required capacity in the transmission and/or distribution network has been established, the STU shall convey its concurrence or 'no objection' or prior standing clearance, as the case may be, to the applicant by e-mail or fax, in addition to any other usually recognized expedient mode of communication, within three

(3) working days of receipt of the application:

Provided that when short-term open access has been applied for the first time by any person, the buyer or the seller, the STU shall convey to the applicant such concurrence or 'no objection' or standing clearance, as the case may be, within seven (7) working days of receipt of the application by e-mail or fax, in addition to any other usually recognized mode of communication.

(d) In case the STU finds that the application for concurrence or 'no objection' or standing clearance, as the case may be, is incomplete or defective in any respect,

it shall communicate the deficiency or defect to the applicant by e-mail or fax, in addition to any other usually recognized mode of communication, within two (2) working days of receipt of the application.

Provided that in case where the STU has communicated any deficiency or defect in the application, the date of receipt of application shall be the date on which the application has been received duly completed, after removing the deficiency or rectifying the defects, as the case may be.

(e) In case the application has been found to be in order but the STU refuses to give concurrence or 'or 'no objection' or standing clearance, as the case may be, on the grounds of non-existence of necessary infrastructure or unavailability of required capacity in the transmission and/or distribution network, such refusal shall be communicated to the applicant by e-mail or fax, in addition to any other usually recognized mode of communication, within the period of three (3) working days or seven (7) working days, as the case may be, from the date of receipt of the application along with reasons for such refusal.

Provided that where the STU has not communicated any deficiency or defect in the application within two (2) working days from the date of receipt of application or refusal or concurrence or 'no objection' or standing clearance, as the case may be, within the specified period of three (3) working days or seven (7) working days, as applicable, from the date of receipt of the application, concurrence or 'no objection' or standing clearance, as the case may be, shall be deemed to have been granted.

(f) In case of applicant connected to the distribution system, the STU shall make a reference to the distribution licensee and the said distribution licensee shall convey its consent or otherwise within (3) three working days of receipt of reference from the STU. For embedded open access consumers, the distribution licensee shall verify only that the consumer meets the eligibility criteria, as laid down in regulation 8, before conveying the consent. In case the distribution licensee has not communicated refusal or consent within the specified period of (3) three working days from the date of receipt of the reference from STU, consent shall be deemed to have been granted.

…

42. Eligibility criteria, procedure and conditions to be satisfied for grant of long term open access, medium term open access and short term open access to embedded consumers shall be same as applicable to other short-term open access consumers. However, the day-ahead transactions, bilateral as well as collective through power exchange or through NRLDC, by embedded open access consumers under short term open access shall be subject to the following additional terms and conditions:

i) The Consumer shall submit to the distribution licensee a schedule of power through open access for all the 96 slots by 10:00 AM of the day preceding the day of

transaction and this will be considered as confirmed schedule for working out the slot-wise admissible drawl of the consumer from the licensee with reference to his sanctioned contract demand. For example, if an embedded consumer with a contract demand of 10 MW has scheduled 4 MW power through open access in any time slot of the succeeding day as per the schedule submitted by him at 10 AM, then his admissible drawl from the licensee in that time slot will be 6 MW.

The total admissible drawl in different time – slots shall, however, be worked out based on slot-wise admissible drawl from the licensee as above and the slot-wise schedule of power through open access accepted / cleared by the power exchange and intimated to the SLDC and distribution licensee by the consumer in compliance of regulation 45. For example if, as per the schedule for drawl of power through open access submitted by the consumer at 10 AM of the day preceding the day of transaction, 4 MW power was scheduled through open access in a time slot and as per the accepted schedule this gets reduced to 3 MW, then his admissible total drawl in that time slot shall be 9 MW. i.e. 6 MW from the licensee and 3 MW through open access.

In case recorded drawl of the consumer in any time slot exceeds his total admissible drawl but is within 105 % of his contract demand, he will be liable to pay charges for the excess drawl (beyond admissible drawl) at twice the applicable tariff including FSA. In case the recorded drawl exceeds the sanctioned contract demand by more than 5% at any time during the month as per his energy meter, demand surcharge as per relevant schedule of tariff approved by the Commission shall also be leviable. For the purpose of calculating demand surcharge in such cases, the total energy drawl during the month including the energy drawl through open access shall be considered. The consumption charges for the energy drawl through open access, for the purpose of levy of demand surcharge, will be worked out at the applicable tariff for the category to which the consumer belongs.

ii) The drawl of power through open access during peak load restriction hours shall be subject to the provisions of regulation 45 (3) hereinafter.

iii) In the event of underdrawl for a slot or multiple thereof, the consumer will be paid imbalance charges by the distribution licensee as provided in Regulation 24 (2) (A) II (i) provided that in case of underdrawl as a result of non-availability of intra-state distribution/transmission system or on account of unscheduled load shedding (to be certified by SLDC), imbalance charges for underdrawl shall be payable as provided in Regulation 24 (2) (C).

All other terms and conditions shall be same as applicable to other short-term open access consumers.

43. Settlement of Energy at drawl point in respect of embedded consumers.-

The mechanism for settlement of energy at drawl point in respect of embedded open access customers shall be as under:

(i) Out of recorded slot-wise drawl the entitled drawl through open access as per accepted schedule or actual recorded drawl, whichever is less, will first be adjusted and balance will be treated as his drawl from the distribution licensee.

(ii) The recorded drawl will be accounted for / charged as per regulation 24 (2) (A) (a) (ii) of these regulations or regulation 42 as may be applicable.

45. Requirement of Scheduling for Embedded open access consumers. –

(1) Scheduling shall be done in accordance with relevant provisions of IEGC for inter-State transactions and in accordance with relevant provisions of Haryana Grid Code for intra-State transactions.

(2) By 10.00 hours every day, these embedded consumers shall prepare and submit daily schedule of power, in MW, separately showing schedule of power from licensee and that from another supplier through open access for the next day, i.e. from 0000 hrs to 24.00 hrs of the following day to SLDC along with copy to distribution licensee. For day-ahead transactions, bilateral as well as collective, through power exchange or through NRLDC, this schedule of drawl of power through open access submitted at 10.00 hrs shall be considered as final for the purpose of working out slot-wise admissible drawl from the licensee as per the provisions of regulation 42.

Provided that in case the quantum of energy through open access as per schedule accepted by power exchange is less than the quantum intimated as per the schedule submitted at 10.00 hrs by the embedded open access consumer to the licensee, then he shall inform the SLDC / distribution licensee about the slot-wise accepted schedule of power through open access and his total admissible draw and settlement of energy at the drawl point shall be regulated /settled as provided in regulation 42 and 43 respectively…."

<u>Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023</u>

…

3. Scope and Extent of Application: <u>This Regulations shall be applicable for allowing connectivity and open access to electricity generated from green energy sources as defined under clause (i) of Regulation 2, including the energy from non-fossil fuel-based Waste-to-Energy plant</u>.

CHAPTER 2

GRANT OF OPEN ACCES

4. Eligibility criteria for Green Energy Open Access:

The consumers who have contracted demand or sanctioned load of hundred kW and above shall be eligible to take power through Green Energy Open Access and there shall be no limit of supply of power for the captive consumers taking power under Green Energy Open Access:

Provided that such open access shall be for a minimum twelve-time blocks of 15 minutes time interval during a day, for which the consumer shall not change the quantum of power consumed through open access:

["Emphasis Supplied"]

2.12. That as per the Connectivity Regulation, Respondent No. 2 is the nodal agency. The consumer seeking inter-state open access shall apply to the nodal agency in order to obtain no objection from the Respondent No. 2. The embedded consumer who has been granted open access shall inform the distribution licensee regarding schedule of power through open access for all the 96 slots by 10:00 AM of the day preceding the day of transaction.

2.13. That the Petitioner No. 1, as a part of its decarbonization initiative, was intending to maximize its power procurement from renewable energy sources for use across various properties owned and/or managed by him. Therefore, the Petitioner entered into a Power Purchase Agreement on 19.09.2023 for procuring power from Petitioner No. 2. As per Article 2 of the PPA, the agreement was entered into for 25 years from the date of commercial operation. Further, Article 5.2 of the PPA, provides as under:

"5.2 Purchase and Sale of Scheduled Energy

From the Commercial Operation Date and subject to the terms and conditions of this Agreement, the Generating Company undertakes to sell to the Purchaser, and the Purchaser undertakes to purchase, and make timely payments for, the scheduled Energy in each Contract Year for the entire Term of the Agreement.

2.14. Thereafter, Petitioner No. 2 i.e., Transition Energy Services Private Limited, situated within the 400 MW AC solar power park of M/s Prerak Greentech Private Limited in Bikaner, commissioned its plant on 15.03.2024 for 24.4 MW Capacity and intimated the same to the Northern Regional Load Dispatch Centre ("NRLDC") by way of letter dated 13.03.2024.

2.15. That Post commissioning of the Project, the Petitioner No. 2 was duly supplying power to Petitioner No. 1 while complying with the terms of the Connectivity Regulations. However, on account of inadvertent error there was failure in informing the distribution licensee regarding the schedule of power through open access for all the 96 slots by 10:00 AM of the day preceding the day of transaction as per Regulation 42 of the Connectivity Regulations from 28.09.2024 to23.11.2024 ("Unaccounted period").

2.16. That the Petitioners carried out all the compliances and obtained all the required *No Objection Certificates* ("NOC") required from *National Open Access Registry* ("NOAR") under the Connectivity Regulation which are given as under:

a. The Petitioner No. 1 obtained the Standing clearance from Haryana SLDC (State Load Dispatch Centre) on *Green Open Access Registry* ("GOAR") portal for the unaccounted period as follows:

   i. From 19.09.2024 to 30.09.2024 – NOC Obtained on 18.09.2024
   ii. From 01.10.2024 to 07.10.2024 - NOC Obtained on 28.09.2024
   iii. From 08.10.2024 to 31.10.08.2024 - NOC Obtained on 30.09.2024
   iv. From 05.11.2024 to 30.11.2024 - NOC Obtained on 01.11.2024

   (Copies of Standing Clearance issued by SLDC has been enclosed with the petition)

b. The Petitioner No. 2 obtained the Standing clearance from Haryana NRLDC on GOAR Portal for the unaccounted period as follows:

   i. From 01.09.2024 to 16.09.2024 - NOC Obtained on 29.08.2024
   ii. From 25.09.2024 to 30.09.2024 - NOC Obtained on 22.09.2024
   iii. From 07.10.2024 to 31.10.2024 - NOC Obtained on 04.10.2024
   iv. From 05.11.2024 to 30.11.2024 - NOC Obtained on 01.11.2024

   (Copies of Standing Clearance issued by NRLDC has been enclosed with the petition)

c. The Petitioner No. 2 obtained the Open Access (Bilateral Transaction) Acceptance for Scheduling from Grid India on NOAR Portal for the unaccounted period as follows:

   i. From 01.09.2024 to 30.09.2024 - Applied and accepted on 23.08.2024
   ii. From 01.10.2024 to 31.10.2024 - Applied and accepted on 20.09.2024
   iii. From 01.11.2024 to 30.11.2024 - Applied and accepted on 22.10.2024

   Copies of Open Access (Bilateral Transaction) Acceptance for Scheduling from Grid India has been enclosed with the petition.

2.17. That further, the Petitioner No. 2 supplied the energy to Petitioner No. 1 for all the Unaccounted Period. Moreover, respective Petitioners have been regularly uploading the scheduled energy on the NOAR website on a daily basis, including for the period from 11.07.2024 to 13.09.2024. The energy supplied was captured in the NRPC monthly Regional Energy Accounts ("REAs") and the same was further accounted by

the Respondent No.2 but the same was not settled in the energy bills of the consumer i.e. Petitioner No. 1.

2.18. That it is further stated that the Petitioner No. 1 has paid an amount of INR 7,13,966/- (Indian Rupees Ten Lakhs Sixty-One Thousand Eight Hundred and Thirty-Eight) for the electricity transmitted and wheeled by the Respondent No. 2. Copy of the Invoice raised by the Respondent No. 2 (relevant to highlight that the total invoice amount as mentioned in the bill is to the tune of INR 37,40,217/- out of which proportionate payment for the relevant time period sums upto the aforesaid amount has been enclosed with the petition.

2.19. That at this juncture, it is extremely pertinent to highlight that in the seeing no response from Respondent No.1 qua energy settlement for the electricity utilised by the Respondent No. 1, ("Issue No. 1") the Petitioners are undertaking measures available to them under the law.

2.20. That in the meanwhile, for the time period from 28.09.2024 to 23.11.2024, the said Petitioner came to notice that Respondent No. 1 has not settled the power for the days wherein Petitioner No. 1 has not maintained the constant power in continuous 12-time blocks of 15 minutes each, while punching the schedules onto Respondent No. 1's portal for D-1 day ("Time Block Issue").

2.21. That upon becoming aware about the said Time Block Issue, Petitioner No. 2 at once proceeded to issue a letter dated 06.05.2025 to the Superintending Engineer, CBO of Respondent No. 1 drawing the attention of Respondent No. 1 to the aforementioned issue and requested the intervention of Respondent No. 1 for the purposes of settling the energy schedule. Further, it is critical to highlight that vide the said letter, Petitioner No. 2, highlighted the following:

i. Petitioner No. 2 has been supplying power to Petitioner No. 1 though its Project located in the State of Rajasthan though open access;

ii. Petitioner No. 1 has inadvertently, not maintained constant power in continuous 12 time slots during the period between 28.09.2024 to 23.11.2024;

iii. Additionally reference was made to the Final Order dated 10.11.2023, passed by this Hon'ble Commission in Petition No. 49 of 2023, wherein this Hon'ble Commission was pleased to settle the pressing issue of availment of benefit of power drawn through Green Energy Open Access, particularly when the consumer (*like Petitioner No. 1 in the present case*) fails to meet the requirement of continuous drawl for 12-

time blocks of 15 minutes each in any particular day, and held that such consumers shall be eligible to avail the benefit of power drawl through green energy open access, subject to applicable settlement mechanism.

iv. In line with the above, Petitioner No. 2 has paid the applicable Deviation settlement penalty;

v. Accordingly, Petitioner No. 1 is entitled to receive the credit of the energy, particularly, when Petitioner No. 2 has paid the applicable Deviation settlement penalty;

2.22. That additionally, Petitioner No. 2 also issued a letter dated 08.05.2025 to the Managing Director of Respondent No. 1, intimating him about the aforesaid Time Block Issue being faced by the Petitioners.

2.23. That in light of the aforementioned, it was requested by Petitioner No. 2, from Respondent No. 1 ought to consider the energy supplied during the aforementioned time period and consequently, provide the revised settlement sheets for the said time period.

2.24. That considering that Respondent No. 1, for the reasons best known to them, have decided not to respond to the aforesaid letters issued by Petitioner No. 2, nor provide revised settlement sheet. Accordingly, the Petitioners herein are left with no alternative but to approach this Hon'ble Commission on the following grounds:

<u>GROUNDS</u>

A. FOR That the public record available reflects that the power has been supplied by the Petitioner No. 2 and consumed by the Respondent No. 1.

B. FOR That the Respondent No. 2 being a state instrumentality and having the same control and ownership as the Respondent No. 1, is confirming that the electricity has been supplied by the Petitioner No. 2 to its consumer namely the Petitioner No. 1.

C. FOR That the Petitioners had complied with all the requirements given under the Connectivity Regulations, Green Energy Open Access Regulations including but not limited to obtaining Standing clearance from Haryana SLDC (State Load Dispatch Centre), the Standing clearance from Haryana NRLDC, the Open Access (Bilateral Transaction) Acceptance for Scheduling from Grid India etc. Additionally, the schedule of electricity in 15 minutes interval was also updated on the NOAR on daily basis.

D. It is a settled law that an unintentional mistake on the part of an individual/entity must not affect their substantial rights. has also been held by Hon'ble Appellate Tribunal for Electricity in the matter of *M/s Rana Sugars Limited v. UPERC, Appeal No. 185 of 2022 dated 28.05.2025* that:

"19. In our judgment in appeal no.186 of 2023, we have taken note of the well settled judicial principle that a bonafide and honest mistake committed by a person/entity with no intention to cause any harm/loss to any other person/entity should be permitted to be rectified. Our discussion on this aspect in the said judgment in extracted hereinbelow: -

"35. We may also note that it is a well settled judicial principle that where a bonafide and honest mistake has occurred with no intention to cause any harm/loss by the party committing such mistake to any other person then that person must be permitted to rectify the mistake. While dealing with the issue of bonafide mistake committed by a person, the Supreme Court in the case of Price Waterhouse Coopers Private Limited V/s CIT, (2012) 348 ITR 306 (SC) held that no penalty can be imposed in respect of inadvertent and bonafide mistake committed by an assessee. The relevant portion of the judgment is extracted hereinbelow: -

"15. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present one, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.

16. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars."

36. Similar view has been expressed by the Delhi Hight Court in Charu Kain V/s High Court of Delhi, 2022 LiveLaw (Del) 551. In that case the petitioner before the court had

appeared for Delhi Judicial Service Preliminary Examination, 2022 as a General Category candidate whereas she belonged to a reserve category (SC). The petitioner had secured 119.5 marks which was admittedly above the cut-off marks i.e. 115.5 specified for reserve category candidates. Therefore, in the event she was considered as a reserve category candidate, she would have made it for appearing in the mains examination. In such a situation, the court observed and held as under: -

"13. In the given facts, the limited question that falls for consideration before this Court is whether the petitioner should suffer the consequence of her mistake, which she has admittedly committed, or ought to be given a chance to rectify the same.

14. The petitioner has relied upon the decision of the Division Bench of the High Court of Rajasthan in the case of Kavita Choudhary v. Registrar (Examination): 2017 SCC OnLine Raj 3612, wherein the court had taken a liberal view that the mistakes which do not prejudice any other person, should be permitted to be rectified. The perusal of the said decision indicates that the court had also followed several decisions passed by this Court to the aforesaid effect.

15. This Court concurs with the aforesaid view. Clearly, a person committing a bona fide mistake, which does not cause prejudice to any person, should be given an opportunity to rectify the same.

16. In the present case, it is clear that the petitioner's mistake is a bona fide one; she derived no benefit from submitting an incorrect application disclosing her category as the general category. She had further compounded the mistake by not seeking immediate rectification as soon as she became aware of the same.

17. Notwithstanding the same, this Court finds that there is no prejudice caused to any person and the matter regarding the examination has not proceeded to a stage, which renders it inapposite to correct this mistake."

37. In the case before Bombay High Court in Commissioner of Income-Tax V/s Somany Evergree Knits Limited 2013 SCC Online Bom 1798, the respondent an income-tax assessee had, in its return of income claimed depreciation of Rs.1.70 crores. During the assessment proceedings, he realized that it had wrongly claimed Rs.1.70 crores of depreciation instead of Rs.1.05 crores and explained that this had happened due to mistake a calculation. The Assessing Officer did not accept that it was a mistake and levied penalty under section 271(1)(c) of the Income Tax Act, 1961. The Commissioner of Income Tax (Appeals) upheld the order of Assessing Officer.

The Appellate Tribunal held the mistake to be bonafide and inadvertent an accordingly reversed the decision of Commissioner of Income Tax as well as the Assessing Officer. The decision of the Income Tax Tribunal was upheld by the Bombay High Court saying that there is no reason to interfere in the same."

E. FOR That the Respondent No. 1 has distributed (and earned revenue) the electricity which has been supplied during the aforesaid time period for Time Block issue, using the assets of the Respondent No. 2. The Respondent No. 2 has earned revenue by collecting fee for the assets utilized by the Petitioner No. 2 to the Petitioner No. 1. Non-recognition/non-settlement of the electricity utilized is an act of unjust enrichment at the expense of Petitioners. That in case of *Sahakari Khand Udyog Mandal Ltd. v. CCE & Customs*, (2005) 3 SCC 738, the Apex Court defined "Unjust Enrichment" as under:
"31. Stated simply, "unjust enrichment" means retention of a benefit by a person that is unjust or inequitable. "Unjust enrichment" occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else.
32. The doctrine of "unjust enrichment", therefore, is that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of "unjust enrichment" arises where retention of a benefit is considered contrary to justice or against equity."

F. FOR That the actions of the Respondent No. 1 are violative of the Electricity Act, 2003 as the intent and scope of Electricity Act, 2003 is majorly built on *protecting interest of consumers and also for promotion of the renewable energy.*

G. FOR That unjust enrichment cannot be allowed especially when it goes against the intent of Electricity Act, 2003. It was held in the case of Power Company of Karnataka Limited v. Udupi Power Corporation Ltd., 2020 SCC OnLine APTEL 94 that:
"251. Noticeably, unjust enrichment may accrue even indirectly by saving of inevitable expenses as well. The liability of the procurer under the PPA is to make timely payment. If this obligation is not discharged, it leads to further liability incurred under the Regulations to pay LPSC which is subsumed as part of the tariff. Since such liability towards LPSC is not founded in contractual terms, the ruling of Madhavankutty (supra) is inapplicable. Failure to account for such liability is an attempt on the part of appellants to make illegitimate savings which, going by above explanation in Mahabir Kishore, <u>is gaining of indirect advantage resulting in unjust enrichment. This cannot be permitted in as much as it violates the letter and spirit of the objects</u>

and reasons, and philosophy, of Electricity Act, 2003, the hallmarks whereof include not only safeguarding of the consumers' interest but also, and equally important, the conduct of "the generation, transmission, distribution and supply of electricity" based "on commercial principles", encouraging "competition, efficiency, economical use of the resources, good performance and optimum investments", and "recovery of the cost of electricity in a reasonable manner"."

H. That apart, it is also submitted that this Hon'ble Commission vide it *Final Order dated 10.11.2023, in Petition No. 49 of 2023, a Petition filed by Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL)* for the purposes of seeking clarifications and removal of difficulties which have arisen in the implementation of certain Regulations of the HERC (Green Energy Open Access) Regulations, 2023, was pleased to settle the Time Block Issue as being faced by the Petitioners herein and held that such consumers shall be eligible to avail the benefit of power drawl through green energy open access, subject to applicable settlement mechanism. The relevant excerpts from the said Final Order have been reproduced herein for ready reference:

"…

ORDER

1. The present petition has been filed by UHBVNL seeking clarifications and removal of difficulties which have arisen in the implementation of certain Regulations of the HERC (Green Energy Open Access) Regulations, 2023.

…

5.5 Clarification regarding green energy open access power for a minimum twelve-time blocks of 15 minutes time interval during a day: -

The petitioner has submitted that first proviso to regulation clause 4 of the HERC (Green Energy Open Access) Regulations, 2023 provides as under regarding 'eligibility criteria for Green Energy Open Access': -

Provided that such open access shall be for a minimum twelve-time blocks of 15 minutes time interval during a day, for which the consumer shall not change the quantum of power consumed through open access

The petitioner has further submitted that the Commission's order dated 24.04.2023 provides that the Open Access consumer must keep its quantum of power brought under open access mechanism while injecting as well as while drawing fixed for at least 12-time blocks in a day (Page No.-30 of Suo-moto petition order dated 24.04.2023).

In this regard, the petitioner has sought the following clarifications: -

d. Whether the scheduled drawl or actual drawl through Green Energy Open Access is to be considered for evaluating the eligibility condition for constant drawl of power for twelve- time blocks of 15-minute intervals?

e. *Whether the twelve-time blocks of 15-minute intervals, as defined in the eligibility conditions are to be considered as continuous time blocks? If yes, the Hon'ble Commission may also kindly clarify:*
   i) If the condition for drawing continuous open access power mandatory for only 3 hours (12-time blocks of 15 minutes each) per day, or should this requirement be repeated for every change in drawl of power by the consumer in a day?
   ii) Whether the consumer, who fails to meet the requirement of continuous drawl for 12-time blocks of 15 minutes each in any particular day, eligible to avail the benefits of power drawl through Green Energy open access on that particular day?
f. *Whether any penalty is liable to be imposed on Green Open Access Consumers who fail to meet the above criteria? If yes, the Hon'ble Commission may kindly clarify the conditions for imposition of such penalties, for instance should the scheduled drawl data or the actual drawl data be considered?*
g. *Does the failure to comply to the aforesaid condition imply that the consumers are ineligible for benefits as outlined in the Green OA Regulations, 2023? Whether in such a scenario, would the consumer be entitled to benefits specified in 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?*
h. *Whether the proviso applies to the drawl of banked energy? If yes, the Hon'ble Commission may kindly clarify whether the consumer is required to keep its total drawl (i.e. drawl in real time + drawl from banking continuous for 12-time blocks), or both drawls should be considered separately for evaluating the eligibility condition?*
i. *Whether the proviso applies to Solar/Wind based Captive consumers where injection of power is not static?*

The Commission is conscious of the fact that generation from Solar PV system is dependent on the solar irradiation per unit area. Hence, on any surface the irradiation will change with the tilt angle. Consequently, generation obtained from solar panels will also change. Resultantly, the quantum of power consumed through open access in twelve-time blocks of 15 minutes time interval during a day may not be possible. Therefore, it is obvious that the condition, of maintaining twelve-time blocks of 15 minutes time interval during a day, for availing open access, is applicable with reference to the schedule given by the consumer/generator. The actual drawl/generation may deviate attracting deviation settlement charges/imbalance charges as per the provisions of DSM/Open Access Regulations in vogue. Accordingly, the questions raised by the petitioner are answered as under:

…

b. Whether the twelve-time blocks of 15-minute intervals, as defined in the eligibility conditions are to be considered as continuous time blocks? If yes, the Hon'ble Commission may also kindly clarify:

i) If the condition for drawing continuous open access power mandatory for only 3 hours (12-time blocks of 15 minutes each) per day, or should this requirement be repeated for every change in drawl of power by the consumer in a day?

Commission's view:-

The condition of drawing continuous open access power for twelve- time blocks of 15-minute intervals, is applicable for the entire day and not to be repeated for change in drawl of power by a consumer in a day.

ii) Whether the consumer, who fails to meet the requirement of continuous drawl for 12-time blocks of 15 minutes each in any particular day, eligible to avail the benefits of power drawl through Green Energy open access on that particular day?

Commission's view:-

The question has already been clarified in the preceding para of this order i.e. they are eligible to avail the benefit of power drawl through green energy open access, subject to applicable deviation settlement mechanism.

…"

["Emphasis Supplied"]

I. That basis the aforementioned, it is vehemently submitted that the Time Block Issue as being faced by the Petitioners herein is no more *res integra* as this Hon'ble Commission has taken a view on the issue and has settled the same in the aforementioned Final Order.

J. That accordingly, it is submitted that Respondent No. 1 is under an obligation to follow the directions by this Hon'ble Commission and abide by the findings of this Hon'ble Commission. In this light, it is humbly submitted that Respondent No. 1 ought to be directed to comply with the findings of this Hon'ble Commission vide the Final Order dated 10.11.2023 and recognize that Petitioner No. 1 is entitled to receive the credit of the energy supplied by Petitioner No. 2 between the period 28.09.2024 to 23.11.2024 and accordingly, provide the revised settlement sheets for the aforementioned time period.

K. That the above becomes extremely pertinent given the fact that in terms of the findings of the Hon'ble Commission vide Final Order dated 10.11.2023, Petitioner No. 2 has paid the applicable Deviation Settlement Charges for the said time period. A copy of the record of the payment made has been enclosed with the petition.

L. That the present Petition is made bona fide and in the interests of justice. The Petitioners have not filed any other application / petition before any other court, Tribunal or Commission in relation to the issues raised herein. The Petitioners craves leave of this Hon'ble Commission to supplement the instant Petition with further pleadings, should the need arise.

M. That Hon'ble Commission has necessary jurisdiction to entertain and decide the present petition in terms of Section 86 of the Electricity Act, 2003 read with applicable regulations.

N. That the petitioners hereby declare that the subject matter of the present petition is not challenged before any other court or forum.

O. That the petitioners submit that it reserves its rights to add, amend, alter in the present petition.

2.25. PRAYER**:**

a. Allow the present petition; and

b. Direct Dakshin Haryana Bijli Vitran Nigam Limited to recognize that Petitioner No. 1 is entitled to receive the credit of the energy supplied by Petitioner No. 2 between the period 28.09.2024 to 23.11.2024 and accordingly, provide the revised settlement sheets for the aforementioned time period, in terms and furtherance of the Final Order dated 10.11.2023 as passed by this Hon'ble Commission in Petition No. 49 of 2023; and

c. Pass any other order/ direction as this Hon'ble Commission may deem fit in the interest of justice.

Proceedings of the Case: -

3. The case was initially heard on 06.08.2026. The Commission, vide its Interim Order dated 07.08.2026, allowed the respondents (DHBVNL and HVPNL) to file their reply till 19.08.2026 and the petitioner was allowed to file its rejoinder on or before 25.08.2026 on the same.

4. **Common Reply filed by Respondents dated 18.08.2026: -**

4.1. That the present Reply is being filed by Dakshin Haryana Bijli Vitran Nigam Limited ("DHBVN"/"Answering Respondent") in response to the captioned Petition, whereby the Petitioners have, inter alia, sought recognition and accounting of power allegedly supplied by Petitioner No. 2 to Petitioner No. 1 in respect of certain dates falling during the period from 28.09.2024 to 23.11.2024 ("Disputed Dates") and consequential revision of the settlement sheets and energy accounts in respect thereof.

4.2. That it is submitted that Haryana Vidyut Prasaran Nigam Limited ("HVPNL"), arrayed as Respondent No. 2 in the captioned Petition, has authorized DHBVN to file the present Reply on its behalf. The present Reply may accordingly be treated as the Reply

on behalf of HVPNL as well. It is pertinent to note that no substantive relief has been claimed by the Petitioners against HVPNL in the captioned Petition.

4.3. That at the outset, the Answering Respondent denies and refutes the contents of the Petition, save and except to the extent expressly admitted herein, and no part thereof should be presumed admitted merely on account of express or implied non denial or non-traversal thereof. The Petition proceeds on a mistaken interpretation of Regulation 4 of the Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023 ("GEOA Regulations") and of the Order dated 10.11.2023 passed by this Hon'ble Commission in Petition No. 49 of 2023, and is accordingly liable to be dismissed.

PRELIMINARY OBJECTION: PRESENT PETITION IS NOT MAINTAINABLE

4.4. That although the controversy raised in the present Petition pertains to the GEOA Regulations, the said Regulations themselves expressly provide that, in respect of matters concerning grant of connectivity and open access for green energy generation, purchase and consumption for which no express provision has been made therein, the provisions of, inter alia, the 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 ("2012 OA Regulations"), shall apply. The GEOA Regulations do not separately prescribe any mechanism for adjudication of disputes or complaints arising thereunder. Consequently, the dispute resolution mechanism prescribed under the 2012 OA Regulations squarely applies to the present dispute.

4.5. That Regulation 53 of the 2012 OA Regulations specifically mandates that all disputes and complaints arising under the said Regulations shall, in the first instance, be decided by the Coordination Committee, and that an appeal against the decision of the Coordination Committee alone lies before this Hon'ble Commission. Regulation 53 is reproduced hereinbelow 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."

4.6. That the regulatory scheme thus prescribes a specific and mandatory hierarchy for adjudication: firstly, adjudication by the Coordination Committee, and thereafter, an appeal before this Hon'ble Commission. The Petitioners have, however, directly invoked the jurisdiction of this Hon'ble Commission without first approaching the Coordination Committee. The present Petition accordingly bypasses the mandatory dispute resolution mechanism applicable to Green Energy Open Access matters and is premature and not maintainable. On this ground alone, the present Petition deserves to be dismissed, leaving it open to the Petitioners to avail such remedy as may be available to them under the applicable Regulations.

SUBMISSIONS ON MERIT

4.7. That without prejudice to the preliminary objection set out hereinabove, it is submitted that the entire case sought to be built by the Petitioners rests on a mistaken understanding of the scope and effect of Regulation 4 of the GEOA Regulations and of the Order dated 10.11.2023 passed by this Hon'ble Commission.

4.8. That the Petitioners, in essence, contend that notwithstanding the admitted failure of Petitioner No. 1 to maintain a constant scheduled quantum of power for twelve continuous time blocks of fifteen minutes each, the energy for the Disputed Dates ought still to be recognised and settled on the ground that the power was physically generated and supplied by Petitioner No. 2; the corresponding energy stood accounted for at the level of the system operator; the requisite Open Access approvals and clearances stood obtained; applicable deviation settlement charges have been paid; and the Order dated 10.11.2023 permits variation between scheduled and actual drawal.

4.9. That this understanding is misconceived and conflates two distinct aspects of the GEOA framework, namely, compliance with the eligibility requirement prescribed under Regulation 4 with reference to the schedule furnished by the consumer or generator, and the treatment of any variation between such schedule and actual drawal or generation under the applicable deviation settlement framework.

4.10. That Regulation 4 of the GEOA Regulations prescribes the eligibility criteria for availing Green Energy Open Access. Open Access is required to be availed for a minimum of twelve time blocks of fifteen minutes during a day, during which the consumer is not permitted to change the quantum of power consumed through Open Access. This

requirement is mandatory and constitutes a condition precedent for claiming the benefit of Green Energy Open Access.

4.11. That the requirement prescribed under Regulation 4 is accordingly not a mere procedural formality or a device for settlement or accounting of energy after the transaction; it constitutes a mandatory threshold eligibility condition which an Open Access consumer must satisfy before claiming the benefit of Green Energy Open Access.

4.12. That whether compliance with the aforesaid requirement is to be tested against the scheduled drawal or the actual drawal was considered by this Hon'ble Commission in Petition No. 49 of 2023 and clarified vide the Order dated 10.11.2023. This Hon'ble Commission, noting that solar generation depends upon solar irradiation and that actual generation and drawal may consequently fluctuate, clarified that the requirement of maintaining twelve time blocks is applicable with reference to the schedule furnished by the consumer or generator. The Commission observed as under:

"The Commission is conscious of the fact that generation from Solar PV system is dependent on the solar irradiation per unit area. Hence, on any surface the irradiation will change with the tilt angle. Consequently, generation obtained from solar panels will also change. Resultantly, the quantum of power consumed through open access in twelve time blocks of 15 minutes time interval during a day may not be possible. Therefore, it is obvious that the condition, of maintaining twelve time blocks of 15 minutes time interval during a day, for availing open access, is applicable with reference to the schedule given by the consumer/generator."

Thus, for the purpose of determining compliance with the eligibility condition prescribed under Regulation 4, it is the scheduled drawal that is required to be considered, and not the actual drawal.

4.13. That the eligibility of a consumer for Green Energy Open Access is accordingly required to be examined with reference to the schedule furnished by the consumer or generator, and such schedule must itself satisfy the requirement of twelve continuous time blocks of fifteen minutes each during which the scheduled quantum of Open Access power remains unchanged. Any variation between the schedule so furnished and the actual drawal or generation is a distinct matter governed by the applicable deviation settlement framework.

4.14. That in the present case, the controversy does not turn upon payment of deviation settlement charges. Even assuming such charges stand duly discharged, the material question is whether the schedule furnished by Petitioner No. 1 satisfied the eligibility requirement prescribed under Regulation 4, as clarified vide the Order dated 10.11.2023. Payment of deviation settlement charges does not answer this anterior and independent question.

4.15. That the Petitioners cannot found their claim for revision of settlement merely upon payment of deviation settlement charges. Even if such charges have been discharged, this does not establish that the schedule furnished by Petitioner No. 1 complied with Regulation 4. The Petitioners must independently establish, with reference to the schedules furnished for the Disputed Dates, that the eligibility requirement prescribed under Regulation 4 stood satisfied.

4.16. That significantly, the Petitioners' own pleadings disclose the very noncompliance underlying the present controversy. The Petitioners themselves plead that Petitioner No. 1 had not maintained constant power in continuous twelve time blocks of fifteen minutes each while furnishing or punching the schedules on DHBVN's portal. On the Petitioners' own showing, therefore, the lapse occurred at the stage of scheduling itself, and not merely by reason of a subsequent variation between schedule and actual drawal or generation.

4.17. That in respect of the Disputed Dates, the schedules furnished by Petitioner No. 1 did not satisfy the mandatory requirement prescribed under Regulation 4 of the GEOA Regulations, inasmuch as Petitioner No. 1 did not maintain the requisite scheduled quantum of Open Access power for twelve continuous time blocks of fifteen minutes each. It is precisely for this reason that the energy for such dates was not settled by DHBVN, consistent with the mandatory eligibility requirement clarified by this Hon'ble Commission vide the Order dated 10.11.2023.

4.18. That this distinction is material. The Petitioners cannot recharacterise a failure at the stage of scheduling as a mere deviation in actual drawal or generation. Once the schedule furnished by Petitioner No. 1 itself fails to conform to Regulation 4, the matter falls to be examined as one of eligibility under Regulation 4 and not merely of deviation between scheduled and actual drawal or generation.

4.19. That once the schedule furnished by the consumer does not itself contain the requisite twelve continuous time blocks of fifteen minutes each with an unchanged scheduled

quantum of Open Access power, the mandatory threshold eligibility condition under Regulation 4 stands unsatisfied. Payment of deviation settlement charges, even if made, does not establish compliance with this separate and independent requirement.

4.20. That the requirement concerning twelve time blocks must further be understood in light of the Order dated 10.11.2023, wherein this Hon'ble Commission examined the requirement in the context of continuous Open Access power for twelve time blocks of fifteen minute intervals. The clarification cannot be read as permitting a consumer to aggregate isolated or scattered time blocks occurring at different points during the day so as to constitute the requisite twelve time blocks. The requirement must be satisfied by reference to twelve continuous or consecutive time blocks in the schedule furnished.

4.21. That consequently, for each of the Disputed Dates, the relevant enquiry is whether the schedule furnished by Petitioner No. 1 contained an unchanged scheduled quantum of Open Access power for twelve continuous time blocks of fifteen minutes each. Where the schedule furnished for a particular date fails this requirement, Petitioner No. 1 cannot establish eligibility under Regulation 4 merely by relying upon actual injection or drawal, or upon payment of deviation settlement charges.

4.22. That acceptance of the interpretation advanced by the Petitioners would render the eligibility condition under Regulation 4 redundant, since a consumer who had not furnished a compliant schedule could nonetheless seek retrospective recognition of the transaction merely by relying upon actual injection or drawal and financial settlement of deviation. Such an interpretation would defeat the distinction drawn by the regulatory framework and by the Order dated 10.11.2023 between the schedule relevant for determining eligibility and the actual drawal or generation which may vary from such schedule.

4.23. That the Petitioners' reliance upon payment of deviation settlement charges is accordingly misplaced. Even assuming such charges stand discharged, this does not establish satisfaction of the separate eligibility requirement under Regulation 4, which must be independently determined with reference to the schedule furnished by the consumer or generator.

4.24. That similarly, the circumstance that power may have been physically injected into the grid or accounted for by the system operator does not, by itself, confer upon the Petitioners any right to seek commercial settlement from DHBVN contrary to the eligibility requirements prescribed under the GEOA Regulations. Physical flow of

electricity and regulatory entitlement to settlement under the Green Energy Open Access framework are distinct matters, and the latter remains subject to compliance with the applicable Regulations.

4.25. That the plea that the noncompliance was inadvertent or bona fide is equally misconceived. The present dispute does not concern imposition of a penalty for a procedural lapse; it concerns satisfaction of an eligibility criterion prescribed by the applicable Regulations for claiming the benefit of Green Energy Open Access. A plea of inadvertence cannot substitute or dispense with an express regulatory eligibility requirement.

4.26. That the Petitioners' reliance upon the principle of unjust enrichment is equally misconceived. DHBVN has acted in accordance with the regulatory framework governing recognition, accounting and settlement of Open Access energy. No right to settlement can arise contrary to Regulation 4 merely because electricity was physically injected into the grid. Equitable principles cannot be invoked to confer a regulatory benefit where the prescribed eligibility condition has not been satisfied.

4.27. That the Petitioners' reliance upon the inherent powers and the power of relaxation of this Hon'ble Commission is equally misconceived, particularly since the Petitioners' own case proceeds on the footing that they are otherwise entitled to settlement in terms of the Order dated 10.11.2023. The Petitioners cannot simultaneously found their entitlement upon Regulation 4 read with the said Order and seek dispensation from the very eligibility requirement that governs such entitlement.

4.28. That the Order dated 10.11.2023, properly construed, supports the stand of the Answering Respondent rather than that of the Petitioners. The said Order makes clear that the eligibility condition under Regulation 4 must be tested with reference to the schedule furnished by the consumer or generator and not the actual drawal. In the present case, the schedules furnished by Petitioner No. 1 in respect of the Disputed Dates did not satisfy Regulation 4, and the Petitioners cannot therefore seek revision of the settlement by relying upon actual injection or drawal, or upon payment of deviation settlement charges.

PARAGRAPH WISE SUBMISSIONS

4.29. That the averments in paragraph 1 of the Petition are denied and disputed, save to the extent expressly admitted herein. The Petition proceeds on a mistaken interpretation of Regulation 4 of the GEOA Regulations and of the Order dated 10.11.2023 passed

in Petition No. 49 of 2023. The Petitioners are not entitled to recognition, accounting or consequential revision of settlement for the Disputed Dates where the schedules furnished by Petitioner No. 1 did not satisfy Regulation 4.

4.30. That the averments in paragraphs 2 to 4 of the Petition, concerning the underlying facts and the correspondence addressed by Petitioner No. 2, are matters of record and require no specific response beyond what is stated in this Reply. Any inference sought to be drawn therefrom that is inconsistent with the applicable regulatory framework or the submissions made herein is denied. It is specifically denied that any correspondence addressed by Petitioner No. 2 creates an entitlement to settlement contrary to Regulation 4.

4.31. That the contents of paragraphs 5 to 9 of the Petition, concerning the description, constitution and particulars of the Petitioners and Respondents, are, in the main, matters of record and require no specific response, save that DHBVN is not privy to the internal arrangements among the Petitioners, including the Co-Development Agreement dated 17.09.2007 referred to in paragraph 7 or the Power Purchase Agreement(s) referred to in the Petition. No arrangement inter se the Petitioners, including any arrangement involving Petitioner No. 3, can dispense with or override the eligibility requirement prescribed under Regulation 4 of the GEOA Regulations. It is reiterated that no substantive relief has been sought against HVPNL, Respondent No. 2, and that HVPNL has authorized DHBVN to file this Reply on its behalf.

4.32. That the averments in paragraphs 10 to 13 of the Petition, insofar as they invoke the jurisdiction and the inherent and relaxation powers of this Hon'ble Commission, are denied to the extent they suggest that the Petitioners may directly maintain the present proceedings without first resorting to the dispute resolution mechanism prescribed under the applicable Regulations. As submitted hereinabove, Regulation 53 of the 2012 OA Regulations mandates that disputes and complaints be decided, in the first instance, by the Coordination Committee, with an appeal alone lying before this Hon'ble Commission. The Petitioners have admittedly not approached the Coordination Committee, and the present Petition is accordingly premature and not maintainable for the reasons set out in paragraphs 4 to 6 hereinabove. Without prejudice to the said objection, the reliance placed upon the inherent and relaxation powers of this Hon'ble Commission is, in any event, misconceived, since such powers

cannot be invoked to dispense with the eligibility condition expressly prescribed under Regulation 4.

4.33. That the contents of paragraphs 14 to 18 of the Petition, to the extent they reproduce or refer to the applicable Regulations, are matters of record. The interpretation and legal consequences sought to be drawn therefrom are, however, denied. The grant of Open Access, standing clearance, No Objection Certificate or any other approval does not dispense with the requirement of the consumer furnishing a schedule compliant with Regulation 4 of the GEOA Regulations.

4.34. That the contents of paragraph 19 of the Petition, concerning the Power Purchase Agreement and the commercial arrangement between Petitioner No. 1 and Petitioner No. 2, are matters inter se the Petitioners and do not alter the regulatory requirements governing Green Energy Open Access. The Answering Respondent is not privy to the said commercial arrangement and, in any event, no contractual arrangement between the Petitioners can override or dispense with Regulation 4. It is also noted that the date of execution of the Power Purchase Agreement as pleaded in this paragraph does not correspond with the date pleaded in paragraph 6 of the Petition, and the Petitioners are put to strict proof thereof.

4.35. That the contents of paragraph 20 of the Petition, concerning commissioning of the generating project of Petitioner No. 2, are matters of record and require no specific response, save that the same has no bearing on the independent question of compliance with Regulation 4 by Petitioner No. 1.

4.36. That the contents of paragraph 21 of the Petition are denied to the extent legal conclusions are sought to be drawn therefrom. It is noted that the Petitioners have themselves described the period from 28.09.2024 to 23.11.2024 as the “Unaccounted period” on account of failure to inform the schedule of power through Open Access in accordance with Regulation 42 of the Connectivity Regulations, which period coincides with the Disputed Dates. This only reinforces that the noncompliance in question occurred at the stage of scheduling itself.

4.37. That the contents of paragraph 22 of the Petition, concerning grant of Standing Clearances, No Objection Certificates and acceptance of Open Access transactions, are matters of record, but the legal conclusions sought to be drawn therefrom are denied. Such approvals and clearances, even if assumed correct, do not establish compliance with the eligibility requirement prescribed under Regulation 4. The relevant

enquiry is whether, for the Disputed Dates, the schedule furnished by Petitioner No. 1 contained an unchanged scheduled quantum of Open Access power for twelve continuous time blocks of fifteen minutes each, which enquiry the aforesaid approvals cannot answer.

4.38. That the averments in paragraphs 23 and 24 of the Petition are denied to the extent the Petitioners seek to derive an entitlement to settlement from alleged physical injection, transmission, wheeling, regional accounting of energy or payment of transmission and wheeling charges. Physical flow or accounting of electricity and regulatory entitlement to settlement under the GEOA framework are distinct matters, and the former does not confer upon the Petitioners a right to commercial settlement contrary to Regulation 4.

4.39. That the contents of paragraph 25 of the Petition are denied. The Answering Respondent is bound to undertake settlement strictly in accordance with the applicable regulatory framework, and no right to settlement can arise merely by reason of the absence of a response from DHBVN where the underlying eligibility requirement itself remains unsatisfied.

4.40. That the averments in paragraph 26 of the Petition, in fact, disclose the very noncompliance underlying the present controversy. The Petitioners themselves plead that Petitioner No. 1 had not maintained constant power in continuous twelve time blocks of fifteen minutes each while furnishing the schedules on DHBVN's portal for the period from 28.09.2024 to 23.11.2024. It is specifically submitted that the schedules furnished by Petitioner No. 1 for the Disputed Dates did not satisfy the eligibility requirement prescribed under Regulation 4, and it is precisely for this reason that the energy for such dates was not settled by DHBVN.

4.41. That the averments in paragraph 27 of the Petition are denied to the extent they suggest that the Order dated 10.11.2023 entitles the Petitioners to settlement notwithstanding the aforesaid noncompliance. This Hon'ble Commission has expressly clarified that the condition of maintaining twelve time blocks is applicable with reference to the schedule furnished by the consumer or generator, whereas variation in actual drawal or generation is a distinct matter attracting the applicable deviation settlement mechanism. The Order dated 10.11.2023, therefore, supports the stand of the Answering Respondent.

4.42. That the contents of paragraph 28 of the Petition are denied. Correspondence addressed by Petitioner No. 2 to the Managing Director of DHBVN does not create an entitlement to settlement contrary to the applicable Regulations.

4.43. That the contents of paragraphs 29 and 30 of the Petition are denied to the extent they assert an entitlement to revised settlement sheets merely on the basis of representations addressed to DHBVN, or that the Petitioners had no alternative but to approach this Hon'ble Commission directly. The Answering Respondent was under no obligation to revise the settlement contrary to Regulation 4, and the Petitioners could not, in any event, have directly approached this Hon'ble Commission without first availing the dispute resolution mechanism prescribed under Regulation 53 of the 2012 OA Regulations.

REPLY TO GROUNDS

4.44. That the contents of Ground A are denied. Mere physical supply or injection of electricity does not confer upon the Petitioners an entitlement to settlement contrary to Regulation 4. The entitlement claimed under the GEOA framework is regulatory in character and remains subject to fulfilment of the prescribed eligibility requirements.

4.45. That the contents of Ground B are denied. That HVPNL or any system operator may have accounted for or confirmed the physical flow of electricity does not dispense with the requirement of Petitioner No. 1 furnishing a schedule compliant with Regulation 4.

4.46. That the contents of Ground C are denied to the extent the Petitioners assert compliance with all requirements under the applicable Regulations. The grant of Standing Clearance, Open Access approval or any other regulatory clearance cannot establish compliance with Regulation 4 where the schedule furnished by Petitioner No. 1 itself did not contain the requisite unchanged quantum of Open Access power for twelve continuous time blocks of fifteen minutes each.

4.47. That the contents of Ground D, including the judgments relied upon therein concerning bona fide or inadvertent mistakes, are denied as inapplicable to the facts of the present case. The present dispute does not concern imposition of a penalty for a procedural lapse; it concerns satisfaction of an express eligibility condition prescribed under Regulation 4. The authorities relied upon concern rectification or the consequences of bona fide mistakes in materially different statutory contexts and cannot be invoked to obtain a regulatory benefit where the prescribed eligibility requirement itself has not been satisfied.

4.48. That the contents of Grounds E to G, insofar as they allege unjust enrichment or violation of the Electricity Act, 2003, are emphatically denied. DHBVN has acted strictly in accordance with the regulatory framework governing recognition, accounting and settlement of Open Access energy, and no question of unjust enrichment can arise where settlement has been undertaken in accordance with the applicable Regulations. General principles of equity or the broad object of promoting renewable energy cannot be invoked to confer a regulatory benefit contrary to an express eligibility requirement prescribed by this Hon'ble Commission.

4.49. That the contents of Ground H are denied to the extent the Petitioners seek to contend that the Order dated 10.11.2023 entitles them to settlement irrespective of compliance with Regulation 4. The said Order does not hold that a consumer is entitled to the benefit of Green Energy Open Access notwithstanding a noncompliant schedule; on the contrary, this Hon'ble Commission specifically held that the condition of maintaining twelve time blocks is applicable with reference to the schedule given by the consumer or generator, and that actual drawal or generation may thereafter deviate, attracting the applicable deviation settlement mechanism. The Petitioners impermissibly seek to rely upon the latter part of the clarification concerning deviation while ignoring the anterior requirement that eligibility itself is determined with reference to the schedule furnished.

4.50. That the contention in Ground I that the issue is no longer res integra and stands concluded in the Petitioners' favour by the Order dated 10.11.2023 is denied as wholly misconceived. The said Order, properly construed, supports the case of the Answering Respondent, since this Hon'ble Commission has expressly clarified that the mandatory eligibility condition under Regulation 4 is to be examined with reference to the schedule furnished by the consumer or generator, and not the actual drawal or generation. The schedules furnished by Petitioner No. 1 for the Disputed Dates did not satisfy this requirement.

4.51. That the contents of Grounds J and K are denied, save that it is not disputed that the Answering Respondent is bound to act in accordance with the orders and directions of this Hon'ble Commission. The Petitioners have, however, misconstrued the findings in the Order dated 10.11.2023, which does not confer an unconditional entitlement to credit for the energy allegedly supplied by Petitioner No. 2. The reliance placed upon payment of Deviation Settlement Charges by Petitioner No. 2 does not advance the

Petitioners' case, since such payment pertains only to the deviation between scheduled and actual drawal or generation and does not establish compliance with the separate and mandatory eligibility requirement under Regulation 4. The action of DHBVN is, in fact, in conformity with the Order dated 10.11.2023, since the eligibility of Petitioner No. 1 has been considered with reference to the schedules furnished by it.

4.52. That the contents of Ground L are denied to the extent the Petition is asserted to be maintainable in its present form and to disclose an entitlement to the relief claimed. It is not disputed that the Petitioners have not filed any other application or petition in relation to the issues raised herein.

4.53. That the contents of Ground M are denied to the extent the Petitioners seek to contend that the present Petition is maintainable directly before this Hon'ble Commission merely by invoking Section 86 of the Electricity Act, 2003. While the jurisdiction of this Hon'ble Commission under the Electricity Act, 2003 is not in dispute, the exercise of such jurisdiction in relation to the present dispute is necessarily governed by the applicable regulatory framework, including Regulation 53 of the 2012 OA Regulations, which the Petitioners have admittedly bypassed. The present Petition, in its present form, is accordingly premature and not maintainable.

4.54. That the contents of Ground N are not disputed. The contents of Ground O do not call for any specific response.

4.55. That in view of the foregoing, the present Petition is liable to be dismissed, firstly, as being premature and not maintainable on account of the Petitioners having bypassed the dispute resolution mechanism prescribed under Regulation 53 of the 2012 OA Regulations and, secondly and without prejudice thereto, on merits, since the schedules furnished by Petitioner No. 1 in respect of the Disputed Dates did not satisfy the eligibility requirement prescribed under Regulation 4 of the GEOA Regulations.

4.56. PRAYER: In view of the foregoing submissions, the respondents' prayed to:

a. Dismiss the captioned Petition with costs; and

b. Pass any other order or direction as this Hon'ble Commission may deem fit in the interest of justice.

5. No rejoinder has been filed by the petitioner in this matter, in response to Interim Order dated 07.08.2026.

6. The case was finally heard on 02.09.2026 in the court room of the Commission. Upon hearing the parties at length, the Commission vide Interim Order dated 03.09.2026 allowed the petitioners as well as respondents to file their written submissions, if any, on or before 20.09.2026.

7. In response to Interim Order dated 03.09.2026, only the respondents filed their written submissions dated 20.09.2026 and no written submissions or rejoinder were filed by the petitioner(s) in this matter.

8. **Written Submissions by Respondents dated 20.09.2026:**

I. Brief Background

8.1. The present Written Submissions are being filed on behalf of Respondent No. 1, Dakshin Haryana Bijli Vitran Nigam Limited ("DHBVN"), in opposition to the captioned Petition, whereby the Petitioners seek recognition/accounting of power allegedly supplied by Petitioner No. 2 to Petitioner No. 1 on certain dates during the period 28.09.2024 to 23.11.2024 ("Disputed Dates"), together with consequential revision of the settlement sheets/energy accounts.

8.2. The controversy lies in a narrow compass. On the Petitioners' own showing, on the Disputed Dates, Petitioner No. 1 did not maintain constant power in continuous twelve-time blocks of fifteen minutes each while punching the schedules on DHBVN's portal for D-1 day. The Petitioners nevertheless seek settlement of such energy principally on the grounds that the power was physically generated/injected and supplied, requisite Open Access approvals/clearances had been obtained, and the applicable Deviation Settlement Mechanism ("DSM") charges have been paid.

8.3. The Petition proceeds by conflating two distinct requirements under the applicable regulatory framework: (i) eligibility under Regulation 4 of the Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023 ("GEOA Regulations"), which is tested with reference to the schedule furnished by the consumer/generator; and (ii)deviation, i.e., variation between such schedule and actual drawl/generation, which is dealt with separately under the applicable DSM framework. This distinction is determinative of the present Petition.

II. PRELIMINARY OBJECTION – THE PETITION BYPASSES THE PRESCRIBED DISPUTE-RESOLUTION MECHANISM

8.4. At the threshold, the present Petition is premature and not maintainable. The GEOA Regulations provide that, in respect of matters concerning grant of connectivity and

Open Access for green energy generation, purchase and consumption for which no express provision has been made therein, the provisions of, inter alia, the HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 ("2012 OA Regulations") shall apply.

8.5. Regulation 53 of the 2012 OA Regulations provides a specific dispute-resolution mechanism whereby all disputes and complaints arising under the Regulations are to be decided by the Coordination Committee in the first instance, with an appeal against its decision lying before this Hon'ble Commission. Regulation 53 reads as under:

"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."

8.6. The Petitioners have not invoked the aforesaid mechanism and have directly approached this Hon'ble Commission. The present Petition is therefore premature and liable to be dismissed on this ground alone. The submissions on merits hereinafter are without prejudice to the aforesaid preliminary objection.

III. REGULATION 4 PRESCRIBES A MANDATORY ELIGIBILITY CONDITION

8.7. Regulation 4 of the GEOA Regulations, insofar as relevant, provides:

"4. Eligibility criteria for Green Energy Open Access: The consumers who have contracted demand or sanctioned load of hundred kW and above shall be eligible to take power through Green Energy Open Access and there shall be no limit of supply of power for the captive consumers taking power under Green Energy Open Access: Provided that such open access shall be for a minimum twelve-time blocks of 15 minutes time interval during a day, for which the consumer shall not change the quantum of power consumed through open access."

8.8. The requirement of maintaining the quantum of power for the prescribed twelve-time blocks forms part of the provision itself titled "Eligibility criteria for Green Energy Open Access." It is therefore not merely a methodology for accounting or settlement after the transaction has taken place, but a condition governing eligibility to avail Green Energy Open Access.

8.9. Consequently, compliance with Regulation 4 necessarily precedes the question of settlement. Unless the schedule furnished by the consumer satisfies the eligibility requirement prescribed under Regulation 4, subsequent physical injection/drawal of electricity cannot, by itself, confer an entitlement to settlement under the GEOA framework.

IV. THE ORDER DATED 10.11.2023 CLARIFIES THAT ELIGIBILITY IS TO BE TESTED WITH REFERENCE TO THE SCHEDULE

8.10. The scope and application of Regulation 4 already stand clarified by this Hon'ble Commission by its Order dated 10.11.2023 in Petition No. 49 of 2023.

8.11. While considering the practical difficulty arising from fluctuations in solar generation, this Hon'ble Commission recognised that actual generation from a solar PV system may vary. The Commission therefore clarified that the condition of maintaining twelve-time blocks of fifteen minutes is to be applied with reference to the schedule furnished by the consumer/generator, while actual drawal/generation may deviate and attract deviation settlement/imbalance charges under the applicable DSM/Open Access Regulations.

8.12. The Commission specifically held:

"The schedule drawl is to be considered for evaluating the eligibility condition for constant drawl of power for twelve-time blocks of 15-minute intervals."

The said clarification has subsequently been reproduced and applied by this Hon'ble Commission in *Goodrich Carbohydrates Limited*.

8.13. The distinction is therefore clear. Eligibility under Regulation 4 is determined with reference to the schedule furnished by the consumer/generator, whereas deviation concerns the difference between such schedule and actual drawal/generation and is dealt with separately under the applicable DSM framework. Payment of DSM charges cannot answer the anterior question whether the schedule itself satisfied Regulation 4.

V. THE ORDER DATED 27.08.2024 IN GOODRICH CARBOHYDRATES LIMITED REAFFIRMS THE MANDATORY NATURE OF THE SCHEDULING REQUIREMENT UNDER REGULATION 4

8.14. The aforesaid interpretation stands further fortified by the Order dated 27.08.2024 passed by this Hon'ble Commission in Petition No. 18 of 2024, *Goodrich Carbohydrates Limited v.* HVPNL *& Ors.* ("Goodrich"), wherein this Hon'ble

Commission considered the requirement under Regulation 4 of the GEOA Regulations read with its earlier Order dated 10.11.2023.

8.15. In *Goodrich*, this Hon'ble Commission reiterated that the eligibility condition under Regulation 4 is to be examined with reference to the schedule furnished by the consumer/generator, whereas variation in actual drawal/generation is separately dealt with under the applicable DSM/Open Access Regulations. The relevant portion reads as under:

"The Commission is conscious of the fact that generation from Solar PV system is dependent on the solar irradiation per unit area. Hence, on any surface the irradiation will change with the tilt angle. Consequently, generation obtained from solar panels will also change. Resultantly, the quantum of power consumed through open access in twelve-time blocks of 15 minutes time interval during a day may not be possible. Therefore, it is obvious that the condition, of maintaining twelve-time blocks of 15 minutes time interval during a day, for availing open access, is applicable with reference to the schedule given by the consumer/generator. The actual drawl/generation may deviate attracting deviation settlement charges/imbalance charges as per the provisions of DSM/Open Access Regulations in vogue."

The Hon'ble Commission thereafter specifically held:

"*The schedule drawl is to be considered for evaluating the eligibility condition for constant drawl of power for twelve-time blocks of 15-minute intervals."*

8.16. The aforesaid finding directly answers the Petitioners' reliance upon actual injection/drawal and payment of DSM charges. This Hon'ble Commission has itself drawn a clear distinction between eligibility, which is determined with reference to the schedule furnished by the consumer/generator, and deviation, which concerns the difference between such schedule and actual drawal/generation.

8.17. The Commission in *Goodrich* further recognised that the GEOA Regulations introduced a more stringent scheduling requirement and explained its regulatory purpose. The relevant finding reads:

"The Commission observes that as per the provisions of HERC OA Regulations, 2012, a consumer was required to provide day ahead schedule incorporating his drawl of power from different sources including captive power plant. Now, vide HERC GEOA Regulations, 2023 notified on 02.05.2023 read with the order dated 10.11.2023, the

requirement of providing day ahead schedule has been changed to the constant schedule of 15 minutes time interval for at least twelve-time blocks of the day.

The Commission further observes that the primary reason behind the requirement of day ahead schedule was to enable the distribution licenses to systematic plan and schedule its load, which has been made more stringent by introducing the schedule of 15 minutes time interval which is to remain constant for at least twelve-time blocks of the day."

8.18. Thus, the scheduling requirement under Regulation 4 serves a substantive regulatory purpose, namely, enabling the Distribution Licensee to plan and schedule its load. It cannot therefore be treated as a mere accounting formality capable of being cured after the event.

8.19. Significantly, this Hon'ble Commission has expressly characterised the scheduling requirement under the GEOA Regulations as "mandatory in nature", observing:

"Having answered the above issues, the Commission is of the considered view that scheduling requirements provided in the HERC GEOA Regulations, 2023 although mandatory in nature has not been followed and complied with by both the parties from May 2023 to October 2023."

8.20. Further, while examining whether the schedule furnished by the consumer complied with the GEOA Regulations, this Hon'ble Commission categorically held:

"In view of the above, the Commission answers the issue framed above in negative i.e. for the period from May, 2023 to October, 2023, the schedule was not provided by the petitioner strictly as per the provisions of the HERC GEOA Regulations in vogue."

8.21. The following propositions therefore emerge from *Goodrich* and are directly applicable to the present Petition: (i) the scheduling requirement under the GEOA Regulations is mandatory in nature; (ii) the requirement is of a constant schedule of fifteen-minute intervals for at least twelve time blocks; (iii) eligibility is to be evaluated with reference to the schedule furnished by the consumer/generator; (iv) actual drawal/generation may deviate from the schedule and such deviation is separately governed by DSM/imbalance charges; and (v) where the schedule is not furnished strictly in accordance with the GEOA Regulations, the statutory scheduling requirement remains unfulfilled.

VI. THE PETITIONERS THEMSELVES ADMIT THAT THE SCHEDULE DID NOT SATISFY THE REQUIREMENT UNDER REGULATION 4

8.22. In the present case, the non-compliance with the scheduling requirement is not a matter of inference or merely the case set up by DHBVN. It stands expressly admitted by the Petitioners in the Petition itself.

8.23. Paragraph 26 of the Petition reads as under:

26. In the meanwhile, for the time period from 28.09.2024 to 23.11.2024, the said Petitioner came to notice that Respondent No. 1 has not settled the power for the days wherein Petitioner No. 1 has not maintained the constant power in continuous 12 time blocks of 15 minutes each, while punching the schedules onto Respondent No. 1's portal for D-1 day ('Time Block Issue').

8.24. Thus, on the Petitioners' own showing, the requisite constant quantum was not maintained while punching the schedules themselves. The defect therefore existed at the scheduling stage itself.

8.25. The present case is consequently not one where a schedule compliant with Regulation 4 was furnished and actual generation/drawal thereafter deviated from such schedule. Rather, the schedule punched by Petitioner No. 1 itself did not maintain constant power for continuous twelve time blocks of fifteen minutes each.

8.26. The aforesaid admission goes to the root of the Petition. Once the schedule itself did not satisfy the eligibility requirement prescribed under Regulation 4, the Petitioners cannot re-characterise the non-compliance as a mere deviation and seek settlement on the basis of subsequent actual injection/drawal or payment of DSM charges.

VII. FAILURE TO SATISFY THE MANDATORY SCHEDULING REQUIREMENT HAS CONSEQUENCES FOR RECOGNITION AND SETTLEMENT OF THE POWER AS OPEN ACCESS POWER

8.27. The consequence of the aforesaid admitted non-compliance is also supported by the judgment dated 05.03.2025 passed by the Hon'ble Appellate Tribunal for Electricity in Appeal Nos. 61 and 62 of 2022, *Ranee Polymers Private Limited & Anr. v. HERC & Ors.* While considering the consequence of non-compliance with the mandatory scheduling requirement under Regulation 42 of the 2012 OA Regulations, the Hon'ble Tribunal held in paragraph 29 as under:

"29. The argument advanced on behalf of the Appellant that the amended Regulations 42 does not enjoy mandatory character for the reason that it does not provide any consequences for its non-compliance, is devoid of any force. We have already extracted Regulation 43 of 2012 OA Regulations, herein above which was also

amended by way of notification dated 3rd December, 2013. It clearly provides consequences for non compliance of Regulation 42. Clause 1 of the said Regulation 43 envisages that out of recorded slot-wise drawl the entitled drawl through open access as per accepted schedule or actual recorded drawl, whichever is less, will first be adjusted and balance will be treated as his drawl from the distribution licensee.

For example, if an embedded open excess consumer with a contract demand of 10 MW has schedule of 4 MW power through open access in a time slot of the succeeding day as per the schedule submitted by him at 10 AM, his admissible drawl from the licensee in that slot would be 6 MW (total contract demand of 10 MW – accepted schedule drawl of 4 MW through open access) which is to be adjusted first. However, in case the embedded open access consumer does not intimate the Distribution Licensees about the quantity of power scheduled by it through open access, as required under Regulation 42, his accepted schedule would be 0 MW even though, he may have obtained 4 MW of power through open access. In that case, the drawl from the licensee would be treated as 10 MW even if he may have consumed only 6 MW of power from the licensee. Thus, in case of non-compliance of the amended Regulation 42, the OA consumer will have to pay twice for the power scheduled through open access; firstly to the exchange from where it is obtained and secondly to the Distribution Licensees."

8.28. The aforesaid principle directly answers the Petitioners' contention that the power was in fact sourced/injected and paid for. APTEL has expressly recognised that, notwithstanding actual procurement of power through Open Access, failure to comply with the mandatory scheduling requirement carries consequences for its recognition and settlement as Open Access power. In the present case, the Petitioners themselves admit that Petitioner No. 1 did not maintain constant power for continuous twelve time blocks of fifteen minutes each while punching the D-1 schedules. Having thus failed to satisfy the threshold requirement under Regulation 4 of the GEOA Regulations, the corresponding power does not qualify for settlement as power sourced through Green Energy Open Access. The mere fact that such power may actually have been sourced/injected, or paid for by the Petitioners, cannot cure the admitted failure to satisfy the mandatory scheduling requirement.

VIII. PAYMENT OF DSM CHARGES CANNOT CURE NON-COMPLIANCE WITH REGULATION 4

8.29. The Petitioners place considerable reliance upon payment of DSM charges. Such reliance proceeds upon a misconception regarding the respective fields occupied by Regulation 4 and the DSM mechanism.

8.30. As clarified by this Hon'ble Commission and subsequently reiterated in *Goodrich*, the eligibility condition under Regulation 4 is tested with reference to the schedule, whereas actual drawl/generation may deviate from such schedule and attract DSM/imbalance charges.

8.31. Payment of DSM charges therefore deals with the financial consequences of deviation between the schedule and actual generation/drawl. It does not answer the anterior and independent question whether the schedule itself satisfied the eligibility requirement under Regulation 4.

8.32. Even assuming that the applicable DSM charges have been paid, the same cannot retrospectively render a non-compliant schedule compliant with Regulation 4.

8.33. Acceptance of the Petitioners' contention would effectively render Regulation 4 otiose. Every consumer could furnish a schedule contrary to Regulation 4, physically inject/draw electricity, pay deviation charges and thereafter seek retrospective recognition and settlement of the transaction as Green Energy Open Access.

8.34. Such an interpretation would erase the distinction expressly drawn by this Hon'ble Commission between eligibility determined on the basis of the schedule and deviation of actual generation/drawl from the schedule.

IX. PHYSICAL INJECTION OF POWER DOES NOT CREATE AN INDEPENDENT REGULATORY ENTITLEMENT TO SETTLEMENT

8.35. The Petitioners' contention that electricity was physically generated/injected into the grid does not advance their case.

8.36. The mere fact that electricity physically entered the grid cannot retrospectively convert a schedule which did not satisfy Regulation 4 into an eligible Green Energy Open Access transaction. This is also consistent with paragraph 29 of *Ranee Polymers*, wherein APTEL recognised that even where power had actually been obtained through Open Access, non-compliance with the applicable scheduling requirement had consequences for the accepted Open Access schedule and corresponding settlement.The Petitioners therefore cannot rely upon actual injection/drawal to cure the antecedent failure of the schedule itself to satisfy Regulation 4.

X. OPEN ACCESS APPROVALS/NOCs DO NOT DISPENSE WITH COMPLIANCE WITH REGULATION 4

8.37. The Petitioners also rely upon standing clearances, NOCs and Open Access approvals obtained in relation to the transactions.

8.38. Such approvals enable a consumer to undertake Open Access transactions subject to compliance with the applicable regulatory framework. They cannot constitute a dispensation from the eligibility/scheduling requirement prescribed under Regulation 4.

8.39. The grant of Open Access/standing clearance and compliance of the particular schedule furnished for a particular day operate at different stages. Obtaining the former therefore does not establish compliance with the latter.

XI. ALLEGED INADVERTENCE OR BONA FIDE ERROR CANNOT SUBSTITUTE COMPLIANCE WITH A MANDATORY ELIGIBILITY CONDITION

8.40. The Petitioners seek to characterise the failure to maintain the requisite schedule as an inadvertent or bona fide mistake.

8.41. Such an explanation does not answer the regulatory issue before this Hon'ble Commission. The present proceedings do not concern imposition of a penalty for an inadvertent procedural error. The question is whether the Petitioners satisfied the mandatory eligibility requirement prescribed under Regulation 4 for claiming settlement under the GEOA framework.

8.42. An explanation for non-compliance cannot be equated with compliance itself. The plea of inadvertence cannot retrospectively confer eligibility where the prescribed eligibility condition was admittedly not satisfied.

8.43. This is particularly so when this Hon'ble Commission had already clarified the application of Regulation 4 by its Order dated 10.11.2023 and, prior to the Disputed Dates, had reiterated in *Goodrich* that the scheduling requirement under the GEOA Regulations is mandatory in nature.

XII. THE PLEA OF UNJUST ENRICHMENT IS MISCONCEIVED

8.44. The Petitioners' reliance upon the principle of unjust enrichment is equally misplaced. DHBVN has acted in accordance with the regulatory framework governing recognition, accounting and settlement of Green Energy Open Access transactions. No entitlement to settlement arises merely from physical injection of electricity where the schedule furnished by the consumer does not satisfy Regulation 4.

8.45. The Petitioners cannot invoke a general equitable principle to obtain a regulatory benefit contrary to the conditions governing such benefit. Their entitlement to settlement must necessarily stand or fall on compliance with the applicable regulatory framework.

8.46. The plea of unjust enrichment therefore cannot be employed to circumvent the mandatory eligibility condition prescribed under Regulation 4.

XIII. NO CASE FOR EXERCISE OF INHERENT POWER OR POWER OF RELAXATION IS MADE OUT

8.47. The Petitioners' reliance upon the inherent powers and/or power of relaxation of this Hon'ble Commission is also misconceived.

8.48. The Petitioners seek settlement under the GEOA Regulations while simultaneously seeking dispensation from the very eligibility condition governing such settlement.

8.49. The relief sought is not merely procedural. Acceptance of the Petitioners' case would result in transactions being treated as eligible for settlement notwithstanding the admitted fact that the underlying schedules failed to satisfy Regulation 4.

8.50. Such an exercise would effectively substitute a different eligibility standard for the one expressly prescribed by the Regulations. The power of relaxation cannot be invoked so as to render the mandatory eligibility requirement itself nugatory.

XIV. ACCEPTANCE OF THE PETITIONERS' CASE WOULD RENDER REGULATION 4 REDUNDANT

8.51. The consequence of the interpretation advanced by the Petitioners itself demonstrates why it cannot be accepted.

8.52. On the Petitioners' construction, a consumer could furnish a schedule which does not satisfy the mandatory scheduling requirement, nevertheless inject/draw electricity, pay the applicable DSM charges and thereafter seek retrospective recognition and settlement of the transaction as Green Energy Open Access.

8.53. If such a course were permissible, compliance with Regulation 4 at the scheduling stage would cease to have any meaningful consequence. A mandatory eligibility requirement would effectively become an optional condition capable of being cured retrospectively through actual injection and payment of DSM charges.

8.54. Such an interpretation cannot be reconciled with the plain language of Regulation 4 or the interpretation placed thereon by this Hon'ble Commission. In *Goodrich*, the Commission expressly recognised that the scheduling requirement is mandatory in

nature, that it has been made more stringent under the GEOA Regulations, and that it serves the specific purpose of enabling the Distribution Licensee to systematically plan and schedule its load.

8.55. It would also run contrary to the principle recognised by APTEL in *Ranee Polymers* that actual procurement of Open Access power does not neutralise the regulatory consequences flowing from failure to comply with the mandatory scheduling requirement.

CONCLUSION

8.56. The regulatory position is clear. Regulation 4 prescribes a mandatory eligibility requirement. The Order dated 10.11.2023 clarifies that eligibility is to be tested with reference to the schedule furnished by the consumer/generator, whereas deviation between the schedule and actual generation/drawal is dealt with separately under the applicable DSM framework.

8.57. The subsequent Order dated 27.08.2024 in *Goodrich* reinforces the same position. This Hon'ble Commission has expressly held that the scheduling requirement under the GEOA Regulations is mandatory in nature, recognised that the GEOA Regulations require a constant schedule for at least twelve time blocks, and reiterated that eligibility is to be examined with reference to the schedule furnished by the consumer/generator.

8.58. In the present case, there is an express admission in paragraph 26 of the Petition that, for the Disputed Dates, Petitioner No. 1 "has not maintained the constant power in continuous 12-time blocks of 15 minutes each, while punching the schedules onto Respondent No. 1's portal for D-1 day." The non-compliance therefore occurred at the threshold scheduling stage itself.

8.59. Further, the principle recognised by APTEL in *Ranee Polymers* makes it clear that actual procurement of power through Open Access does not efface the consequences of non-compliance with a mandatory scheduling requirement. Therefore, once the Petitioners failed to satisfy the threshold requirement under Regulation 4, the corresponding power does not qualify for settlement as power sourced through Green Energy Open Access merely because such power was actually sourced/injected or paid for.

8.60. Actual injection of electricity, payment of DSM charges, existence of Open Access approvals or a plea of inadvertence cannot retrospectively cure the admitted non-compliance with Regulation 4. The action of DHBVN in declining settlement in respect

of the Disputed Dates is therefore in conformity with the applicable regulatory framework and the interpretation placed thereon by this Hon'ble Commission.

8.61. The Petition is accordingly liable to be dismissed.

Commission's Analysis and Order: -

9. The Commission has heard the arguments of the parties at length as well as carefully considered the pleadings of the petitioners, the replies filed by the respondents, the documents placed on record, and the applicable provisions of the Electricity Act, 2003, the Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023 ('GEOA Regulations, 2023'), the HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 ('2012 OA Regulations'), HERC (Conduct of Business) Regulations, 2019 as well as Electricity (Promoting renewable energy through Green Energy Open Access) Rules, 2022.

10. Before proceeding to examine the issues on merits, the Commission considers it appropriate to first adjudicate upon the preliminary objection regarding the maintainability of the present petition.

11. The Commission observes that the Respondents have raised a threshold preliminary objection contending that the present Petition, preferred directly under Section 86(1)(e), (f), and (k) of the Electricity Act, 2003, read with Regulations 55 and 59 of the 2012 OA Regulations, is premature and not maintainable in law. The Respondents submit that the GEOA Regulations, 2023 do not contain an independent dispute resolution clause for operational Open Access complaints, thereby attracting the provisions of the 2012 OA Regulations. Specifically, Regulation 53 of the 2012 OA Regulations mandates that all disputes and complaints arising under the Open Access framework shall, in the first instance, be decided by the Coordination Committee within 30 days, and an appeal against such decision alone lies before this Commission. The Respondents argue that by bypassing the statutory Coordination Committee, the Petitioners have violated the prescribed statutory hierarchy.

12. To examine the objection raised by the Respondents regarding the maintainability of the present petition, the relevant provision of Regulation 53 of the HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012, is reproduced below:

"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."

13. The Commission has examined the statutory and regulatory framework governing dispute resolution under the State's Open Access regime. Regulation 1(2) of the HERC (Green Energy Open Access) Regulations, 2023 (hereinafter referred to as the "GEOA Regulations, 2023") provides that, in respect of matters concerning Open Access for which no express provision has been made therein, the provisions of the HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 (hereinafter referred to as the "2012 OA Regulations"), as amended from time to time, shall apply. Accordingly, Regulation 53 of the 2012 OA Regulations is relevant to the determination of disputes arising in the course of implementation of the Open Access framework, including disputes relating to scheduling, billing and energy accounting, subject to the applicable statutory and regulatory provisions.

14. The Commission has also considered the provisions of Section 86(1)(f) of the Electricity Act, 2003, which empowers the State Commission to adjudicate upon disputes between licensees and generating companies and to refer such disputes for arbitration where considered appropriate. Further, Section 86(1)(e) of the Act mandates the Commission to promote cogeneration and generation of electricity from renewable sources of energy, while Section 86(1)(k) empowers the Commission to discharge such other functions as may be assigned to it under the Act. The Commission has also taken note of Regulations 65, 66 and 67 of the HERC (Conduct of Business) Regulations, 2019, which provide for the exercise of appropriate procedural powers to secure the ends of justice, prevent abuse of process and deal with special circumstances. Regulation 68 further empowers the Commission to correct defects or errors in proceedings so as to determine the real issue involved. In addition, Regulations 10 to 14 of the GEOA Regulations, 2023 provide the relevant regulatory framework for addressing implementation-related difficulties, subject to the express provisions and limitations contained therein.

15. The Commission has considered the objection raised by the Respondents that disputes between an Open Access consumer and a distribution licensee fall within the jurisdiction of the Coordination Committee under Regulation 53 of the OA Regulations, 2012. The Respondents have contended that Petitioner No. 1, being a Long-Term Open Access consumer, is required to seek redressal before the Coordination Committee.

16. The Commission observes that the dispute in the present case is not confined merely to the rights and obligations of an Open Access consumer vis-à-vis a distribution licensee. Petitioner No. 2 is a renewable energy generator, whereas Petitioner No. 1 is the Long-Term Open Access consumer purchasing energy from Petitioner No. 2. The grievance arises from the alleged non-crediting of such energy by Respondent No. 1, DHBVNL. The dispute, therefore, also involves the rights and obligations of a renewable energy generator vis-à-vis a distribution licensee and raises issues concerning the implementation of the applicable Open Access framework.

17. In this context, the Commission is of the view that the jurisdiction conferred upon the Coordination Committee under Regulation 53 of the OA Regulations, 2012 must be construed harmoniously with the statutory jurisdiction vested in the Commission under the Electricity Act, 2003. The mechanism prescribed under Regulation 53 provides for the resolution of disputes and complaints arising under the said Regulations, with an appeal against the decision of the Coordination Committee lying before the Commission. However, the existence of such a mechanism does not, by itself, extinguish or override the jurisdiction expressly conferred upon the Commission under the Act. The maintainability of the present petition must, therefore, be determined having regard to the nature of the dispute, the parties involved and the statutory functions and powers invoked.

18. The Commission further observes that, to the extent the dispute involves the rights and obligations of a generating company vis-à-vis a licensee, the same falls for consideration under Section 86(1)(f) of the Electricity Act, 2003, subject to the applicability of the said provision to the facts and circumstances of the case. The Petitioners may avail themselves of the remedies available under the applicable statutory and regulatory framework, including the mechanism provided under Regulation 53 of the OA Regulations, 2012 wherever applicable. The availability of

such a mechanism, however, does not preclude the Commission from exercising its statutory jurisdiction in a matter falling within its domain.

19. **In view of the foregoing, the Commission is of the considered opinion that the objection raised by the Respondents regarding maintainability, on the ground that the dispute falls exclusively within the jurisdiction of the Coordination Committee, cannot be accepted. The present petition is, accordingly, held to be maintainable before the Commission.**

20. Having decided the issue of maintainability, the Commission now proceeds to examine the substantive issues raised by the Petitioners on merits.

21. The Petitioners contend that power was generated and injected by Petitioner No. 2 from its 24.4 MW Solar Project in Rajasthan for consumption of 5.9 MW power by Petitioner No. 1 in Haryana, has been captured in the Regional Energy Accounts (REAs) published by NRPC, and consumed at Petitioner No. 1's premises in Haryana. The Petitioners argue that electricity physically flowed into the system and was distributed by Respondent No. 1, and therefore declining commercial settlement for actual energy delivered is arbitrary and unsustainable.

22. Per-contra, the Respondent No. 1 (DHBVN) submitted that Open Access is a pure statutory creation governed strictly by notified regulations. Compliance with threshold eligibility requirements under Regulation 4 of the GEOA Regulations, 2023 read with procedure of Open Access prescribed under Regulation 42 and 45 of HERC OA Regulations, 2012, necessarily precedes the question of commercial accounting. Unless the minimum day ahead schedule of twelve-time blocks of 15 minutes time interval during a day through open access, satisfies Regulation 4 of the GEOA Regulations, 2023 read with procedure of Open Access prescribed under Regulation 42 and 45 of HERC OA Regulations, 2012, subsequent physical injection or drawl of electricity cannot, by itself, confer an entitlement to settlement under the Green Energy Open Access framework.

23. The Commission observes that the petitioner no. 1 has contravened the provisions of Regulation 4 of the GEOA Regulations, 2023 (maintaining the minimum schedule of twelve-time blocks of 15 minutes time interval during a day through open access) as well as Regulation 42 and 45 of HERC OA Regulations, 2012 (giving such schedule on day ahead basis).

Regulation 4 of the GEOA Regulations, 2023, provides as under:-

"4. ***Eligibility criteria for Green Energy Open Access:***

The consumers who have contracted demand or sanctioned load of hundred kW and above shall be eligible to take power through Green Energy Open Access and there shall be no limit of supply of power for the captive consumers taking power under Green Energy Open Access.

Provided that such open access shall be for a minimum twelve-time blocks of 15 minutes time interval during a day, for which the consumer shall not change the quantum of power consumed through open access.

…….."

(Emphasis Supplied)

Regulation 42 and 45 of HERC (Terms & Conditions for grant of connectivity and Open Access for inter-state transmission and distribution system) 1st Amendment, Regulation 2013 (HERC OA Regulations, 2012), provides as under:-

"*42. Eligibility criteria, procedure and conditions to be satisfied for grant of long term open access, medium term open access and short term open access to embedded consumers* *shall be same as applicable to other short-term open access consumers. However, the day-ahead transactions, bilateral as well as collective through power exchange or through NRLDC, by embedded open access consumers under short term open access shall be subject to the following additional terms and conditions:*

i) The ***Consumer shall submit to the distribution licensee a schedule of power through open access for all the 96 slots by 10:00 AM of the day preceding the day of transaction and this will be considered as confirmed schedule*** *for working out the slot-wise admissible drawl of the consumer from the licensee with reference to his sanctioned contract demand. For example, if an embedded consumer with a contract demand of 10 MW has scheduled 4 MW power through open access in any time slot of the succeeding day as per the schedule submitted by him at 10 AM, then his admissible drawl from the licensee in that time slot will be 6 MW.*

The total admissible drawl in different time – slots shall, however, be worked out based on slot-wise admissible drawl from the licensee as above and the slot-wise schedule of power through open access accepted / cleared by the power exchange and intimated to the SLDC and distribution licensee by the consumer in compliance of

regulation 45. For example if, as per the schedule for drawl of power through open access submitted by the consumer at 10 AM of the day preceding the day of transaction, 4 MW power was scheduled through open access in a time slot and as per the accepted schedule this gets reduced to 3 MW, then his admissible total drawl in that time slot shall be 9 MW. i.e. 6 MW from the licensee and 3 MW through open access.

In case recorded drawl of the consumer in any time slot exceeds his total admissible drawl but is within 105 % of his contract demand, he will be liable to pay charges for the excess drawl (beyond admissible drawl) at twice the applicable tariff including FSA. In case the recorded drawl exceeds the sanctioned contract demand by more than 5% at any time during the month as per his energy meter, demand surcharge as per relevant schedule of tariff approved by the Commission shall also be leviable. For the purpose of calculating demand surcharge in such cases, the total energy drawl during the month including the energy drawl through open access shall be considered. The consumption charges for the energy drawl through open access, for the purpose of levy of demand surcharge, will be worked out at the applicable tariff for the category to which the consumer belongs…"

(Emphasis Supplied)

*"**45 Requirement of Scheduling for Embedded open access consumers**. - (1) Scheduling shall be done in accordance with relevant provisions of IEGC for inter-State transactions and in accordance with relevant provisions of Haryana Grid Code for intra-State transactions.*

*(2) **By 10.00 hours every day, these embedded consumers shall prepare and submit daily schedule of power, in MW**, separately showing schedule of power from licensee and that from another supplier through open access for the next day, i.e. from 0000 hrs to 24.00 hrs of the following day to SLDC along with copy to distribution licensee. For day-ahead transactions, bilateral as well as collective, through power exchange or through NRLDC, this schedule of drawl of power through open access submitted at 10.00 hrs shall be considered as final for the purpose of working out slot-wise admissible drawl from the licensee as per the provisions of regulation 42.*

Provided that in case the quantum of energy through open access as per schedule accepted by power exchange is less than the quantum intimated as per the schedule

submitted at 10.00 hrs by the embedded open access consumer to the licensee, then he shall inform the SLDC / distribution licensee about the slot-wise accepted schedule of power through open access and his total admissible draw and settlement of energy at the drawl point shall be regulated /settled as provided in regulation 42 and 43 respectively……"

(Emphasis Supplied)

24. The Commission has also perused Rule 5 of the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022, notified by the Ministry of Power, on 06.06.2022, which provides as under:-

"5. Green Energy Open Access. (1) To provide Green Energy Open Access to consumers of green energy, the appropriate Commission may, if necessary, amend the relevant regulations made by it and such regulations shall be consistent with these rules.

(2) All applications for open access of green energy in this regard shall be allowed by the nodal agency within a period of fifteen days:

Provided that only consumers who have contracted demand or sanctioned load of hundred kW and above shall be eligible to take power through Green Energy Open Access and there shall be no limit of supply of power for the captive consumers taking power under Green Energy Open Access:

Provided further that reasonable conditions such as the minimum number of time blocks, which shall not be more than twelve time blocks, for which the consumer shall not change the quantum of power consumed through open access may be imposed <u>so as to avoid high variation in demand to be met by the distribution licensee</u>."

(Emphasis Supplied)

25. Accordingly, the Commission has framed the following issues for consideration and decision: -

25.1. **Whether Regulation 4 of the GEOA Regulations, 2023 framed in line with Rule 5 of the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 as well as Regulations 42 and 45 of HERC OA Regulations, 2012 are mandatory provisions?**

25.2. **Whether the petitioner has complied with the mandatory provisions?**

25.3. **Whether the petitioner was estopped from complying with the mandatory provisions by the respondents?**

25.4. **Whether the Respondent Nigam suffered any financial loss and was constrained in planning its power procurement on day to day basis?**

After hearing the learned counsel for the parties and going through the record of the appeal, the findings of the Commission on the issues are as under: -

25.1. **Issue No. 1**

Whether Regulation 4 of the GEOA Regulations, 2023 framed in line with Rule 5 of the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 as well as Regulations 42 and 45 of HERC OA Regulations, 2012 are mandatory provisions?

The Commission has closely examined the said Regulation as well as the rival contention on the same. The petitioner (s) have submitted that in Suo-Moto Petition No. 49 of 2023 (Order dated 10.11.2023), this Commission resolved the time block issue by holding that consumers failing to meet continuous drawl requirements remain eligible for Open Access benefits subject to the DSM framework. It is further contended that because Petitioner No. 2 paid all applicable Deviation Settlement Mechanism (DSM) charges for the Disputed Dates, Petitioner No. 1 is automatically entitled to energy credit and revised settlement sheets. Per contra, the respondents submitted that the petitioners have misconstrued the Order dated 10.11.2023. The said Order explicitly clarified that eligibility under Regulation 4 is tested strictly with reference to the D-1 day-ahead schedule, whereas variation between schedule and actual drawl/generation is dealt with separately under DSM. Payment of DSM charges governs financial imbalances post-schedule; it cannot retrospectively render an ineligible D-1 schedule eligible under Regulation 4.

In order to examine the issue, the Commission has perused its Order dated 10.11.2023 in Petition No. 49 of 2023. The relevant findings are reproduced below:

"The Commission is conscious of the fact that generation from Solar PV system is dependent on the solar irradiation per unit area... Resultantly, the quantum of power consumed through open access in twelve-time blocks of 15 minutes time interval during a day may not be possible. Therefore, it is obvious that the condition, of maintaining twelve-time blocks of 15 minutes time interval during a day, for availing

open access, is applicable with reference to the schedule given by the consumer/generator. The actual drawl/generation may deviate attracting deviation settlement charges/imbalance charges as per the provisions of DSM/Open Access Regulations in vogue."

"The schedule drawl is to be considered for evaluating the eligibility condition for constant drawl of power for twelve-time blocks of 15-minute intervals."

The Order dated 10.11.2023 issued by this Commission lays down two distinct rules:

i. Eligibility Stage: The D-1 schedule furnished by the consumer must show a constant quantum of power for at least continuous twelve 15-minute time blocks.

ii. Deviation Stage: If the actual physical generation/drawal deviates from that accepted, compliant schedule, the variation is settled under DSM charges. The payment of DSM charges applies downstream after an eligible schedule is established. Paying DSM charges cannot answer the anterior question of whether the D-1 schedule itself met Regulation 4. If payment of DSM charges could cure a non-compliant D-1 schedule, Regulation 4 would be rendered completely otiose, allowing consumers to submit arbitrary schedules, inject power, pay deviation charges and demand Open Access settlement. That is neither the intent of Regulation 4 nor the ruling in the Order dated 10.11.2023.

The Commission observes that all the provisions of the Regulations notified by the Commission in its legislative capacity, have the force of law behind it. Hence a statute has to be construed according to the intent of the legislation, as the same, as reflected in the 'objectives' is to make the dispensation effective and workable. A reading of the said provision i.e. Regulation 4 of the GEOA Regulations, 2023 framed in line with Rule 5 of the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 as well as Regulation clause no. 42 & 45 of HERC OA Regulations, establishes the fact that meaning/interpretation of the said provision is plain & simple and the same by no stretch of imagination is open to more than one interpretation, which may require interference of the Commission or any court of competent jurisdiction to choose the interpretation which represents the true intent of the said Regulation. Hence, the effect of the same has to be necessarily given to it irrespective of the consequences.

In view of the above discussion, the Commission answers this issue in affirmative i.e. the requirement under Regulation 4 of the GEOA Regulations, 2023 framed in line with Rule 5 of the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 as well as Regulation clause no. 42 & 45 of HERC OA Regulations are mandatory and binding.

25.2. **Issue No. 2**

Whether the petitioner has complied with the mandatory provisions?

The Commission observes that the Petitioner has vehemently claimed that it has not provided day ahead schedule by 10 AM, to DHBVNL, during the disputed period, as prescribed under Regulation 42 of HERC OA Regulations. The submissions of the petitioner is as under:-

"Post commissioning of the Project, the Petitioner No. 2 was duly supplying power to Petitioner No. 1 while complying with the terms of the Connectivity Regulations. However, on account of inadvertent error there was failure in informing the distribution licensee regarding the schedule of power through open access for all the 96 slots by 10:00 AM of the day preceding the day of transaction as per Regulation 42 of the Connectivity Regulations from 28.09.2024 to23.11.2024 ("Unaccounted period")."

Further, the petitioner has not maintained the mandatory constant power schedule in 12-time blocks of 15 minutes each on daily basis, as prescribed under Regulation 4 of the GEOA Regulations, 2023. The submissions of the petitioner is as under:-

"In the meanwhile, for the time period from 28.09.2024 to 23.11.2024, the said Petitioner came to notice that Respondent No. 1 has not settled the power for the days wherein Petitioner No. 1 has not maintained the constant power in continuous 12-time blocks of 15 minutes each, while punching the schedules onto Respondent No. 1's portal for D-1 day ("Time Block Issue")."

Further, the Commission observes that the Petitioner's contention that it had been uploading the scheduled energy on the NOAR portal on a daily basis and that the energy supplied was duly reflected in the monthly Regional Energy Accounts ("REAs") issued by the NRPC cannot be accepted as a substitute for compliance with the mandatory requirements prescribed under the HERC OA Regulations. The Commission further observes that the requirement relating to the 'time block', which

constituted a fundamental eligibility condition for the grant of Green Energy Open Access, was also not complied with by the Petitioner. The Petitioners further argued that they fulfilled all statutory requirements under the Open Access framework, having obtained valid Standing Clearances from Haryana SLDC and NRLDC, as well as Open Access (Bilateral Transaction) acceptances for scheduling from Grid India on the NOAR portal for the relevant periods. However, the petitioner (s) have lost sight of the fact that Standing Clearances, NOCs, and NOAR acceptances operate at an overarching operational stage enabling a consumer to undertake Open Access transactions generally, subject to daily compliance. They do not constitute a waiver or dispensation from daily day-ahead scheduling rules under Regulation 4.

The Commission has also examined the provisions of Regulations 42 and 45 of the HERC OA Regulations. Regulation 42 requires intimation to be furnished to the "distribution licensee", as the information is necessary for the DISCOMs to undertake power procurement planning. The requirement for submission of the day-ahead schedule to the SLDC is separately stipulated under Regulation 45 of the said Regulations. The Commission observes that the two provisions serve distinct purposes: Regulation 42 enables the distribution licensee to plan its power procurement, whereas Regulation 45 facilitates the SLDC in scheduling power for Open Access consumers. Accordingly, compliance with one provision cannot be treated as a substitute for compliance with the other.

In the present case, it is an admitted position that the Petitioner did not send the requisite schedule intimating the day-ahead schedule of drawl of power through Open Access to DHBVNL which was also required to be maintained for a minimum twelve-time blocks of 15 minutes each.

The Commission, therefore, holds that the Petitioner failed to comply with the applicable requirement under Regulation 4 of the GEOA Regulations, 2023 along with Regulation 42 of the HERC OA Regulations, which constituted an essential condition governing the drawl of power through Open Access. In view of the above, the Commission answers the issue framed above in negative i.e. petitioner has not complied with the mandatory provisions

25.3. **Issue No. 3**

Whether the petitioner was estopped from complying with the mandatory provisions by the respondents?

The Commission has examined the submissions made by the Petitioners and observes that no grievance has been raised by the Petitioners against the DISCOMs which could have prevented or otherwise impeded them from complying with the mandatory provisions of the applicable Regulations. The Petitioners have, instead, submitted that the non-compliance with the said provisions occurred on account of an inadvertent error.

Relying on M/s Rana Sugars Limited v. UPERC (APTEL Appeal No. 185 of 2022 / 186 of 2023 dated 28.05.2025), Price Waterhouse Coopers Pvt. Ltd. v. CIT [(2012) 348 ITR 306 SC], Charu Kain v. High Court of Delhi [2022 LiveLaw (Del) 551], and CIT v. Somany Evergreen Knits Limited [2013 SCC OnLine Bom 1798], the Petitioners contend that a bona fide human error committed without intent to cause loss ought to be permitted to be rectified. The Respondents submitted that the judicial precedents relied upon by the Petitioners concern penalty waivers or relief against forfeiture for inadvertent errors under revenue, service or penal statutes. They have no application to mandatory statutory eligibility conditions precedent for claiming special regulatory open access benefits.

The Commission take note of the fact that the non-compliance is explicitly admitted by the petitioners. The judgments in Price Waterhouse Coopers (tax audit error), Charu Kain (category selection error in exam), and Somany Evergreen Knits (claim of depreciation) deal with relieving a party from punitive or penal consequences for inadvertent administrative slips. In contrast, the present case does not involve any penalty or fine imposed on the Petitioners. Satisfaction of Regulation 4 of GEOA Regulations, 2023, is a threshold statutory eligibility condition precedent. An equitable plea of "bona fide error" or "inadvertence" cannot substitute for, dispense with, or retrospectively cure a failure to fulfill statutory eligibility criteria. In M/s Goodrich Carbohydrates Limited v. HVPNL & Ors. (Petition No. 18 of 2024, Order dated 27.08.2024), the Commission considered Regulation 4 read with its clarification order dated 10.11.2023 and authoritatively held that *"Having answered the above issues, the Commission is of the considered view that scheduling requirements provided in the HERC GEOA Regulations, 2023 although mandatory in nature has not been followed and complied with by both the parties from May 2023 to October 2023." "In view of the*

above, the Commission answers the issue framed above in negative i.e. for the period from May, 2023 to October, 2023, the schedule was not provided by the petitioner strictly as per the provisions of the HERC GEOA Regulations in vogue." The Commission re-affirms that the scheduling requirement under Regulation 4 of GEOA Regulations, 2023 is mandatory in nature. An inadvertent failure to punch a compliant schedule leaves the statutory eligibility unfulfilled.

In view of the foregoing, the Commission answers the issue in the negative and holds that the Petitioners were not prevented or estopped by any act or omission on the part of the Respondents from complying with the mandatory provisions of the applicable Regulations.

25.4. **Issue No. 4**

Whether the Respondent Nigam suffered any financial loss and was constrained in planning its power procurement on day to day basis?

The Petitioners also contend that Respondent No. 1 distributed and earned revenue from the electricity supplied by Petitioner No. 2 without giving credit to Petitioner No. 1, resulting in "unjust enrichment" contrary to Sahakari Khand Udyog Mandal Ltd. v. CCE & Customs [(2005) 3 SCC 738] and Power Company of Karnataka Ltd. v. Udupi Power Corporation Ltd. [2020 SCC OnLine APTEL 94]. They argue this violates Section 86(1)(e) and the core philosophy of the Electricity Act, 2003 to promote renewable energy.

Upon examination of the matter, the Commission is of the considered view that the doctrine of unjust enrichment cannot be invoked to override or circumvent the express provisions of the applicable statutory Regulations. In the present case, DHBVNL declined to settle the energy account on the ground that the Petitioners had failed to satisfy the requirements prescribed under Regulation 4 of the GEOA Regulations, 2023. The Commission observes that equitable principles cannot be applied in a manner that is contrary to or inconsistent with the governing statutory and regulatory framework, as recognised by the Hon'ble Supreme Court and the Appellate Tribunal for Electricity (APTEL). Accordingly, enforcement of the notified regulatory requirements cannot, in itself, be construed as unjust enrichment, particularly where

the claim for settlement arises from non-compliance with the applicable regulatory provisions.

The Commission further observes that it is not feasible to precisely quantify the losses, if any, attributable to the failure of a particular Open Access consumer to intimate its scheduled drawl in a timely manner, or to determine the consequential gain or loss arising from the sale or purchase of equivalent power through the power exchange or under the Unscheduled Interchange (UI) mechanism. This is primarily on account of the complexities involved in grid operations and the pooling of power in the electricity grid. The Commission further observes that, owing to the non-intimation of the Open Access schedule, the energy in question could not be duly accounted for in the energy balance planning, resulting in some quantum of energy remaining unutilized.

In view of the foregoing factual position, the Commission answers the issue in the affirmative and holds that the Nigam may have suffered some financial loss on account of the non-intimation of Open Access, although the exact extent of such loss cannot be precisely quantified.

Conclusion:-

26. **Having answered the above issues, the Commission is of the considered view that Regulation 4 of the GEOA Regulations, 2023 along with Regulation 42 of HERC OA Regulations, 2012 being mandatory in nature has not been followed and complied with by the petitioner no 1 from 28.09.2024 to 23.11.2024. The Petitioner has itself admitted that the mandatory provisions of regulations could not be complied with due to an oversight. The Commission finds that physical entry of electricity into the grid does not automatically translate into a Green Energy Open Access commercial entitlement. Regulation 4 of the GEOA Regulations, 2023 sets out an explicit threshold condition precedent i.e. open access schedule should be for minimum twelve-time blocks of 15 minutes time interval during a day. Regulation 42 of HERC OA Regulations provides that such schedule should be on a day ahead basis by 10 AM of the day preceding the day of transaction.**

In light of the detailed pointwise analysis, statutory provisions and judicial precedents recorded hereinabove, the Commission orders that the action of Respondent No. 1 (DHBVN) in declining Green Energy Open Access commercial

settlement for the disputed dates (28.09.2024 to 23.11.2024) is upheld as being in full conformity with Regulation 4 of the HERC GEOA Regulations, 2023, read with Regulations 42 and 45 of HERC OA Regulations.

27. The present petition stands disposed of accordingly.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 13.10.2026.

	Sd/-	Sd/-
Date: 13.10.2026	**(Shiv Kumar)**	**(Mukesh Garg)**
Place: Panchkula	**Member**	**Officiating Chairman**

HERC