

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/Petition No. 9 of 2026

Date of Hearing : 26.05.2026

Date of Order : 05.06.2026

In the Matter of

Petition for Clarification under Section 94(1) and (2) of the Electricity Act, 2003 read with Regulation 65, 66, 67, 69 and 70 of Conduct of Business Regulations, 2012 regarding applicability of Cross Subsidy Surcharge on Captive Power transactions under Short Term Open Access.

Petitioner

1. M/s. Jindal Stainless Ltd.

Respondent

1. Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL) through its Managing Director

Present on behalf of the Petitioner

1. Mr. Aashish Chopra, Sr. Advocate
2. Mr. Drupad Sangwan, Advocate
3. Mr. Madhur Panwar, Advocate
4. Mr. Yashpal Sharma, Advocate
5. Mr. Pankaj Sharma, Advocate
6. Mr. Rajesh Jain, Authorised Representative
7. Mr. Om Prakash Agarwal, Authorised Representative

Present on behalf of the Respondent

1. Mr. Raheel Kohli, Advocate
2. Mr. Tarsem Rana, Advocate
3. Mr. Himanshu Handa, Advocate
4. Mr. Amit Kumar, SDO, DHBVNL

Quorum

**Shri Nand Lal Sharma
Shri Mukesh Garg
Shri Shiv Kumar**

**Chairman
Member
Member**

ORDER

Brief Background of the case

1. The present petition has been filed by M/s. Jindal Stainless Ltd. (Jindal) seeking clarification to the extent that the exemption from levy of Cross Subsidy Surcharge (CSS) is applicable to all captive power transactions irrespective of whether the open access is Long Term Open Access (LTOA), Medium Term Open Access (MTOA), or Short Term Open Access (STOA) and further to grant refund of Cross Subsidy Surcharge wrongly levied and collected from the Petitioner for the captive power

evacuated, under short term open access, during the period from 23.03.2025 onwards, along with interest.

2. The petitioner's submissions: -

- 2.1. That the present petition is being filed seeking clarification against the decision/communication of the Respondent vide Memo No. Ch-04/SE/C/37/2006/Vol-I dated 07.01.2026 rejecting the Representation dated 29.09.2025 submitted by the Petitioner seeking refund and exemption of Cross Subsidy Surcharge on captive power transactions.
- 2.2. That the petitioner is a large integrated Industry in the Steel manufacturing domain and is an embedded electricity consumer of the Distribution Licensee with its corporate office at Hisar, with a contract demand of 130 MVA, connected at BBMB 220 kV SS Satrod, Hisar at 220 kV voltage level.
- 2.3. That the Petitioner has established a Captive Generating Plant through a Special Purpose Vehicle (SPV) namely M/s ReNew Green (MHS One) Private Limited, which owns and operates a 100 MW Wind-Solar Hybrid Captive Generating Plant located at Village Konhali, Taluka Akkalkot, District Solapur, Maharashtra. The said plant is registered under the name "RENEW GREEN (MHS ONE) PRIVATE LIMITED SOLAR HYBRID" and commenced commercial operations on 13.03.2025 from 00:00 hrs.
- 2.4. That the petitioner holds 26% of the equity share capital with voting rights in M/s ReNew Green (MHS One) Private Limited, thereby satisfying the ownership criterion prescribed under Rule 3(1)(a)(i) of the Electricity Rules, 2005. Further, during the period from 11.03.2025 to 31.03.2025, the Petitioner consumed 5,125.89 MWh out of the total generation of 6,905.67 MWh (constituting 78.67% after accounting for technical losses of 306.96 MWh), thereby satisfying the consumption criterion prescribed under Rule 3(1)(a)(ii) of the Electricity Rules, 2005.
- 2.5. That since the Captive Generating Plant and the Captive User (Petitioner) are located in more than one State (Maharashtra and Haryana/Odisha respectively), the verification of captive status falls within the jurisdiction of the Central Electricity Authority (CEA) as per Rule 3(3) of the Electricity Rules, 2005 read with the "Procedure for verification of captive status of such generating plant, where Captive Generating Plant and its Captive User(s) are located in more than one state" notified by the Ministry of Power vide Order No. 10/2025 dated 10.02.2025.
- 2.6. That the Central Electricity Authority, Legal Division, after due verification of ownership and consumption criteria, has approved and verified the Captive Status of JSL as a

Captive User of the generating plant owned by M/s ReNew Green (MHS One) Private Limited vide Memo No. CEA-EC-14/43/2025-Legal Division/252-259 dated 26.09.2025. The CEA has conclusively determined that JSL fulfills both the ownership criteria (26% equity with voting rights) and consumption criteria (78.67% consumption) stipulated under Rule 3(1)(a) of the Electricity Rules, 2005 for the period 11.03.2025 to 31.03.2025.

- 2.7. That based on the CEA's verification and approval of captive status, the Petitioner submitted a representation dated 29.09.2025 to the Respondent requesting:
- (i) Refund of Cross Subsidy Surcharge (CSS) charged on captive power evacuated from 23.03.2025 to 31.03.2025, and
 - (ii) Exemption from charging of CSS on power evacuated from 01.04.2025 onwards.

The Petitioner has relied upon Section 42(2) of the Electricity Act, 2003 and the proviso to Regulation 21(1) of HERC (Open Access) Regulations, 2012 which provide that CSS shall not be levied on a person who has established a captive generating plant.

- 2.8. That the Respondent, vide Memo No. Ch-04/SE/C/37/2006/Vol-I dated 07.01.2026, has rejected the Petitioner's request for refund/exemption of CSS. The Respondent has raised three issues in the said letter, which are as follows:
- (i) CSS waiver, as per HERC Regulations, is applicable only under Long Term Open Access (LTOA);
 - (ii) For Short Term Open Access (STOA) transactions, CSS is applicable as per the notified procedure, and no general exemption has been provided under the Regulations;
 - (iii) Nigam (DHBVN), being a regulated utility, has no authority to unilaterally waive or refund CSS levied in accordance with the Regulations.

- 2.9. That Section 42(2) of the Electricity Act, 2003 provides as follows:

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

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

- 2.10. That this statutory exemption is absolute and unconditional. The only requirement as stipulated under the Act is that the person claiming exemption must have established a captive generating plant and the electricity must be carried to the destination of his

own use. The statute does not make any distinction based on the duration of open access, i.e., whether the open access is Long Term, Medium Term, or Short Term. The exemption is based solely on the captive status of the plant and the transaction, not on the duration of the Open Access arrangement.

- 2.11. That Rule 3 of the Electricity Rules, 2005 defines the requirements for a power plant to qualify as a "Captive Generating Plant". The key conditions are:
- (i) the captive user(s) must hold at least 26% of the equity share capital with voting rights; and
 - (ii) the captive user(s) must consume at least 51% of the aggregate electricity generated on an annual basis.
- 2.12. That the Petitioner has satisfied both these conditions, as verified and certified by the Central Electricity Authority. The Petitioner submits that the Central Electricity Authority is the competent authority designated under Rule 3(3) of the Electricity Rules, 2005 for verification of captive status where the generating plant and captive user(s) are located in more than one state. The CEA, vide Memo dated 26.09.2025, has verified and approved the captive status of the Petitioner after examining all relevant documents including ownership certificates, consumption data authenticated by SLDCs, and compliance with CEA Procedure. This verification is conclusive and binding. Once the captive status is verified by the competent authority, the exemption from paying CSS flows automatically by operation of law under Section 42(2) of the Electricity Act, 2003. The Respondent cannot question or disregard the CEA's verification on extraneous grounds such as the duration of open access, which is not a criterion for determining captive status.
- 2.13. That the exemption from CSS flows automatically once a plant qualifies as a Captive Generating Plant under Rule 3, irrespective of whether the captive power is evacuated through Long Term, Medium Term, or Short Term Open Access.
- 2.14. That reliance is placed on Regulation 21 of the HERC (Open Access) Regulations, 2012 and its subsequent amendments, which provide as follows:
- "21. Cross subsidy surcharge. –*
- (1) If open access is availed by a consumer of a distribution licensee of the State, then such consumer, in addition to payment of transmission and/or wheeling charges, shall pay cross subsidy surcharge... **Provided that** such surcharge shall not be levied on a person who has established a captive generation plant and carries the electricity to the destination of his own use."*

- 2.15. That this proviso mirrors the statutory exemption provided under Section 42(2) of the Electricity Act, 2003. Notably, the proviso does not make any distinction between Long Term Open Access and Short Term Open Access. The exemption is categorical and applies to "a person who has established a captive generation plant" without any qualification as to the duration of open access. Hence the petitioners squarely covered under these regulations as well and the Respondent's denial of the same is wholly illegal and amounts to violation of the provisions of the Regulations.
- 2.16. That the HERC (Green Energy Open Access) Regulations, 2023 provides under its Regulation regarding Cross-subsidy surcharge as follows:
"(2) The Cross-subsidy surcharge shall be as per the provisions of the Electricity Act, 2003 and National Tariff Policy notified by the Central Government under the Act."
- 2.17. That in view of the HERC (Green Energy Open Access) Regulations, 2023 the provisions applicable are as provided in the Electricity Act, 2003 and National Tariff Policy and it is pertinent to highlight here that neither the Electricity Act, 2003 nor the National Tariff Policy makes any distinction regarding waiver of CSS based on the duration of Open Access. Short Term, Medium Term, and Long Term Open Access consumers are on the same footing insofar as CSS exemption for captive users is concerned. The Regulations have consciously adopted the statutory framework without creating any artificial distinction based on the duration of open access.
- 2.18. That the Respondent's denial of the Petitioners exemption request based on interpretation that CSS exemption is available only under Long Term Open Access is contrary to the scheme and object of the Electricity Act, 2003, Rules and Regulations as stated above.
- 2.19. That the legislature has consciously provided exemption from CSS for captive generating plants to encourage captive generation and reduce the burden on the grid. This policy objective would be defeated if captive users are forced to enter into Long Term Open Access arrangements merely to avail the statutory exemption. Many captive users, particularly those with renewable energy captive plants, may require flexibility in scheduling and quantum of power, which is better served through Short Term Open Access. Denying CSS exemption to such users would discourage captive generation and renewable energy adoption, which is contrary to the legislative intent and national policy.
- 2.20. That in the absence of any statutory sub-classification or exclusion under the Act, the Respondent Authority has acted ultra vires in reading additional conditions into the

provision. Such an approach amounts to legislation by interpretation, which is impermissible in law.

- 2.21. That reliance can be placed on the decision of Hon'ble Supreme Court in the case of State of Jharkhand v. Govind Singh, (2005) 10 SCC 437, whereby it was that the It is impermissible to read into a provision something which the legislature has deliberately omitted. By creating a sub-classification within an unqualified exemption, the Respondents has acted contrary to this binding principle. The Relevant portion of the order is reproduced for easy reference

“When the words of a Statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said.”

Further reliance can be placed on **Commissioner of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1**, wherein it was held that exemption provisions are construed strictly at the threshold of eligibility, once the statutory conditions are satisfied, the benefit cannot be curtailed by administrative interpretation.

- 2.22. That while the Respondent vide letter dated 07.01.2026, stating that it has no authority to "unilaterally waive or refund CSS levied in accordance with the Regulations", the converse is equally true. The Respondent has no authority to levy CSS contrary to the provisions of Section 42(2) of the Electricity Act, 2003 and the proviso to Regulation 21(1) of HERC (Open Access) Regulations, 2012.

- 2.23. That since the Petitioner has established a captive generating plant and carries the electricity to the destination of its own use (as verified by CEA), the statutory exemption operates automatically. The Respondent's levy of CSS on such captive transactions is itself contrary to law. The Respondent is bound by the statute and cannot take shelter under subordinate legislation to levy charges which are expressly exempted under the parent Act.

In this regard, reliance can be placed on the judgment of the Hon'ble Supreme Court in the case of **Supreme Court Employees' Welfare Association v. Union of India, (1989) 4 SCC 187**, whereby it was held that introducing additional conditions not contemplated by the statute, the Respondent Authority has crossed from interpretation into legislation, violating the doctrine of separation of powers.

Further, reliance is placed on a recent decision of the Hon'ble Supreme Court in **Kerala State Electricity Board & Others v. Thomas Joseph & Others**, wherein the Court reaffirmed that where the statute defines a provision and its scope, neither a subordinate regulation nor an authority can narrow or expand those statutory contours beyond what Parliament has prescribed. The Court noted that while the statute provided the framework, the Regulatory Code or subordinate regulations cannot supplant or override the statutory definition or introduce conditions inconsistent with the Act. The Relevant portion of the order is reproduced for easy reference:

“A delegated power to legislate by making rules or regulations ‘for carrying out the purpose of the Act’, is a general delegation without laying down any guidelines; it cannot be exercised so as to bring into existence the substantive rights or obligations or disabilities not contemplated by the provisions of the Act 2003 itself. The Court, considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power as has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute.”

- 2.24. That the Green Energy Open Access Rules, 2022 notified by the Ministry of Power, Government of India, further strengthen the case for CSS exemption for captive green energy transactions. Under these Rules, even third-party Open Access consumers procuring green energy (who do not meet the captive criteria) are entitled to certain reliefs such as CSS cap at 50% of the surcharge and complete exemption from Additional Surcharge.
- 2.25. That the Petitioner, being a captive user who has satisfied the stringent 26%/51% ownership and consumption criteria under Rule 3 of Electricity Rules, 2005, is a fortiori entitled to complete CSS exemption. It would be anomalous if third-party green energy consumers receive partial relief while genuine captive users are denied complete exemption merely because they have availed Short Term Open Access instead of Long Term Open Access.
- 2.26. That the following prayers have been made:-
 - a) Clarify and declare that the exemption from paying Cross Subsidy Surcharge (CSS) under Section 42(2) of the Electricity Act, 2003 read with the proviso to Regulation 21(1) of HERC (Open Access) Regulations, 2012 is applicable to all captive power transactions where the captive status has been verified as per Rule 3 of the Electricity Rules, 2005, irrespective of whether the open access is Long

- Term Open Access (LTOA), Medium Term Open Access (MTOA), or Short Term Open Access (STOA);
- b) Direct the Respondent to refund the Cross Subsidy Surcharge wrongly levied and collected from the Petitioner for the captive power evacuated during the period from 23.03.2025 to 31.03.2025, along with interest at the rate of 12% per annum or at such rate as this Hon'ble Commission may deem fit and proper;
 - c) Direct the Respondent to forthwith cease levying Cross Subsidy Surcharge on captive power evacuated by the Petitioner from M/s ReNew Green (MHS One) Private Limited through Short Term Open Access with effect from 01.04.2025 onwards and for all future periods and refund any CSS charged on captive power with effect from 01.04.2025 up to the date of filing of this petition.
 - d) Issue appropriate directions to all Distribution Licensees in the State of Haryana to comply with the provisions of Section 42(2) of the Electricity Act, 2003 and not to levy Cross Subsidy Surcharge on captive power transactions where the captive status has been duly verified by the competent authority;
 - e) Award costs of this petition in favour of the Petitioner and against the Respondent;
 - f) Pass such other and further orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case, in the interest of justice.

3. Reply filed by Respondent dated 20.05.2026: -

- 3.1. That the Petitioner, being a Short Term Open Access ("STOA") consumer, is importing power from a Captive Generating Plant established through M/s ReNew Green (MHS One) Private Limited situated in the State of Maharashtra to its manufacturing unit situated in the State of Haryana. The Petitioner has relied upon the verification of captive status issued by the Central Electricity Authority ("CEA") and has sought exemption/refund of Cross Subsidy Surcharge ("CSS") on the ground that Section 42(2) of the Electricity Act, 2003 read with Regulation 21(1) of the HERC Open Access Regulations provides exemption from CSS in case of captive consumption. The grievance of the Petitioner arises from the communication dated 07.01.2026 issued by the Respondent whereby the request of the Petitioner for waiver/refund of CSS in respect of STOA transactions was rejected.
- 3.2. That the present Petition is wholly misconceived, devoid of merit and liable to be dismissed. The Petitioner seeks exemption/refund of CSS in respect of electricity imported through STOA by selectively relying upon Regulation 21 of the HERC (Terms

and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 (“Open Access Regulations”), while completely ignoring the subsequent amendment (1st amendment dated 03.12.2013) consciously introduced by the Hon’ble Commission defining the term “beneficiary”.

- 3.3. That the entire case of the Petitioner proceeds on the erroneous assumption that merely because the Petitioner claims captive status, it automatically becomes entitled to exemption from CSS irrespective of the nature and category of Open Access availed by it. Such interpretation is contrary to the scheme of the applicable Regulations and renders the subsequent amendment introduced by the Hon’ble Commission wholly redundant and otiose.
- 3.4. That the Hon’ble Commission, by way of amendment to the Open Access Regulations (1st amendment dated 03.12.2013), consciously introduced the definition of “beneficiary”, which reads as under:
“beneficiary” in relation to transmission system means the person who has availed of the transmission system on payment of transmission charges as determined by the Commission under relevant regulations. This includes a distribution licensee, a transmission licensee, a person who has setup a captive power plant or a generating company including merchant power plant or a consumer availing long-term or medium-term open access utilizing such transmission system. Short-term open access consumers will not be treated as beneficiaries.”
- 3.5. That the Hon’ble Commission, while framing the regulatory framework, consciously included consumers availing Long Term Open Access (“LTOA”) and Medium Term Open Access (“MTOA”) within the category of recognized “beneficiaries”, while specifically excluding STOA consumers therefrom.
- 3.6. That the specific exclusion of STOA consumers from the category of “beneficiaries” necessarily reflects the regulatory intent of the Hon’ble Commission to distinguish committed and stable open access arrangements recognized within the transmission framework from temporary, intermittent and transaction-oriented STOA arrangements.
- 3.7. That Regulation 21 cannot be interpreted in isolation de hors the subsequently amended regulatory framework. The Regulations are required to be read harmoniously and purposively. When Regulation 21 is read together with the amended definition of “beneficiary”, the only harmonious interpretation that emerges is that the regulatory framework recognizes only LTOA and MTOA consumers as part of the structured transmission usage framework, whereas STOA consumers stand consciously

excluded from such recognition. Consequently, the exemption from CSS cannot be mechanically extended to STOA transactions merely because the consumer asserts captive status.

- 3.8. That the distinction drawn by the Hon'ble Commission between LTOA/MTOA and STOA is substantive and intentional. STOA transactions are temporary in nature, transaction-specific, granted subject to corridor availability, inherently uncertain and revocable and incapable of forming the basis of stable load forecasting and network planning.
- 3.9. That permitting STOA consumers to claim exemption from CSS would seriously prejudice the distribution licensee and defeat the very object and purpose of CSS. CSS is compensatory in nature and is intended to safeguard the financial and operational stability of the distribution licensee, which continues to maintain the distribution network, reserve and standby infrastructure, discharge universal supply obligations and undertake long-term demand and system planning. Unlike LTOA and MTOA arrangements, which provide stability, predictability and committed usage patterns enabling proper system planning and load assessment, STOA transactions are temporary, intermittent and transaction-oriented in nature. Consequently, intermittent migration of consumers through STOA arrangements without payment of CSS would result in severe financial and operational prejudice to the Respondent distribution licensee and would directly undermine the regulatory framework governing cross-subsidization. It is precisely for this reason that the Hon'ble Commission, in its wisdom, consciously recognized only LTOA and MTOA consumers within the category of "beneficiaries", while expressly excluding STOA consumers therefrom.
- 3.10. That the proviso to Section 42(2) cannot be interpreted in isolation while ignoring the regulatory framework framed by the Hon'ble Commission governing the manner and categories of Open Access transactions. The exemption contemplated under Section 42(2) necessarily operates within the framework of the applicable Regulations framed by the Hon'ble Commission. Once the Commission, in its wisdom, has consciously excluded STOA consumers from the recognized beneficiary framework, the Petitioner cannot indirectly nullify the amendment by seeking exemption through an artificial and strained interpretation.
- 3.11. That the Respondent, being a regulated utility, is bound by the applicable Regulations and has no authority whatsoever to either waive or refund CSS contrary to the prevailing regulatory framework.

- 3.12. That in view of the facts and submissions made hereinabove, this Hon'ble Commission may graciously be pleased to:
- a) Dismiss the present Petition as being devoid of merit;
 - b) Uphold the action of the Respondent in levying Cross Subsidy Surcharge on electricity imported by the Petitioner through Short Term Open Access arrangements; and
 - c) Pass such other and further order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case.

Proceedings in the Case

4. The case was heard on 09.04.2026 and finally on 26.05.2026, in the court room of the Commission, wherein the petitioner as well as the respondent mainly reiterated the contents of their petition/reply, which for the sake of brevity are not being reproduced here.

Commission's Analysis and Order

5. The Commission heard the arguments of the parties at length as well as perused the petition/reply filed by the parties. Upon perusal of the submissions of the parties and the documents referred to and placed on record, the Commission, at the outset, observes that the petitioner herein has sought a clarification to the extent that the exemption from levy of Cross Subsidy Surcharge (CSS) is applicable to its captive power transactions undertaken through Short Term Open Access (STOA). The Petitioner has further prayed for refund of the Cross Subsidy Surcharge levied and recovered from it in respect of captive power evacuated under STOA from 23.03.2025 onwards, together with applicable interest thereon.
6. Per-contra, the respondent (DHBVNL) has placed substantial reliance on Regulation 3 (2a) of the HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) (1st amendment) Regulations, 2013, and contended that the said amendment specifically excludes Short Term Open Access (STOA) consumers from the definition of "beneficiaries"; therefore, STOA consumers are not entitled to the benefit of exemption from payment of Cross Subsidy Surcharge (CSS).
7. At the outset, the Commission notes that the captive status of the Petitioner's generating plant, as certified by the Central Electricity Authority (CEA) for the relevant period, is not in dispute. Accordingly, the principal issue that falls for consideration is whether the exemption from the levy of Cross Subsidy Surcharge (CSS), envisaged

under Section 42(2) of the Electricity Act, 2003 and the proviso to Regulation 21(1) of the HERC (Open Access) Regulations, 2012, is contingent upon or restricted by the nature and duration of the open access availed, namely, Long-Term Open Access (LTOA), Medium-Term Open Access (MTOA), or Short-Term Open Access (STOA).

8. In order to examine the same, the Commission has perused Regulation 3 (2a) of the HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) (1st amendment) Regulations, 2013. The relevant clause is reproduced hereunder:-

“beneficiary” in relation to transmission system means the person who has availed of the transmission system on payment of transmission charges as determined by the Commission under relevant regulations. This includes a distribution licensee, a transmission licensee, a person who has setup a captive power plant or a generating company including merchant power plant or a consumer availing long-term or medium-term open access utilizing such transmission system. Short-term open access consumers will not be treated as beneficiaries.”

In this context, it is also relevant to examine regulation 19 of HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) (1st amendment) Regulations, 2013, where the newly introduced term ‘beneficiary’ has been used. The extant clause is reproduced hereunder:-

“19. Transmission charges and wheeling charges. - (1) Open access consumer using inter-State transmission system shall pay the transmission charges as specified by the CERC from time to time.

(2) Open access consumer using intra-State transmission system shall pay transmission charges to the STU or the transmission licensee other than STU for usage of their system as determined by the Commission for the relevant financial year as per the provisions of Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012, or its statutory re-enactments, as amended from time to time.

The annual transmission charges (or total transmission cost in case of multiple transmission licensees) as determined by the Commission for the relevant financial year shall be shared by all the beneficiaries i.e. distribution licensees, long-term open access consumers and medium-term open access consumers in the ratio of their allocated transformation capacity or contracted capacity, whichever applicable, and shall be payable on monthly basis. The monthly transmission charges payable by each of the beneficiaries shall be computed as per the following formula

$$\text{Monthly Transmission Charges} = \frac{\text{ATC}}{12} \times \frac{\text{CA}}{\text{CS}}$$

Where

ATC = Annual Transmission charges payable by all the beneficiaries (ATC shall be equal to the annual transmission cost determined by the Commission in the tariff order for transmission business for the relevant year)

CA = **Transformation Capacity (MVA) allocated to each beneficiary.**

CS = **Sum of Transformation Capacity (MVA) allocated to all the beneficiaries.**

Note: Where allocated Transformation Capacity (MVA) of a beneficiary is not available, the contracted capacity in MW shall be converted in MVA at a power factor of 0.90 and the same shall be considered for computation of monthly transmission charges payable by the beneficiaries.

Provided that monthly Transmission charges shall also be shared by a Generation Company (including Renewable Energy Generators which opt for third party sale) if power from such Generating Company is sold to a consumer outside the State of Haryana to the extent of capacity contracted outside the state

Provided further that where a dedicated transmission system has been constructed for exclusive use of or being used exclusively by an open access consumer at the cost of the licensee, the transmission charges for such dedicated system shall be worked out by transmission licensee and got approved by the Commission and shall be borne entirely by such open access consumer till such time the surplus capacity is allotted and used for by other open access consumers or purposes, after which these transmission charges for such dedicated system shall be shared in the ratio of loads allotted to the various users.

Provided also that the transmission charges shall be payable by the short- term open access consumers on Rs./ kWh basis, as determined by the Commission for the relevant financial year, for the scheduled quantum of energy in MWh cleared by the concerned Load Despatch Centre.

.....”

(Emphasis Supplied)

The ibid regulation 19 was substituted in the HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) (1st amendment) Regulations, 2013. The erstwhile regulation 19 of HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012, had provided as under:-

“19. Transmission charges and wheeling charges. - (1) Open access consumer using inter-State transmission system shall pay the transmission charges as specified by the CERC from time to time.

(2) Open access consumer using intra-State transmission system shall pay transmission charges to the STU or the transmission licensee other than STU for usage of their system as determined by the Commission for the relevant financial year

Provided that transmission charges shall be payable on the basis of contracted capacity in case of long term and medium term open access consumers and on the basis of scheduled load in case of short term open access consumers. For open access for a part of a day, the transmission charges shall be payable on pro-rata basis.

*Provided further that where a dedicated transmission system has been constructed for exclusive use of or being used exclusively by an open access consumer, the transmission charges for such dedicated system shall be worked out by transmission licensee and got approved by the Commission and shall be borne entirely by such open access consumer till such time the surplus capacity is allotted and used for by other open access consumers or purposes, after which these transmission charges for such dedicated system shall be shared in the ratio of loads allotted to the various users.
.....”*

(Emphasis Supplied)

The Commission observes that the aforesaid definition of “beneficiary” was introduced through the HERC (Open Access) Regulations (First Amendment), 2013, primarily for the purpose of determination and levy of transmission charges under Regulation 19 of the said Regulations. By virtue of the amendment, distribution licensees, transmission licensees, captive power plants, generating companies, long-term open access consumers, and medium-term open access consumers were brought within the ambit of the term “beneficiary” for the purpose of sharing transmission charges. Prior to the amendment, such charges were leviable only upon long term and medium term open access consumers.

The Commission further observes that short-term open access (STOA) consumers were consciously excluded from the definition of “beneficiary”, as the methodology prescribed for recovery of transmission charges from such consumers is distinct. While transmission charges payable by STOA consumers are determined on an energy basis (Rs./kWh), all other beneficiaries are required to bear transmission charges in proportion to their respective transformation capacity (MVA) or contracted capacity. Accordingly, the exclusion of STOA consumers from the definition of “beneficiary” is confined to the framework for assessment and recovery of transmission charges and cannot, by itself, be construed as a restriction on any statutory exemption otherwise available under the Electricity Act, 2003 or the applicable Open Access Regulations.

Similar provisions have been incorporated in the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2024. The relevant provisions are reproduced hereunder:-

“3.12 **“Beneficiary”** in relation to a

.....

(b) *“Transmission System” means the person who has availed of the transmission system on payment of transmission charges determined under these Regulations. **This includes a distribution licensee, a transmission licensee, a person who has setup a captive power plant or a generating company including merchant power plant or a consumer availing long-term or medium-term open access utilizing such transmission system. Short-term open access consumers will not be treated as beneficiaries;**”*

“52. RECOVERY OF ANNUAL TRANSMISSION CHARGES

(a) *Transmission licensee shall recover the transmission charges at the normative annual transmission system availability factor specified for it by the Commission.*

(b) Payment of transmission charges

*Annual transmission charges shall be fully recoverable at the specified level of target availability. Payment of transmission charges below the specified target availability shall be on pro-rata basis. The transmission licensee may recover its annual transmission charges by way of a fixed charge based on transformation capacity. The transmission charges shall be calculated on a monthly basis. **In case of more than one beneficiaries of the transmission system, including the distribution licensees and long term and medium-term open access consumers** (but subject to any exclusion of any other open access consumers as per the open access Regulation notified by the Commission), the monthly transmission charges leviable on each beneficiary shall be computed as per the following formula.*

$$\text{Monthly Transmission Charges} = \frac{\text{ATC} \times \text{CA}}{12 \times \text{CS}}$$

Where,

ATC = Annual Transmission Charges payable by all the beneficiaries after deducting any benefits to be considered as decided by the Commission;

CA= Transformation Capacity (MVA) allocated to each beneficiary. CS = Sum of Transformation Capacity (MVA) allocated to all beneficiaries.

Note: Where allocated Transformation Capacity (MVA) of a beneficiary is not available, the contracted capacity in MW shall be converted in MVA at a power factor of 0.90 and the same shall be considered for computation of monthly transmission charges payable by the beneficiaries.

Provided that monthly Transmission tariff shall also be shared by a Generation Company (including Renewable Energy Generators which opt for third party sale) if power from such Generating Company is sold to a consumer outside the State of Haryana to the extent of capacity contracted outside the state.

Provided further that the Long Term and Medium-Term beneficiaries of the Transmission System shall pay no other charges for the use of Transmission Network of STU.

*Provided also that the **transmission charges shall be payable by the short- term open access consumers for the scheduled energy drawl at per kWh rate as worked out by dividing the annual transmission charges by the total volume of energy transmitted by the transmission licensee during the previous year. Provided further that Intra-State charges payable by the Open Access Consumers shall not be applicable on short term Open Access power purchase/sales by the Distribution Licensee.***

(Emphasis Supplied)

From a detailed examination of the definition of the term "Beneficiary" as contained in the HERC (Open Access) Regulations and the HERC Multi-Year Tariff (MYT) Regulations, as well as its relevance in the determination and apportionment of transmission charges, the Commission is of the considered view that the said term is confined to the regulatory framework governing transmission charge recovery and allocation. The scope and applicability of the definition bear no nexus with the levy or exemption of Cross Subsidy Surcharge (CSS).

Accordingly, the Commission holds that the exclusion of Short-Term Open Access (STOA) consumers from the definition of "Beneficiary" cannot be relied upon to deny the statutory exemption from payment of CSS available to captive users under Section 42(2) of the Electricity Act, 2003 read with the proviso to Regulation 21(1) of the HERC (Open Access) Regulations, 2012. The entitlement to such exemption flows

independently from the aforesaid statutory and regulatory provisions and is not contingent upon the classification of a consumer as a "Beneficiary" for the purpose of transmission charge determination.

The relevant provisions of Section 42(2) of the Electricity Act, 2003 read with the proviso to Regulation 21(1) of HERC (Open Access) Regulations, 2012, are reproduced hereunder:-

"Section 42. (Duties of distribution licensee and open access): --- (1)

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

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

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

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

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

(Emphasis Supplied)

Regulation 21(1) of HERC (Open Access) Regulations, 2012, provides as under:-

"21. Cross subsidy surcharge. - (1) *If open access is availed by a consumer of a distribution licensee of the State, then such consumer, in addition to payment of transmission and / or wheeling charges, shall pay cross subsidy surcharge. Cross subsidy surcharge on per unit basis shall be payable, on monthly basis, by the open access consumer for the actual energy drawn through open access during the month. The amount of surcharge shall be paid to the distribution licensee of the area of supply in which such consumer is located.*

Provided that such surcharge shall not be levied on a person who has established a captive generation plant and carries the electricity to the destination of his own use.

(Emphasis Supplied)

9. **Conclusion:-**

After the comprehensive analysis and findings recorded above, the Commission finds that the exemption from payment of Cross Subsidy Surcharge (CSS) available to captive users under Section 42(2) of the Electricity Act, 2003 is clear, unequivocal and unconditional. The proviso to Section 42(2) expressly stipulates that CSS shall not be leviable in cases where open access is provided to a person who has established a captive generating plant for carrying electricity to the destination of his own use. The statutory provision does not make any distinction based on the tenure or category of open access availed, whether long-term, medium-term or short-term.

The Commission further observes that the proviso to Regulation 21(1) of the HERC (Open Access) Regulations, 2012 substantially mirrors the language of the parent statute and similarly provides an unqualified exemption from payment of CSS in respect of captive consumption. Neither the Act nor the Regulations prescribe any restriction whereby the availability of such exemption is made contingent upon the duration of open access.

The contention of the Respondent that the exclusion of Short-Term Open Access (STOA) consumers from the definition of “Beneficiary” under the HERC (Open Access) Regulations disentitles such consumers from claiming exemption from CSS is misconceived and untenable. As discussed hereinabove, the definition of “Beneficiary” was introduced for the limited purpose of determination and recovery of transmission charges and bears no nexus to the levy or exemption of CSS. A definition incorporated for a specific regulatory purpose cannot be relied upon to curtail or dilute a substantive statutory exemption conferred under the Electricity Act, 2003.

The Commission is also guided by the settled principle of statutory interpretation that where the language of a statute is plain and unambiguous, effect must be given to its natural meaning and no words or limitations can be read into the provision which the legislature has consciously omitted. Once the captive status of a generating plant stands duly verified in accordance with law,

the exemption from CSS follows as a matter of statutory entitlement and not as a matter of discretion.

The Commission further observes that acceptance of the Respondent's interpretation would frustrate the legislative objective underlying the captive generation framework. The Electricity Act, 2003 seeks to promote captive generation and facilitate greater participation in renewable and efficient sources of energy. Denial of CSS exemption to a verified captive user merely on account of availing STOA would create an artificial distinction unsupported by either the Act or the Regulations and would defeat the very purpose of the statutory exemption.

Accordingly, the Commission holds that the levy of Cross Subsidy Surcharge by the Respondent on the Petitioner's captive power transactions undertaken through Short-Term Open Access is contrary to the provisions of Section 42(2) of the Electricity Act, 2003 and the proviso to Regulation 21(1) of the HERC (Open Access) Regulations, 2012.

In view of the foregoing discussion and findings, the petition is allowed. The Commission hereby declares that the exemption from Cross Subsidy Surcharge (CSS) available under Section 42(2) of the Electricity Act, 2003 and the proviso to Regulation 21(1) of the HERC (Open Access) Regulations, 2012 extends to all verified captive power transactions irrespective of whether such transactions are undertaken through Long-Term Open Access (LTOA), Medium-Term Open Access (MTOA) or Short-Term Open Access (STOA).

Consequently, DHBVNL is directed to refund the Cross Subsidy Surcharge recovered from the Petitioner in respect of captive power evacuated through STOA during the period from 23.03.2025 to 31.03.2025, within thirty days from the date of this order. Further, in line with the principle of restitution, interest @ 9.15% p.a. i.e. the average rate of interest on working capital allowed to DISCOMs in the ARR order dated 25.03.2026, shall also be payable from the date of recovery of such CSS till the date of refund. The differential amount shall carry interest on a month-to-month basis, and the liability shall continue to accrue till

full payment of both principal and carrying cost. Needless to add that any further delay in payment of differential tariff along with applicable interest thereon, beyond the allowed period of thirty days, will attract late payment surcharge @ 1.25% per month.

The Respondent is further directed not to levy CSS on the Petitioner's duly verified captive power transactions undertaken through STOA with effect from 01.04.2025 and to refund any amount, if recovered thereafter, along with applicable interest.

All Distribution Licensees operating within the State of Haryana shall ensure strict compliance with the provisions of Section 42(2) of the Electricity Act, 2003 and shall not levy CSS on duly verified captive power transactions, irrespective of the category or tenure of open access under which such transactions are undertaken.

10. The present petition is disposed of in terms of the above order.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 05.06.2026.

Date: 05.06.2026
Place: Panchkula

-Sd/- (Shiv Kumar) Member	-Sd/- (Mukesh Garg) Member	-Sd/- (Nand Lal Sharma) Chairman
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