BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/P. No. 100 of 2025
Date of Hearing : 13/08/2026
Date of Order : 06/10/2026

IN THE MATTER OF:
Petition under Section 86(1)(e) & (k) of the Electricity Act, 2003 read with Regulation 19 and 20 of the HERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019 and other enabling provisions of law, seeking suitable directions/ removal of difficulty/ relaxation of the provisions mandating Long Term Open Access and the appointment of Qualified Coordinating Agency, in respect of the Petitioners, being 1 MW Solar Power Generators, in view of the recent order dated 20.08.2025 passed by the Hon'ble Commission in HERC/Petition No. 43 of 2025

Petitioner

1. M/s Utrecht Solar Pvt. Ltd.,309, Third Floor, Block-A, The Arcadia, South City-II, Gurgaon, Through its Director.
2. M/s Subhash Infraengineers Pvt. Ltd., SCO-4, CSC, Pocket-C, First Floor, Sarita Vihar, New Delhi Through its Head HR
3. M/s Balarch Renewable Energy Pvt. Ltd., House No. 528, Sector 10, Chandigarh Through its Authorised Representative

VERSUS

Respondent:

1. Haryana Vidyut Prasaran Nigam Limited, Shakti Bhawan, Plot No. C-4, Sector 6, Panchkula Through its Executive Engineer/Open Access
2. Dakshin Haryana Bijli Vitran Nigam Limited, Vidyut Sadan, Vidyut Nagar, Hisar Though its Executive Engineer
3. Haryana Power Purchase Centre, 2nd floor, Shakti Bhawan, Sector -6, Panchkula. Through its Chief Engineer

Present

On behalf of the Petitioner
1. Sh. Irshan S Kakkar, Advocate
2. Sh. B. S. Yadav, Director

On behalf of the Respondent
1. Sh. Raghujeet Singh Madan, Advocate
2. Ms. Aerika Singh, Advocate
3. Sh. Lovepreet Singh, Advocate
4. Sh. Amit Kumar, SDO, DHBVN
5. Sh. Vijay Upadhay, AE,HVPN

QUORUM

Shri Mukesh Garg, Chairman
Shri Shiv Kumar, Member

ORDER

1. **Petition:**

MOST RESPECTFULLY SHOWETH:

1.1 That the present petition is being filed the Petitioners seeking the relief as have been granted by this Hon'ble Commission to similarly placed Generators vide a recent order dated 20.08.2025 in HERC/Petition No. 43 of 2025 titled – *M/s Sunphotonics Private Limited & Anr. Vs. Haryana Vidyut Prasaran Nigam Limited & Ors.,* whereby the Hon'ble Commission was pleased to exempt the applicability of provisions relating to Long-Term Open Access ("LTOA") and the requirement of scheduling either through a Qualified Coordinating Agency ("QCA") in the following terms:

"8.12 Having invoked its inherent powers and relaxed the provisions of extant regulations, specific to the project developers covered under PM-KUSUM Scheme, the Commission decides that the requirement of Long-Term Open Access (LTOA) and the scheduling either self or through a Qualified Coordinating Agency (QCA), shall not be applicable."

A copy of the Final Order dated 20.08.2025 passed by the Hon'ble Commission in HERC/Petition no. 43 of 2025 is annexed.

BRIEF DESCRIPTION OF THE PARTIES**:**

1.2 The Petitioner No. 1- M/s Utrecht Solar Pvt. Ltd., has established a 1 MW Solar Power Plant at Village Bhankhari, Tehsil Narnaul, District Mahendergarh, Haryana. A Power Purchase Agreement ("PPA") was executed with Respondent No. 3- HPPC dated 19.06.2015 for supply of power for 25 years. The plant was commissioned in October 2016, with requisite approvals for grid connectivity with the 33 kV Khatoti sub-station via 11 kV line.

1.3 The Petitioner No. 2- M/s Subhash InfraEngineers Pvt. Ltd., has also set up a 1 MW Solar Power Plant at Village Bhankhari, Tehsil Narnaul, District Mahendergarh. The PPA with HPPC was executed on 16.06.2015, and the plant was commissioned in October 2016 with grid connectivity to the 33 kV Khatoti sub-station via 11 kV line.

1.4 The Petitioner No. 3- M/s Balrach Renewable Energy Pvt. Ltd., has established a 1 MW Solar Power Plant at Narwana Road, Tohana, District Fatehabad. The PPA with HPPC was executed on 15.06.2015 and the plant was commissioned in October 2016, connected to the 33 kV Tohana Sub-station via 11 kV line.

It is submitted that the PPAs between the Petitioners and HPPC are similar in nature. For ready reference, the PPA between Petitioner No. 1 and HPPC is annexed.

1.5 The Respondent No. 1- Haryana Vidyut Prasaran Nigam Limited ("HVPNL") is the Transmission Licensee and the State Load Despatch Centre ("SLDC") established in terms of Section 31 of the Electricity Act, 2003 ("Act, 2003"). HVPNL has been entrusted with the function of scheduling and despatch of electricity with the State of Haryana.

1.6 The Respondent No. 2- Dakshin Haryana Bijli Vitran Nigam ("DHBVNL") is the Distribution Licensee and is responsible for distribution and retail supply of electricity in the Southern Zone of Haryana. The Petitioner's

Power Plants are connected with the sub-stations under the control of DHBVNL. The Transmission System is not being utilised in any manner.

1.7 The Respondent No. 3- HPPC is the procurement agency established for the purposes of procuring electricity from various sources for onward supply to the Distribution Licences/ Consumer of the State of Haryana. The power generated by the Petitioner is purchased by HPPC in terms of the PPA.

BRIEF FACTS LEADING UPTO THE FILING OF THE PRESENT PETITION:

1.8 The Petitioners are small-scale solar power generators, each operating a 1 MW plant, and are similarly situated to the projects established under the PM-KUSUM Scheme (Component-A). It is submitted that at the time when the Notice Inviting Tender ("NIT") was floated by HPPC, the PM-KUSUM Scheme had not yet been introduced; however, the Petitioners were selected pursuant to the said NIT issued by HPPC. It is further submitted that the underlying objective of both the NIT and the PM-KUSUM Scheme is similar i.e. to promote and enhance renewable energy generation capacity within the State.

1.9 That, as have been stated above, separate PPAs were entered between the parties, and at present, the Petitioners operate and maintain their plants in Haryana, each with 1 MW installed capacity directly connected to DHBVNL distribution network.

1.10 That on 29.04.2019, the Hon'ble Commission notified the Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019 ("DSM Regulations, 2019"), applicable to all wind and solar generators connected to intra-state transmission/distribution systems. As per Regulation 4.1 of the DSM Regulations, 2019- *"These Regulations shall apply to all Wind and Solar Energy Generators in Haryana connected to the Intra-State Transmission/ Distribution System, including those connected through Pooling Sub-stations, and using the power generated for self-consumption or sale within or outside the State."* Thereby, making the DSM Regulations, 2019 applicable to the Petitioners herein as well.

1.11 That subsequently, on 08.03.2021 Hon'ble Commission approved the *"Procedure for Forecasting, Scheduling and Deviation Settlement of Solar & Wind Generation"* ("the Procedure"). Clause 5 of the Procedure, in line with Regulation 5 of the DSM Regulations, 2019, prescribed the Pool Generators shall appoint a Qualified Coordinating Agency ("QCA"), to perform the functions and discharge the obligations specified in the Regulations. The Procedure specifies such functions, obligations - including submission of schedules, coordination with SLDC/STU/DISCOMs, commercial settlement etc. The same also prescribes the penalties for non-compliance. The relevant part of the Procedure is reproduced below:

"2. Definitions and interpretation

2.1 In this procedure, unless context otherwise requires:

…

(r) "Pooling Sub-Station" means a Sub-station consisting of a step-up transformer and associated switchgear to the Low Voltage (LV) side of which several Wind or Solar Energy Generators are connected:
Provided that, where a Generating Unit is connected through a common or an individual feeder terminating at a Sub-Station of a Distribution Licensee or the State Transmission Utility, such Sub-Station shall be treated as the Pooling Sub-Station for such Wind or Solar Energy Generators for the purpose of these Regulations;
… …
(t)"Qualified Coordinating Agency" (or "QCA") means the agency appointed by the Wind or Solar Energy Generators connected to a Pooling Sub-Station, or by an individual Generator connected directly to a Sub-Station, to perform the functions and discharge the obligations specified in these Regulations;
… … …
3. Applicability
This procedure shall be applicable to all Wind and Solar Energy Generators in Haryana connected to the Intra-State Transmission/ Distribution System, including those connected through Pooling Sub-Station and using the power generated for self-consumption or sale within or outside the State:
Provided that the combined installed capacity of the Solar or Wind Generators connected to a particular pooling Sub-Station, or that of an individual Generator connected to same other Sub-station, shall not be less than 1 MW.
… … …
5. The Qualified Coordinating Agency (QCA):
i) The Pool of Generators shall appoint one amongst themselves or any other mutually agreed agency to act as Qualified Coordinating Agency (QCA) for coordinating on their behalf with SLDC. The pool generators shall give authorisation/ consent at least for a period of 2 years as per Annexure-V for registration of QCA at SLDC.
Provided that an individual pool generator may opt to function as a QCA on its own or appoint a separate entity as its QCA.
… … …
v) QCA shall be the single point of contact with SLDC on behalf of the pool generators for the following purposes:
a.Provide schedules with periodic revisions as per the Regulations on behalf of all the pool Generators.
b. Responsible for coordination with STU/SLDC/ DISCOMs and other agencies for metering, data collection and its transmission and communication.
c. Undertake commercial settlements on behalf of the pool generators, of such charges pertaining to generation deviations including payments of Deviation Charges to the State pool account through SLDC.
d. Undertake de-pooling of payments received/payable on behalf of the pool generators form/to the State Pool account and settling them with the individual pool generators in accordance with the Regulations.

e. Undertake commercial settlement of any other charges on behalf of the pool generators of a pooling station, as may be mandated from time to time.

f. All other ancillary and incidental matters.

… … …

viii) The pool generators shall provide all requisite details & data (including technical data, time-block wise schedule and actual injection and deviation details) to QCA for onward submission to SLDC.

… … ..

16. Mechanism for Ensuring Compliance

… … …

ii) Consequences for event of default:

a.If schedule is not provided by the generator/QCA then the previous day's schedule for those non-submission days shall be considered and DSM charges shall be computed accordingly. The non-submission of schedule shall attract scheduling charges as per the provisions of the SLDC's ARR approved by Hon'ble HERC as amended from time to time.

b.In case of default, the SLDC shall issue a notice of period not less than 15 days for revocation of registration of Stand-alone Generator/QCA, non-scheduling of generator/ Pooling Station and disconnection from the grid and adequate opportunity to Generator/ QCA to present its case before SLDC.

In case QCA/Generator fails to address/rectify the breach expressed by the SLDC in the Notice within stipulated time, the SLDC shall proceed with revocation of registration of QCA/ Generator and disconnection form grid. The Bank Guarantee may be forfeited in such case and the QCA/ Generator may also be debarred for a period of 2 years.

17. SLDC Fees & Charges and other Charges:

SLDC fee and charges including scheduling and operating charges shall be payable by QCA or generator, as the case may be, as specified/decided by the Haryana Electricity Regulatory Commission. The other Charges shall be levied as per the applicable HERC Regulations/Orders. Details of Registration Fee, Forecasting fee, Schedule Revision Charges and Bank Guarantee enclosed at Annexure-IX (which shall be levied subject to approval of Hon'ble HERC).

The payment/ billing of charges shall be in accordance with the relevant regulations (e.g. forecasting, scheduling & DSM regulations, open access regulations etc.) issued by Hon'ble HERC from time to time."

1.12 That in view of the compliances introduced vide the coming in force of the DSM Regulations, a Memo No. Ch-99/ISB-77 dated 22.04.2022 was served upon the solar generators, including the Petitioners herein, calling upon them to comply with the OA Regulations, 2012 and the DSM Regulations, 2019 in the following terms:

"You are therefore called upon to take necessary action regarding:

a. Grant of Connectivity and Open Access as per the provisions of Regulations, 2012; and

b. Registration as a stand-alone generator/ QCA as per Clause 9.1 of the Procedure within a period of 15 days from the date of issue of this Notice;

Falling which the Nigam would be constrained to initiate necessary action against you."

Subsequently, notices dated 01.06.2022 and 12.01.2023 were also issued. The copies of the notices served upon the Petitioners dated 22.04.2022, 01.06.2022 and 12.01.2023 are annexed.

1.13 That being aggrieved by the aforesaid notices, the Petitioners, including other small solar power generators, on 06.04.2023, had filed a petition bearing PRO No. 21 of 2023 titled *Utrecht Solar Park & Ors. Vs. HVPNL & Ors.*_seeking exemption from LTOA and QCA requirements for small power plants. The prayer clause of the petition is reproduced below for ready reference:

"a) allow the instant petition, in the interest of justice,

b) Pass an order to amend Regulations 4.1 of the Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019 & notification dated 29.04.2019 and 2.1.ii of the procedure for intra-state transmission and distribution system of the HVPNL/UHBVNL & DHBVNL and further amendments in forecasting, scheduling, deviation settlement of solar and wind generation accordingly, in the interest of justice,

c) Pass an order to exempt from aforesaid regulations and procedure i.e. connectivity and open access Regulations, 2019 and procedure for forecasting, scheduling and deviation settlement of solar and wind generation of the Petitioners solar plant of 1 MW capacity which are connected to rural substation at 11/33 kV line.

D) Direct the respondents to withdraw the notices dated 22.04.2022, 01.06.2022 and 12.01.2023 wherein they called upon to take immediate action regarding application for grant of connectivity and open access in terms of HERC (terms and conditions for grant of connectivity and open access for intra state transmission and distribution systems) Regulations, 2019 and compliance of 9.1 of the procedure for forecasting, scheduling and deviation settlement of solar and wind generation to the petitioners, in the interest of justice."

e) Direct the respondents not to take any coercive step/action of disconnecting the small solar power plants of the Petitioners during the pendency of the instant petition, in the interest of justice.

… … …"

1.14 That however, the petition was dismissed on 17.10.2023 on grounds that DSM Regulations, 2019 are required to be applied to plants of 1 MW and above and that no justified reasons for relaxation were being given. The relevant part of the Final Order dated 17.10.2023 is reproduced below:

"6.3The issue regarding exemption of solar and wind generators having capacity upto 5 MW has already been dealt with by the Commission while passing the order dated 08.03.2021 in PRO – 42 of 2020, the Commission had finalized and approved the Draft Procedure for Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation (DSM Procedure) submitted by HVPNL/SLDC/STU in accordance with the provision specified in the Regulation (5.20) of the Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation

Settlement for Solar and Wind Generation) Regulations, 2019 (DSM Regulations, 2019) notified vide notification dated 29.04.2020. The DSM Regulations, 2019 have been notified after duly inviting the comments through a public notice, considering the comments of all the stake holders and holding a public hearing. The issue of applicability of the Regulations on solar plants of 1 MW is, therefore, based on consideration of all the aspects and no longer res-integra. On that ground alone, the petition is found untenable.

… … …

6.8. The petitioners further alleged that they will have to make expenditure for installation of infrastructure for transfer of real time data to SLDC. In this regard, the Commission observes that clause 6.2 of the PPA obligates petitioners to install at their own cost infrastructure for proper and reliable communication between the generation facility and Grid substation of Nigam/Discom/STU. Further, the installation of adequate infrastructure to ensure supply of schedule and actual generation data thereof for preparation of deviation charges is the obligation of the generators as per the DSM Procedure.

6.9 In view of the above, it is observed that no justified reasons have been submitted by the petitioner to relax the provisions, to give the benefit to them and for considering exemption from the applicability of the DSM Regulations, 2019.

The petition is therefore, dismissed."

A copy of the Final order dated 17.10.2023 passed by the Hon'ble Commission in PRO-21 of 2023 is annexed.

1.15 That, however, as have been stated above, recently the Hon'ble Commission has exempted a similarly placed Solar Generator, namely M/s Sunphotonics Private Limited, from the requirement of LTOA and scheduling either through self or through a QCA. As such, a fresh cause of action has arisen in the favour of the Petitioners to file the present petition.

1.16 That, at this stage, it is humbly clarified that the principal of res-judicata cannot be applied in the present case, due to changed circumstances and fresh interpretation adopted by the Hon'ble Commission, as recognised in the following judgments:

a. In *Narinder Kumar Sood Vs. Rakesh Kumar Verma* [2007 (1) RCR (Civil) 153; Law Finder Doc Id # 123735], the Hon'ble Punjab and Haryana High Court held that res-judicata would not apply in case of change of circumstances, while observing as under:

"17. The learned counsel for the respondent contended that the earlier judgment cannot operate as res judicata at the time of passing of decree, he could not file any appeal because at that time, he was not left with any right to claim possession in view of his eviction on merits by the learned Rent Controller as well as by the Appellate Authority. However, by way of subsequent order passed by the Hon'ble High Court on 26.9.1989, he got a fresh cause of action to move an application under Section 144 of the Civil Procedure Code and therefore, the previous judgment and decree cannot operate as res judicata. In support of his contention, the

petitioner placed reliance on the judgment of Hon'ble Supreme Court in the case of Hope Plantations Ltd. v. Taluk Land Board, Peermade and another, 1999(1) RCR (Civil) 235 (SC) : 1999(5) Supreme Court Cases 590 wherein in para 31 of the said judgment, it was held as under :-

"Law on res judicata and estoppel is well understood in India and there are ample authoritative pronouncements by various courts on these subjects. As noted above, the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however, different if an issue which had been decided in an earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the meanwhile, law has changed or has been interpreted differently by a higher forum. But that situation does not exist here. Principles of constructive res judicata apply with full force. It is the subsequent stage of the same proceedings. If we refer to Order 47 of the Code (Explanation to Rule 1) review is not permissible on the ground :

"that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

21. Now it would be seen that order dated 26.9.1989 passed in a revision petition by this Court gave a right to the respondent to seek restoration of possession and, therefore, would be treated as a fresh cause of action. This being the position, the tenant had a right to move a petition under Section 144 of the Civil Procedure Code for seeking re-possession of the property and the said application could not be rejected by the Courts by holding that previous judgment and decree passed inter se between the parties would operate as res judicata as the second application was filed on afresh cause of action.

22. It is also well settled that the question of res judicata is a mixed question of law and facts and the same cannot be applied unless the parties are allowed to lead evidence and proved the factum of the previous judgment being binding on the parties. This process was not followed. In view of this, the order passed by the learned lower Appellate Court cannot be faulted with. "

b. In *Ram Gopal Vs. Babu Singh* [2009(2) RCR (Rent) 671; Law Finder Doc Id #205329], the Hon'ble Punjab and Haryana High Court held as under:

"15. Adverting to the first plea that the landlord is a chronic litigant who has already lost eviction on the ground of personal necessity, suffice it to observe that per se, the principles of res-judicata is not attracted while seeking eviction of a tenant on the ground of personal bonafide need when such need is based upon changed circumstances which were non-existent and were not pleaded previous."

c. Similarly, the Hon'ble Madras High Court in the case of *R. Sulochana Vs. V. Sundar* [Law Finder Doc Id# 1386180] held that the principal of res-judicata is not applicable when there is a change in circumstances and a fresh cause of action has arisen.

As such, the Petitioners have approached the Hon'ble Commission, seeking suitable directions/ removal of difficulty/ relaxation of the provisions concerning the requirement of Long Term Open Access as well as the appointment of Qualified Coordinating Agency on the following amongst other Grounds:

GROUNDS IN SUPPORT OF THE PETITION:

A. PARITY LIABLE TO BE GRANTED TO THE PETITIONER:

BECAUSE, as have been stated above, the Hon'ble Commission has relaxed the applicability of the DSM Regulations, 2019 for a similarly placed generator vide Final Order dated 20.08.2025 (Annexure P-1) in HERC/Petition No. 43 of 2025. The relevant part of the order dated 20.08.2025 is reproduced below:

"8.4In view of the above discussions, the Commission observes that PM-KUSUM (Pradhan Mantri Kisan Urja Suraksha evam Uthaan Mahabhiyan) Scheme is aimed at ensuring energy security for farmers in India, along with honouring India's commitment to increase the share of installed capacity of electric power from non-fossil-fuel sources to 40% by 2030 as part of Intended Nationally Determined Contributions (INDCs). Component-A of PM-KUSUM schemes aims at setting up of 10,000 MW of Decentralized Grid Connected Renewable Energy Power Plants, of capacity from 500 kW to 2 MW to be setup by individual farmers/ group of farmers/ cooperatives/ panchayats/ Farmer Producer Organisations (FPO)/ Water User associations (WUA) on barren/fallow land, within five km radius of the sub-stations in order to avoid high cost of sub-transmission lines and to reduce transmission losses. The power generated will be purchased by local DISCOM at pre-fixed tariff.

8.5 Further, Under Component A of PM KUSUM Scheme, small scale power plants of 0.5 MW to 2 MW, are decentralized and located near 33/ 11 kV substations i.e. the point of consumption, leading to savings in transmission infrastructure and losses. Power is typically evacuated at the 11-kV level directly into the local distribution grid under a Power Purchase Agreement (PPA), not the state transmission network. Because these projects are designed for local injection into the nearest substation at 11 KV level, they fall under the purview of the DISCOM rather than the STU.

8.6 The Commission is constrained to note the minuscule progress made in achieving the target of 106.21 MW by December, 2025 as Solar Power plants with aggregate capacity of 13.7 MW only could only be commissioned since 2020. While, the State of Haryana is struggling to achieve the target of 106.21 MW, other States like Rajasthan, Maharashtra and Uttar Pradesh, are executing huge capacity of 5 GW, 7 GW and 3 GW, respectively. The main reason being treatment of generators covered under a specific scheme at par with other generators. In the fitness of things, special relaxations should have been granted by Discoms, who are the implementing agency of the scheme, to attract

developers covered under the scheme. However, the requirement of scheduling either independently or through QCA and signing of LTOA including delay in signing of the same, has proved to be a nail in the coffin for the project developers already reeling under red tapism of seeking various approvals and compliances.

8.7 The petitioner (s) herein have sought relief from applicability of two specific regulatory requirements i.e. signing of LTOA agreement and appointment of a QCA on the grounds of ease of doing business for the power developer covered under a National Scheme and to avoid heavy penalties for deviations which could lead to net losses for farmers, thus defeating the basic objective of the scheme. The Commission has also considered the arguments of the petitioner (s) that in most of the other States in India, the DSM Regulations including the provisions of scheduling , are applicable on solar and wind developers with a capacity of 5 MW and above.

… … …

8.11 In view of the above discussions, in order to circumvent the difficulty faced in promoting a farmers centric scheme of the Central Government, in larger public interest, the Commission considers it a fit case to invoke 'power to relax' provided under Regulation clause 19 & 20 of the Haryana Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2019 as well as Regulation clause 55, 58 & 59 of the Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012.

8.12Having invoked its inherent powers and relaxed the provisions of extant regulations, specific to the project developers covered under PM-KUSUM Scheme, the Commission decides that the requirement of Long-Term Open Access (LTOA) and the scheduling either self or through a Qualified Coordinating Agency (QCA), shall not be applicable."

It is humbly submitted that all the facets i.e. reasoning mentioned hereinabove leading upto the grant of relaxation of the Regulations are applicable to the case of the Petitioners as well. It is submitted that:

i. The NIT in the present case was floated to increase the share of installed capacity of electric power from non-fossil-fuel sources to RE power. Through at the relevant point in time, the PM-KUSUM Scheme was not in vogue, however, the intent of the NIT was the same.
ii. The Petitioners are also small enterprises/ small farmers, are decentralized and located near 33/11 kV substations i.e. the point of consumption, leading to savings in transmission infrastructure and losses. Power is typically evacuated directly into the local distribution grid under a PPA, not the state transmission network.
iii. The power is purchased at a pre-fixed tariff.
iv. The penalties under the DSM Regulations, 2019 and the compliance of the OA Regulations, 2012 may lead to net-losses for the Petitioners, defeating the very objective behind the NIT.

It is reiterated that the both M/s Sunphotonics Private Limited and the Petitioners are similarly placed. As such, such parity is liable to be granted to the Petitioners herein.

Reliance in this regard is placed on the decision in case of *Adani Power (Mundra) Limited Vs. Central Electricity Regulatory Commission* [Appeal No. 421 of 2019, Decided on 12.08.2021] wherein the Hon'ble APTEL observed as under:

"49. Then coming to another objection raised by Respondents that there is no concept of payment of interest on carrying cost, according to Respondents, since no provision exists in the PPA for payment of interest on interest or compounding basis, hence it cannot be granted. However, the Appellant contends that they are entitled for such interest on carrying cost. Appellants place reliance on the orders of the Commission dated 17.09.2018 passed in Petition No. 235/MP/15. In terms of this order of CERC, the Respondents have paid carrying cost from the date of approval of change in law events and thereafter, Respondents have also paid interest on such carrying cost till subsequent order dated 17.09.2018 of CERC in the said petition.

50. Though Respondents contend that the payment of interest by Haryana utilities in the said petition cannot be a ground for claiming computation of interest on carrying cost, but there is no explanation as to why Respondent utilities are taking different yardstick for different parties. The Respondent being a public utility, cannot adopt a different approach but should have same approach towards all the parties. In the absence of any explanation as to why the facts in the present appeal are different from the facts in Petition No.235/MP/2015, we are of the opinion that the Appellants are entitled for interest on carrying cost as well.

Similarly, the Hon'ble Apex Court in the case of Prem Chand Somchand Shah Vs . Union of India [(1991) 2 SCC 48] held thus:

"8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question."

B. PRECEDENT FROM OTHER STATES:

BECAUSE a number of States have granted exemption from DSM to small solar power generates, such as the Petitioners herein. Attention in this regard is brought towards the Regulations of the Following States:

a. The Punjab State Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2019, makes the DSM applicable to the Generators having capacity of 5 MW or above, in the following terms:

"3.2 Applicability

These Regulations shall be applicable to all wind and solar generators with individual capacity of 5 MW and above connected to the State Transmission System or distribution system or wind and solar generators of any capacity connected through pooling stations to the State Transmission System or distribution system with combined capacity of 5 MW and above, supplying power to the distribution company (ies) or to the third party through open access or for captive consumption through open access within or outside the State."

b. The Uttar Pradesh Electricity Regulatory Commission 9Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulation, 2017 provides as under:

"3. Applicability of the Regulations:

… …

(2) For solar power generators supplying power to the Discoms, or to the third party consumers through Open Access (OA) or for captive consumption through OA within or outside the State:

(a) Solar power generators having Individual or combined capacity of 5 MW and above whether connected to the State Grid independently or through pooling stations and/or solar parks;

(b) Solar power generators of any capacity connected to the State Grid through pooling station and /or solar park with total capacity of 5 MW and above."

c. The Rajasthan Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2017 prescribes as follows:

"3. Applicability of the Regulations:

… …

(2) For solar power generators supplying power to the Discoms, or to the third party consumers through Open Access (OA) or for captive consumption through OA within or outside the State:

(a) Solar power generators having Individual or combined capacity of 5 MW and above whether connected to the State Grid independently or through pooling stations and/or solar parks;

(b) Solar power generators of any capacity connected to the State Grid through pooling station and /or solar park with total capacity of 5 MW and above."

d. The Karnataka Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2015 provides as under:

"3.2 Applicability

These Regulations are applicable to:

… …

(b)All Solar Generators with an installed capacity of 5 MW and above at the pooling station whether they are supplying power to the ESCOMs or to third party consumers through open access for captive consumption through open access within or outside he State."

e. The Maharashtra Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation) Regulations, 2018 also makes DSM applicable only to generators have capacity of 5MW and above, as under:
"4 Applicability
4.1 These Regulations shall apply to all Wind and Solar Energy Generators in Maharashtra connected to the Intra-State Transmission System, including those connected through Pooling Sub-Stations, and using the power generated for self-consumption or sale within or outside the State :
Provided that the combined installed capacity of the Solar or Wind Generators connected to a particular Pooling Sub-Station, or that of an individual Generator connected to some other Sub- Station, shall not be less than 5 MW."

f. The Madhya Pradesh Electricity Regulatory Commission Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation) Regulations, 2018, prescribes as under:
"3. Objective and Scope
… …
(2) These Regulations shall be applicable to Seller(s) and Buyer(s) involved in the transactions facilitated through short-term open access or medium-term open access or long-term open access in intra-state transmission or distribution of electricity (including intra-state wheeling of power), as the case may be, in respect of all wind generators having a combined installed capacity of 10 MW and above and solar generators with an installed capacity of 5 MW and above including those connected via pooling stations and selling power within or outside the State."

As such, the present petition is liable to be allowed on the sole ground that other States have consciously exempted the applicability of DSM for the generators having installed capacity of less than 5 MW.

C. PROMOTION OF RE ENERGY:
BECAUSE Section 86(e) of the Electricity Act, 2003 obligates the Hon'ble Commission to – *"promote cogeneration and generation of electricity from renewable sources of energy…"*. In fact, the Hon'ble Commission has time and again emphasised the need to meet the RPOs and promotion of RE energy vide its orders. Attention in this regard is brought towards the following orders:

a. The Hon'ble Commission in HERC/PRO-13 of 2019- *Piccadily Agro Industries Ltd. v. Uttar Haryana Bijli Vitran Nigam Limited,* decided vide order dated 04.04.2019, made the following observations:
"7. In the light of the ibid statute, the Commission observes that for promoting environmentally benign RE generation projects as an alternative to problems associated with coal based thermal power generation including fast depleting fossil fuel, it is essential to promote RE Projects to increase generation on the Grid for meeting the RPO mandate i.e. solar as well as non-solar. One of the measures besides preferential tariff / Grid connectivity is to allow banking facility to RE generator who are not selling power to the

Discoms but selling to a third party or captive consumption. Such dispensation shall promote RE penetration in the State as well as prevent use of expensive and polluting use of diesel generators."

b. The Case No. HERC/Petition No. 23 of 2022 filed by HPPC, the Hon'ble Commission vide Final Order dated 09.06.2022 observed as under:
"4. The Commission observes that HPPC has to meet the Solar RPO targets fixed by the Commission, under Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 (HERC RE Regulations, 2021). The shortfall in fulfillment of RPO Solar targets by HPPC, for the FY 2021-22, as reported by HAREDA, is 1246 MUs. Considering the backlog of shortfall in RPO by HPPC for the FY 2020-21, the cumulative shortfall in compliance of Solar and Non-Solar RPO, as on 31.03.2022 comes to 2505 MUs and 605 MUs, respectively."

c. The Hon'ble Commission in the matter of- Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017- Suo Moto, vide order dated 30.6.2018, observed as under:
"The Commission has considered the above comments / suggestions and is of the considered view that the Commission is under statutory obligation to promote RE Power project and RPO / REC mechanism is one of the tools available for the purpose. Hence, enlarging the ambit of 'obligated entity' by including STOA has been considered appropriate and the same shall be retained."

As such, the Petitioners may kindly be granted an appropriate exemptions/ relaxation in light of the overarching policy objective of promoting and facilitating the growth of RE power in the State.

D. PRACTICAL CONSTRAINTS:

BECAUSE in recent years, climatic patterns have undergone significant and unpredictable changes, making it practically impossible to forecast weather conditions with any degree of accuracy. At present, there exists no reliable or standardized model at the national level capable of predicting, with sufficient precision, parameters such as solar irradiance, temperature variation, wind velocity, and cloud movement on a day-ahead or even intraday basis, particularly for rural areas where the generating stations of the Petitioners are situated. Numerous unquantifiable and interdependent meteorological variables affect these weather parameters, resulting in considerable uncertainty in forecasting.

It is a matter of common knowledge that cloudy, foggy, or variable atmospheric conditions lead to a substantial loss in generation as compared to normal days with stable weather. The additional imposition of DSM penalties under such circumstances further exacerbates the financial strain, compounding the revenue losses already suffered by the developers. In effect, the Petitioners and the

Power Utilities would invariably be in dispute, despite the non-availability of dependable forecasting data.

A copy of the study titled "*Challenges with Forecasting in Solar*" issued by the National Solar Energy Federation of India, which highlights the erratic nature of solar generation and the absence of any precise model for accurate forecasting, is annexed.

As such, the imposition of financial penalties under the DSM Regulations places an undue and disproportionate burden on small RE Generators, who neither possess the technical infrastructure nor the financial or human resources necessary to undertake accurate forecasting of generation on a day-ahead basis. Accordingly, strict implementation of the penalty provisions, without accounting for such practical constraints, would operate harshly and inequitably against the Petitioners.

E. FINANCIAL IMPLICATIONS ON THE PETITIONER WITHOUT ANY CHANGE IN TARIFF IS UNJUST AND UNFAIR:

BECAUSE, at the time of submission of their bids, the Petitioners could not have reasonably anticipated, nor factored in, the costs associated with compliance under the DSM Regulations, which were neither in force nor contemplated at that stage. It is further submitted that it is respectfully submitted that the cost implications arising from the appointment and engagement of a QCA have neither been disclosed nor clarified by the concerned Utilities. The Petitioners remain unaware of the potential financial burden that may ensue from such engagement and from the concomitant requirement to upgrade the existing infrastructure to ensure compliance with the DSM framework. In the absence of any clear disclosure, cost estimate, or financial impact assessment, the Petitioners cannot be expected to make an informed or prudent decision regarding the same. The Petitioners, therefore, reserve their right to seek revision, adjustment, or enhancement of the applicable tariff, should compliance with these additional requirements impose any unforeseen financial liability or adversely affect the economic viability of their projects.

F. OBLIGATIONS IMPOSED UPON THE PETITIONERS WITHOUT ANY CORRESPONDING OBLIGATION ON THE PART OF THE UTILITIES IS CONTRARY TO THE PRINCIPLE OF LEGITIMATE EXPECTATION:

The attention of this Hon'ble Commission is respectfully drawn to the frequent tripping of the grid, which directly affects the generation output of the Petitioners. The data pertaining to grid downtime from January 2025 to October 2025 in the case of Petitioner No. 1, is annexed. Similar data, if required, can be furnished for the other Petitioners as well.

A perusal of the said data reveals that the grid tripped on several occasions, resulting in a generation loss to Petitioner No. 1. It is humbly submitted that no penalty or accountability mechanism has been prescribed for such deviations or interruptions attributable to the Utilities. Imposing penalties upon the Petitioners for deviations in generation, while exempting the Utilities from any corresponding responsibility for grid-related failures, is manifestly arbitrary and

contrary to the principle of legitimate expectation. As such, exemption is liable to be granted to the Petitioners on this ground alone.

G. NEGLIGIBLE IMPACT ON GRID STABILITY:

BECAUSE, the objective underlying the DSM Regulations is to maintain grid discipline and ensure system stability through the management of deviations in generation and drawl, however, it is respectfully submitted that the deviations or forecasting errors arising from small-scale solar generation projects, such as the 1 MW plants operated by the Petitioners, have an insignificant and practically negligible impact on the overall stability or operation of the State Grid. The aggregate generation from such projects constitutes only a minute fraction of the total system load, and any deviation in their output is well within the natural tolerance and balancing capacity of the grid.

Therefore, the application of the stringent provisions of the DSM Regulations, conceived primarily for large-scale and utility-level generation entities, to the Petitioners' small-capacity plants serves no meaningful technical or operational purpose. On the contrary, it imposes a disproportionate compliance and financial burden on the Petitioners without any corresponding benefit to grid performance. In such circumstances, the insistence on strict adherence to the DSM framework is neither reasonable nor justified, and a more pragmatic and capacity-sensitive approach is warranted.

H. BECAUSE, even otherwise, the development of a solar power project is not only in the interest of the undersigned's livelihood but also directly contributes to the broader policy objective of promoting renewable energy in the State, as mandated under Section 86(1)(e) of the Electricity Act, 2003, especially when the recent bids have resulted in unallocated/ unsubscribed capacity.

PROVISIONS UNDER WHICH THE PRESENT PETITION HAS BEEN PREFERRED:

1.17 The Hon'ble Commission has ample power to grant the relief prayed for in view of the following provisions:

Section 86(1) (c), (e) & (k) of the Electricity Act, 2003 read with Regulation 19 to 21 of the HERC (Deviation Settlement Mechanism and related matters) Regulations, 2019 and Regulation 19 and 20 of the HERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019

The Electricity Act, 2003

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

… …

(e)promote cogeneration 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;"

Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement and related matters for Solar and Wind Generation) Regulations, 2019:

"17 Practice Directions:

Subject to the provisions of the Act, the Commission may issue Practice Directions with regard to the implementation of these Regulations.

18 Power to amend

The Commission may, at any time, vary, alter, modify or amend any provisions of these Regulations.

19 Power to remove difficulties

If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by general or specific order, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.

20 Power to relax

The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected by grant of relaxation, may relax any of the provisions of these Regulations on its own motion or on an application made before it by an interested person."

Similar provisions are contained in 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 well as the Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023.

Apart from the above, Clause 8.10 and Clause 14.3 of the PPA subsisting between the parties provides as under:

"8.10 For matters relating to grid operations and load dispatch, the directions of State Load Despatch Centre shall be strictly complied with, by the company. Any dispute on this account shall be settled by the parties amicably. If the dispute is not settled during such discussion, then either party may refer the same to HERC.

… …

14.3All differences or disputes between the parties arising out of or in connection with these presents, including any question or matter of dispute which falls within the scope and purview of the statutory authorities under the provisions of the Electricity Act, 2003 as amended from time to time, that the parties are unable to resolve by mutual agreement, shall be referred to HERC for adjudication."

1.18 That the Court Fee of Rs.50,000/- (Rupees Fifty Thousand Only) in terms of the Haryana Electricity Regulatory Commission (Fee) Regulations, 2005, 7th Amendment Regulations, 2022, stands deposited.

1.19 That the present petition is *bonafide* and in the interest of justice.

RELIEF SOUGHT:

In view of the peculiar facts and circumstances, it is humbly prayed that the present petition may kindly be allowed and the Petitioners may kindly be suitable directions/ removal of difficulty/ relaxation of the

provisions concerning the requirement of Long Term Open Access as well as the appointment of Qualified Coordinating Agency;
AND/OR
Pass any other order as the Hon'ble Commission may deem fit, keeping in view the facts of the matter submitted by Petitioner.
and for this act of kindness and justice the petitioner shall as in duty bound ever pray.

2. The case was heard on 17/03/2026. The representative of HPPC present in court in other case intimated that the HPPC has authorised HVPN to defend the case; however, none appeared on behalf of Respondent DHBVNL. Ms.Prieya Ahluwalia, Counsel for the Respondents, requested three (3) weeks' time to file the joint reply from HVPNL and HPPC. The Commission noted with concern the absence of Respondent DHBVN and directed the MD/DHBVN to nominate a Standing Counsel along with a Nodal Officer to attend the cases at the first instance in the HERC Court Room. Further, any authorisation to another licensee or co-respondent be submitted in Court for record. Acceding to the request of the Respondent, the Commission adjourns the matter and directs the Respondents to file their replies within three (3) weeks, with advance copy to the Petitioner.

3. The case was heard on 16/04/2026. Ms. Aerika Singh, Counsel for the Respondents submitted that a joint reply will be filed by all the respondents and requested for two (2) weeks' time to file the joint reply. The proxy counsel for the petitioners requested for adjournment and sought two (2) weeks' time to file the rejoinder. Acceding to the requests of the parties, the Commission adjourns the matter and directs the Respondents to file their replies within two (2) weeks, and petitioners to file their rejoinder with in two (2) weeks thereafter with advance copies to either parties

4. **Reply of respondent received on 29/04/2026.**

4.1 That the present reply is being filed through Ashok Kumar Muthuria, XEN, Haryana Vidyut Prasaran Nigam Limited ("HVPNL"), who is duly authorized and is otherwise is well conversant with the facts of the case on the basis of knowledge derived from the record.
All submissions made by the way of the present reply are in the alternative and without prejudice to each other. All allegations made by the Petitioner are denied in totality and the same may be treated as a denial as if it was made in seriatim. Nothing submitted herein shall be deemed to be admitted unless the same has been admitted thereto specifically.

4.2 That the present petition is being filed by *M/s Utrecht Solar Pvt. Ltd., Subhash Infra engineers Pvt. Ltd. and Balarch Renewable Energy Pvt. Ltd.* wherein the Petitioners are seeking the relief as have been granted by this Hon'ble Commission to similarly placed Generators vide a recent order dated 20.08.2025 in HERC/Petition No. 43 of 2025 titled – *M/s Sunphotonics Private Limited & Anr. Vs. Haryana Vidyut Prasaran Nigam Limited & Ors.,* whereby the Hon'ble Commission was pleased to exempt the applicability of provisions relating to Long-Term Open Access ("LTOA") and the requirement of scheduling either through a Qualified Coordinating Agency ("QCA").

PRELIMINARY SUBMISSIONS/ OBJECTIONS:

4.3 At the outset, the reliance placed by the Petitioners upon Section 86(1)(c), (e) and (k) of the Electricity Act, 2003 read with Regulations 19 to 21 of the HERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2019 and Regulations 17 to 20 of the HERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019 is misconceived and is accordingly denied. The provisions of Section 86 merely define the functional jurisdiction and regulatory powers of the State Commission and do not confer any blanket authority to exempt regulated entities from compliance with duly notified Regulations governing grid discipline and deviation settlement. It is well settled that Regulations framed under the Electricity Act, 2003 constitute subordinate legislation having binding force, and compliance therewith is mandatory unless relaxation is granted strictly within the limited framework contemplated under the Regulations themselves. The powers to remove difficulties or to relax contained in the Regulations are conditional and circumscribed and cannot be invoked to dilute the core objective of the regulatory framework or to create class-based exemptions contrary to the scheme of deviation discipline.

4.4 Further, the provisions relating to issuance of practice directions or amendment of Regulations do not advance the Petitioners' case, as amendment or modification of Regulations is a legislative function of the Commission to be exercised strictly in accordance with the statutory procedure and cannot be sought indirectly through adjudicatory proceedings initiated by individual generators. The mere existence of enabling clauses in other Regulations does not imply that the Commission is obliged to relax substantive compliance requirements, particularly where such relaxation would undermine grid discipline and system security. Moreover, Clause 8.10 and Clause 14.3 of the Power Purchase Agreement merely recognise the adjudicatory jurisdiction of the Commission in disputes relating to grid operations and statutory matters. They do not create any substantive right in favour of the Petitioners to claim exemption from statutory Regulations. The present Petition, therefore, lacks any valid statutory foundation and is liable to be rejected.

4.5 It is most respectfully submitted that, in terms of the applicable regulatory framework, including the HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission

and Distribution System) Regulations, 2012 read with Clause 9.1 of the "Procedure for Forecasting, Scheduling and Deviation Settlement of Solar & Wind Generation" and the provisions of the DSM Regulations, 2019, the Petitioners were under a mandatory obligation to obtain requisite connectivity/open access approvals and undertake registration with a Qualified Coordinating Agency (QCA). In this regard, the Respondents had issued repeated notices, including communications dated 22.04.2022 and 01.06.2022, specifically directing the Petitioners to comply with the aforesaid statutory and regulatory requirements. However, despite the lapse of considerable time and repeated opportunities, the Petitioners have failed to take any steps towards obtaining the requisite connectivity/open access permissions or ensuring compliance with QCA registration requirements. Even as on date, the Petitioners continue to remain in breach of the applicable statutory and regulatory framework. The present Petition, therefore, is nothing but a deliberate attempt to evade binding statutory and contractual obligations, and such non-compliant parties cannot seek equitable relief from this Hon'ble Commission. Accordingly, the present Petition deserves to be dismissed at the threshold.

I. OBJECTION AS TO NON-MAINTAINABILITY OF THE PRESENT PETITION AS THE ISSUES RAISED ARE ALREADY SETTLED BY THE HON'BLE COMMISSION AND ARE BARRED BY THE PRINCIPLES OF RES JUDICATA AND FINALITY OF ADJUDICATION:

4.6 That at the outset, it is humbly submitted that the issue raised by the Petitioners herein, both with respect to the applicability of the DSM Regulations as well as the LTOA, already stands decided by this Hon'ble Commission vide its earlier orders. Attention in this regard is brought towards the following orders:

i. Order dated 08.03.2021 in HERC/PRO-42 of 2020: Vide the said order, the Hon'ble Commission had approved the Draft DSM Procedure submitted by HVPNL. A perusal of the order dated 08.03.2021 shows that the Hon'ble Commission had already considered the submission raised by one M/s Manikaran Analytics Ltd. w.r.t. exemption of solar and wind generators having capacity upto 5 MW. The relevant part of the order dated 08.03.2021 is reproduced below:

"Comments by Manikaran Analytics Ltd.:

Rationale: The obligations provided under the Draft Procedure will be burdensome for the solar or wind generators the combined installed capacity of whom is less than 1 MW. The capability of the generators should be such that it should be in position to comply with the mandatory obligations as well as to handle the risk of high penalties which may arise due to deviations. While such minimum installed capacity does not create huge burden on grid efficiency due to deviations, the high penalties resulting from it does impact the small generators financially. There are multiple states which prescribes application of forecasting, scheduling and deviation settlements regulations and their respective procedures to generators above 5 MW

capacity namely Punjab, Rajasthan, Madhya Pradesh, Maharashtra, Karnataka among others.

Suggestion: It is suggested that proviso to Point 3 be replaced with as follows:

" .. the combined installed capacity of the Solar or Wind Generators connected to a particular Pooling Sub-Station, or that of an individual Generator connected to some other Sub-Station, shall not be less than 5 MW.

…

Commission's Observation: The Commission observes that ibid provision of procedure is in line with clause no. 4.1 of HERC, Principal Regulation i.e. Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement and related matters for Solar and Wind Generation) Regulations, 2019, therefore, the provision as per regulations in-vogue shall prevail."

A copy of the order dated 08.03.2021 passed by the Hon'ble Commission is annexed.

ii. Order dated 17.10.2023 in HERC/PRO-21 of 2023: The said petition was filed by a number of small RE generators. One of the prayers raised by the Petitioners therein was – *"Pass an order to exempt from aforesaid regulations and procedure i.e. connectivity and open access Regulations 2019 and procedure for forecasting scheduling and deviation settlement of solar and wind generation of the petitioners solar plant of 1 MW capacity which are connected to rural substation at 11/33 KV line."* However, vide the order dated 17.102.2023, the Hon'ble Commission had rejected the petition while holding as under:

"6. Commission's Order:

… … …

6.9. In view of the above, it is observed that no justified reasons have been submitted by the petitioner to relax the provisions, to give the benefit to them and for considering exemption from the applicability of the DSM Regulations, 2019.

The petition is therefore, dismissed."

A copy of the order dated 17.10.2023 passed by the Hon'ble Commission is annexed.

4.7 At the outset, it is most respectfully submitted that the present Petition is barred by the well-settled principles of res judicata and finality of adjudication. The issues sought to be raised herein stand conclusively determined by this Hon'ble Commission vide Final Order dated 17.10.2023 passed in PRO-21 of 2023 between the very same parties. The Petitioners, having unsuccessfully sought exemption from the applicability of the DSM Regulations, 2019 and the related procedural requirements in the earlier round of litigation, cannot now be permitted to re-agitate the identical relief under the guise of a so-called "fresh cause of action."

4.8 A perusal of the final order dated 17.10.2023 passed by this Hon'ble Commission clearly establishes that the applicability of the DSM Regulations, 2019 to solar plants of 1 MW capacity and above had already been examined and conclusively settled. The Commission

categorically recorded that the issue was "*no longer res-integra*" and that no justified grounds existed for granting relaxation from the regulatory framework. The prayer for exemption was accordingly rejected on merits. The Petitioners accepted the said determination and did not challenge it before any appellate forum, and the findings have therefore attained finality. It is further submitted that the Petitioners cannot seek to take refuge under the guise of being unqualified farmers or invoke the alleged plight of farmers to claim exemption from regulatory compliance, as the Petitioners are in fact a private limited company, well-resourced and technically capable of complying with the applicable regulatory framework.

4.9 That the reliefs now sought in the present Petition are substantially identical and pertain to issues that already stand conclusively adjudicated between the same parties. The present proceedings are therefore clearly barred by the principles of *res judicata* and finality of adjudication. The attempt to reopen a matter that has already attained finality amounts to a vexatious invocation of jurisdiction, resulting in unnecessary harassment to the Respondents and a waste of valuable judicial time. The doctrine of *Res Judicata*, founded on principles of justice, equity and good conscience, mandates that once an issue has been finally determined, the same cannot be permitted to be reagitated in subsequent proceedings. In view of the above, the present Petition is liable to be dismissed as not maintainable and as an abuse of the process of this Hon'ble Commission, with appropriate costs. Section 11 of the Code of Civil Procedure, 1908 along with the applicable 'Explanations' are reproduced below for ready reference of the Hon'ble Tribunal:

"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

…

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

Section 11 of the Code of Civil Procedure, 1908 provides that any issue which has been directly and substantially in issue in a former proceeding between the same parties, and has been heard and finally decided on merits by a court or authority of competent jurisdiction, cannot be re-agitated in subsequent proceedings. The principle embodied in the doctrine of *res judicata* bars the trial of any matter which has already been conclusively determined between the same parties. In the present case, the issue with respect to the applicability

of the DSM Regulations and the relief now sought by the Petitioners has already been examined and finally adjudicated by this Hon'ble Commission in the earlier proceedings. The Petitioners having accepted the said determination and not having challenged the same before any appellate forum, the findings recorded therein have attained finality and thus, is barred by the principal of res-judicata. Attention in this regard is also brought towards the decision in *Reliance Infrastructure Ltd. Vs. Maharashtra Electricity Regulatory Commission [Appeal No. 267 of 2013, Decided on 28.12.2014]* wherein the Hon'ble APTEL held as under:

"(a) The Appellant has sought the same relief in the Petition before the State Commission in the present case No.84 of 2013 as in the case No.109 of 2012. No Appeal was filed against the earlier order in case No.109 of 2012 and it has attained the finality. By the present Appeal, the Appellant is virtually seeking to challenge the earlier order dated 2.1.2013 in case No.109 of 2012 which has attained finality. Principle of Res-judicata will apply in the present case."

4.10 The Hon'ble Supreme Court also in the case of *C. R. Neelakandan & Anr. vs. Union of India & Ors. (2014 SCC OnLine SC 432)* has recorded that rule of Res Judicata is not merely a technical rule but it is based on high public policy. It prevents not only a new decision in the subsequent suit but also prevents new investigation. For the applicability of rule of res judicata the important thing that must be seen is that the matter was directly and substantially in issue in the previous proceeding and a decision has been given by the Court on that issue. It is the case of the Respondents that the submissions which are being raised by the Petitioners have already been considered and rejected by this Hon'ble Commission. Further, in *Daryao Vs. State of U.P. (1961 SCC OnLine 21)*, the Supreme Court emphatically held that the rule of res judicata operates not only as a bar to fresh suits but also as a bar to further proceedings on substantially the same cause of action between the same parties. The court underscored that permitting repeated litigation on identical issues would defeat the very object of adjudication and undermine public confidence in the judicial process.

4.11 That the above-mentioned authorities collectively establish that res judicata does not permit a second bite at the apple under the guise of "fresh cause of action". Where the identical question of applicability of DSM regulations, 2019 and exemption therefrom has already been finally determined by this Hon'ble Commission vide its final order dated 17.10.2023 in PRO-21 of 2023 between the same parties, the present Petition is barred at the threshold. The attempt to re-litigate the same controversy is impermissible in law and ought to be dismissed as barred by res-judicata and the principle of finality of adjudication.

II. OBJECTION AS TO NON-MAINTAINABILITY OF THE PRESENT PETITION AS THE SAME IS FOUNDED MERELY ON A CLAIM OF PARITY WITHOUT DISCLOSING ANY INDEPENDENT CAUSE OF ACTION, AND THE ALLEGED FINANCIAL BURDEN/HARDSHIP STANDS ALREADY CONSIDERED AND REJECTED BY THE HON'BLE COMMISSION.

4.12 That the present Petition does not disclose any independent statutory violation, fresh regulatory illegality, or subsequent adverse action giving

rise to a distinct cause of action. A plain reading of the Petition would demonstrate that the entire foundation of the present proceedings rests upon the order dated 20.08.2025 passed by this Hon'ble Commission in HERC Petition No. 43 of 2025. The Petitioners themselves candidly assert that the alleged cause of action has arisen solely on account of the relaxation granted in the said matter. In essence, therefore, the present Petition is merely an attempt to seek replication of relief granted in another proceeding without disclosing any independent legal or factual basis. It is a settled principle that a cause of action must arise from a legally enforceable injury suffered by a party. In the present case, the Petition does not allege any fresh act, order or regulatory determination subsequent to the dismissal of Petition No. PRO-21 of 2023 vide order dated 17.10.2023.

4.13 That the applicability of the DSM Regulations, 2019 and the procedure prescribed thereunder to solar generators of 1 MW capacity has already been conclusively considered and upheld by this Hon'ble Commission in the earlier proceedings between the very same parties. In the absence of any subsequent regulatory determination or adverse action affecting the Petitioners, the present invocation of the jurisdiction of this Hon'ble Commission is premised solely upon a perceived claim of parity with another category of project developers. Such a derivative claim cannot constitute a valid cause of action in law. The Petition, therefore, amounts to nothing more than a re-agitation of issues that already stand examined and determined by this Hon'ble Commission.

4.14 That even otherwise the reliance placed upon the order dated 20.08.2025 is wholly misconceived. The said order expressly records that the relaxation granted therein was specific to project developers covered under the PM-KUSUM Scheme and was granted in view of the peculiar objectives and policy considerations governing that scheme. The Petitioners herein admittedly do not fall within the PM-KUSUM framework. Consequently, the attempt to invoke the said order as a precedent to claim similar relief is legally untenable. A scheme-specific relaxation granted on policy considerations cannot be transformed into a general exemption merely on the basis of analogy or perceived similarity.

4.15 That upon the coming into force of the DSM Regulations, 2019, the Petitioners were called upon vide Memo No. Ch-99/ISB-77 dated 22.04.2022 to comply with the provisions of the Open Access Regulations, 2012 as well as the DSM Regulations, 2019, including obtaining connectivity/Open Access and registration with a Qualified Coordinating Agency (QCA). Despite repeated communications, the Petitioners have failed to comply with these statutory and regulatory requirements. The Petitioners had earlier approached this Hon'ble Commission by way of Petition No. PRO-21 of 2023 seeking, inter alia, exemption from the applicability of the DSM Regulations, 2019, which was dismissed vide order dated 17.10.2023. Despite the same, the Petitioners have once again approached this Hon'ble Commission seeking substantially identical reliefs, which amounts to a clear re-agitation of issues already adjudicated and an abuse of process.

4.16 A comparative reading of the reliefs sought in the present Petition and those in Petition No. PRO-21 of 2023 clearly establishes that the Petitioners are seeking substantially identical reliefs. In the earlier petition, the Petitioners had sought (i) amendment of Regulation 4.1 of the DSM Regulations, 2019, (ii) exemption from DSM applicability including forecasting and scheduling requirements, (iii) exemption from connectivity and open access obligations, and (iv) withdrawal of compliance notices. The same reliefs have been reiterated in the present Petition, including exemption from DSM compliance, relaxation from LTOA and QCA requirements, and avoidance of regulatory obligations arising from the same provisions. The variation in drafting is merely cosmetic and does not alter the substance of the claims. The present Petition is therefore a re-litigation of issues already adjudicated and is barred by the principles of res judicata, constructive res judicata and finality of adjudication. The Petitioners cannot be permitted to circumvent a binding adjudication by merely rephrasing the reliefs or invoking a different nomenclature.

4.17 That it is further submitted that the Petitioners have raised a grievance that implementation of forecasting, scheduling and deviation related requirements would necessitate the creation of additional infrastructure, including installation of hardware, software, LAN connectivity and allied equipment, thereby imposing additional financial burden upon them. The said contention is misconceived and contrary to the contractual and regulatory framework governing the parties. The installation of ABT compliant meters in accordance with the CEA Metering Regulations, as well as the provision of scheduling and actual generation data for computation of deviation charges, are obligations squarely cast upon the generators under the applicable DSM Procedure and the terms of the Power Purchase Agreement. The Hon'ble Commission has already clarified in the earlier proceedings that in terms of Clause 6.2 of the PPA, the generators are required to install, at their own cost, the necessary infrastructure to ensure proper and reliable communication between the generating facility and the grid substation of the Nigam/Discom/STU. Therefore, the Petitioners cannot seek to avoid compliance with these binding contractual and regulatory obligations by citing financial burden or infrastructural requirements. The relevant conditions in this regard are reproduced hereunder for the kind reference of this Hon'ble Commission.

"6.2 SYNCHRONIZATION AND INTERCONNECTION FACILITIES

6.2.1 The synchronization equipment will be installed by the IPP at its generation facility at its own cost. The IPP shall synchronize its system with the Nigam's system only after the grant of approval of synchronization scheme. IPP shall, immediately after each synchronization/ tripping of generator, inform the grid substation to which the plant is electrically connected.

The Company shall provide step up transformers/ other stepping up equipment i.e. Grid Tie Inverter, panels, kiosks, protection& metering 45 equipment at the generation facility and fully equipped line bay(s) in its switchyard for termination of interconnecting transmission lines(s) of the

DISCOM. Company shall also provide proper and reliable communication between the generation facility& Grid substation of Nigam/Discom/STU, to ensure better data transfer, the cost of these works will be borne by the Company."

…

"10.3 The Company shall be responsible to operate the solar power plant as envisaged under this PPA and to provide appropriate facility/instrumentation/metering arrangement to enable remote monitoring of generation."

DSM Procedure –

"10. Data & Communication protocol:-

In view of the large volume of information needed to be exchanged in a time bound manner, the transfer of information e.g. technical/static data, forecast, Available Capacity, Schedule etc. between SLDC and QCA/ Stand –alone Generator shall be through internet only. However, in case of contingencies like internet failure etc., the transfer of information may be communicated through alternate mode i.e., telephone on request of SLDC/ QCA Generator. Real Time Data from turbine/ inverter level to the interface Point (Generator/ Pooling Station) and from interface Point to SLDC shall be provided by Stand- alone Generators/ QCA (including necessary interfacing arrangements for data integration at SLDC end). The Real Time data shall be transmitted upto SLDC through IEC: 60870-5-101/ IEC 60870-5-104 protocol by providing a redundant (main &backup) communication link using any mode of communication compatible with existing Communication system of STU/SLDC (For e.g. Optical Fibre/PLCC/MPLS/RF/VSAT/ or any other latest technology available, which shall be provided and maintained by the Stand–alone Generators/ QCA. Further, main and backup communication links shall preferably be either through different communication modes or from different service providers (if same communication mode is used).

The Communication network i.e. PLCC/Optical fibre from HVPNL substations to SLDC in Haryana is to be provided by STU (HVPNL) for telemetry of real time data up to SLDC."

From the foregoing, it is evident that the establishment of adequate infrastructure for transfer of data is clearly mandated in view of the conditions of PPA. It is well settled law that the financial difficulty cannot be urged as ground for seeking exemption for compliance of the conditions of the Contract or the regulatory framework.

4.18 That the Petitioners have once again attempted to justify their claim for relaxation by alleging financial and administrative burden. These arguments are not only repetitive but were specifically raised and rejected in the earlier round of litigation. In paragraph 6.7 of the order dated 17.10.2023, this Hon'ble Commission categorically recorded that the alleged financial burden is uncalled for in view of the binding conditions of the PPA and the applicable Regulations. The Commission further relied upon the judgment of the Hon'ble Supreme Court dated 06.04.2023 in *Haryana Power Purchase Centre vs. Sasan Power Ltd. & Ors.* (Civil Appeal No. 11826 of 2019), wherein it was held that where a matter is governed by the express terms of a contract, it is not open

even to the Commission acting in its regulatory capacity to travel beyond such contractual stipulations. The said principle was further reiterated by the Hon'ble Supreme Court in its judgment dated 13.04.2023 in *Gujarat Urja Vikas Nigam Limited & Ors. vs. Renew Energy Private Limited & Ors.* (Civil Appeal Nos. 3480-3481 of 2020), wherein it was held that the Power Purchase Agreement is sacrosanct and binding upon the parties.

4.19 That the Hon'ble Commission in paragraph 6.8 of the said order further observed that Clause 6.2 of the PPA obligates the generators to install, at their own cost, the necessary infrastructure for proper and reliable communication between the generating facility and the grid substation, including infrastructure required for supply of scheduling and actual generation data for computation of deviation charges under the DSM Procedure. The regulatory compliance now portrayed by the Petitioners as burdensome was thus expressly recognised as an inherent obligation flowing from the contractual and statutory framework governing their projects. It is therefore evident that the alleged financial hardship or infrastructural expenditure does not constitute any supervening or newly emergent circumstance. These aspects were consciously considered and rejected by this Hon'ble Commission in the earlier proceedings. The mere repetition of the same grounds under the guise of parity, equity or legitimate expectation does not create a fresh cause of action nor dilute the binding force of the prior adjudication.

4.20 That in view of the foregoing submissions, it is respectfully submitted that the present Petition discloses no independent cause of action and is founded merely on a claim of parity. The alleged financial or operational hardship has already been considered and rejected by this Hon'ble Commission in the earlier proceedings and cannot be re-agitated to seek exemption from the applicability of the Regulations. Accordingly, the present Petition is devoid of merit and liable to be rejected as not maintainable.

III. OBJECTION THAT THE RELIEF SOUGHT BY THE PETITIONERS IS DETRIMENTAL TO GRID STABILITY AND REGULATORY DISCIPLINE, AND THE ASSERTION OF "NEGLIGIBLE IMPACT" IS MISCONCEIVED AND CONTRARY TO THE STATUTORY FRAMEWORK OF GRID MANAGEMENT.

4.21 That the relief sought by the Petitioners is fundamentally inconsistent with the overarching objective of maintaining grid security, stability and regulatory discipline. It is submitted that HPPC has already executed Power Purchase Agreements aggregating to approximately 100 MW under the PM-KUSUM Scheme. While each individual project under the said scheme may be of comparatively modest capacity, their cumulative contribution constitutes a significant portion of renewable energy generation within the State. Grant of exemptions from the deviation discipline framework to even a limited set of generators would have a cascading impact, as similarly placed developers would inevitably seek identical reliefs. The resultant situation would lead to a substantial number of renewable generators operating outside the prescribed framework governing scheduling and deviation settlement, thereby

impairing the mechanism for real-time demand-supply balancing and adversely affecting grid operations. A list of the PPAs signed by HPPC relating to the projects set up under the PM Kusum Scheme is annexed.

4.22 That granting exemptions of this nature would not only dilute the statutory and regulatory regime governing grid discipline but would also pose a serious threat to the stability, reliability and security of both the State and Regional grids. The contention advanced by the Petitioners that deviations from their 1 MW solar plants have negligible or inconsequential impact on grid stability is categorically denied. The Deviation Settlement Mechanism (DSM) Regulations have been framed in exercise of statutory powers under Sections 32, 33, 73, 86(1)(h) and other enabling provisions of the Electricity Act, 2003 with the express objective of ensuring grid discipline, frequency control and secure system operation. The regulatory framework governing deviations is designed to preserve the real-time balance between generation and drawal, which is the foundational principle underlying grid stability and system reliability.

4.23 That the Petitioners' attempt to evaluate the impact of deviations solely on the basis of individual project capacity is fundamentally flawed. Grid security is assessed on a systemic and cumulative basis rather than through isolated project-level considerations. Even where a single generator's deviation may appear numerically modest, the aggregate effect of multiple similarly situated generators operating outside the deviation discipline framework can significantly impair real-time balancing and frequency control. For this reason, the regulatory mechanism applies uniformly to all eligible grid-connected generators unless a specific statutory or regulatory exemption is provided. Under Section 33 of the Electricity Act, 2003, generating companies are mandatorily required to comply with directions issued by the State Load Dispatch Centre for maintaining grid stability, and the DSM Regulations operationalise this statutory mandate by imposing financial disincentives for deviations to ensure scheduling discipline.

4.24 That the submission advanced by the Petitioners that the DSM framework was conceived exclusively for large-scale or utility-level generating stations is wholly misconceived and finds no support in the statutory or regulatory framework. The discipline imposed under the DSM mechanism is technical and operational in character, rather than commercial in nature. Financial implications arising from deviations are an integral component of the regulatory architecture designed to enforce compliance with scheduling obligations. Compliance costs or operational adjustments cannot, by themselves, justify exemption from a uniform regulatory regime intended to preserve grid stability and reliability. Accordingly, the Petitioners' plea that strict adherence to the DSM framework serves no meaningful technical purpose is untenable and contrary to the statutory mandate governing grid discipline and secure system operation.

IV. PROMOTION OF RENEWABLE ENERGY UNDER SECTION 86(1) (e) DOES NOT EXEMPT GENERATORS FROM STATUTORY AND REGULATORY COMPLIANCE

4.25 The Petitioners' reliance upon Section 86(1)(e) of the Electricity Act, 2003 is misplaced and misconceived. While this Hon'ble Commission is empowered and obligated to promote generation from renewable sources of energy, such mandate must operate harmoniously with the other statutory duties entrusted to the Commission, including the responsibility to ensure grid security, maintain system stability and enforce grid standards. The objective of promoting renewable energy does not override or dilute the requirement of adherence to scheduling discipline and deviation control. Renewable energy generators, once connected to the grid, form an integral part of the power system and are therefore required to comply with the operational framework governing forecasting, scheduling and deviation settlement. There exists no statutory principle under the Electricity Act, 2003 which suggests that promotional objectives confer immunity from compliance with DSM Regulations or from the financial consequences arising from deviations.

4.26 That the reference made by the Petitioners to unallocated or unsubscribed capacity in recent bidding processes is wholly extraneous to the present proceedings and does not advance their case. Procurement outcomes or commercial considerations cannot justify relaxation of statutory and regulatory compliance obligations. Grid discipline is fundamentally a matter of system security and operational integrity rather than market conditions or commercial convenience. While the development of solar projects may contribute to broader policy objectives relating to renewable energy promotion, such advancement must remain within the contours of the Electricity Act, 2003 and the applicable regulatory framework. The Petitioners cannot invoke livelihood considerations or general policy objectives relating to renewable promotion to seek exemption from a uniform statutory mechanism specifically designed to safeguard grid stability and reliability.

V. RELIANCE ON REGULATORY FRAMEWORKS OF OTHER STATES IS MISPLACED AND DOES NOT OVERRIDE THE BINDING EFFECT OF HERC DSM AND FORECASTING & SCHEDULING REGULATIONS, 2019

4.27 That the reliance placed by the Petitioners on regulatory frameworks adopted in certain other States is wholly misplaced and does not advance their case. Electricity regulation in India operates under a federal statutory structure wherein each State Electricity Regulatory Commission exercises independent regulatory authority within its respective jurisdiction under the Electricity Act, 2003. Consequently, the regulatory provisions framed by Commissions in other States are neither binding nor determinative for this Hon'ble Commission. The applicability thresholds prescribed in the Regulations of Punjab, Uttar Pradesh, Rajasthan, Karnataka, Maharashtra or Madhya Pradesh reflect policy choices and grid conditions specific to those States and cannot be mechanically transplanted into the regulatory framework applicable in Haryana.

4.28 That it is further submitted that the HERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019 have been duly framed by this Hon'ble Commission in exercise of its

statutory powers under the Electricity Act, 2003 after following the prescribed consultative process. Once notified, these Regulations constitute subordinate legislation and are binding on all generating entities falling within their scope. The Petitioners cannot seek exemption from a validly notified regulatory framework merely by citing a different threshold adopted by other State Commissions. Regulatory uniformity across States is neither contemplated nor mandated under the Electricity Act, particularly where grid management, renewable penetration levels and operational considerations vary from State to State.

4.29 Moreover, the argument that the present Petition deserves to be allowed solely because certain other States have prescribed a higher capacity threshold for applicability of DSM is legally untenable. Grid discipline, forecasting accuracy and deviation control are matters fundamentally linked to system operation and grid stability within the State and must be assessed in the context of the operational characteristics of the Haryana grid. It is also pertinent to note that the Petitioners' contention regarding expenditure for installation of infrastructure for transfer of real-time data to the SLDC is equally untenable. Clause 6.2 of the Power Purchase Agreement specifically obligates the Petitioners to install, at their own cost, the requisite infrastructure for proper and reliable communication between the generating facility and the grid substation of the Nigam/Discom/STU. Further, installation of adequate infrastructure to ensure supply of scheduling and actual generation data for computation of deviation charges is an obligation flowing directly from the DSM Procedure.

4.30 That in view of the foregoing submissions, it is most respectfully submitted that the present Petition is ex facie barred by the doctrine of res judicata, as the very same relief stood conclusively adjudicated and rejected by this Hon'ble Commission in the proceedings instituted by the Petitioner in 2023. The principle that a matter once finally decided between the same parties cannot be re-agitated is firmly entrenched in law and is founded upon considerations of public policy, judicial discipline, and finality of litigation. The Petitioner's attempt to invoke "parity" on the basis of relief allegedly granted in Petition No. 43 of 2025 is wholly untenable in law. It is settled that Article 14 does not contemplate negative equality, and an order passed in another case even assuming it to be correct cannot nullify or override a binding adjudication inter partes. Parity cannot be employed as a device to circumvent finality or to resurrect a stale and concluded claim.

Accordingly, the present Petition, being an impermissible attempt to reopen an issue already adjudicated, is not maintainable in law and is liable to be dismissed at the threshold.

PARA-WISE REPLY

1. That the contents of para no. 1 of the Petition insofar it relates to the filing of the present Petition and the order dated 20.08.2025 passed by this Hon'ble Commission in Petition No. 43 of 2025 is a matter of record. It is, however, specifically denied that the Petitioners are entitled to claim the benefit of the relaxation granted in the said order. The Petitioners

have wrongly sought to rely upon the aforesaid order to contend that they are similarly placed and therefore entitled to identical relief. The present contention of the Petitioners is therefore misconceived and liable to be rejected.

DESCRIPTION OF THE PARTIES:

2.-7. That the contents of para 2 to 7 relating to description of the Petitioner companies and the Respondents herein are a matter of record. However, anything stated contrary to the record, is wrong and vehemently denied. It is pertinent to mention that the Petitioners, by their own admission, are companies with over 11 years of experience in power generation. Therefore, the allegations raised by them concerning the applicability of LTOA or the complexity of the DSM Regulations hold no merit, given their long industry experience.

BRIEF FACTS LEADING UPTO THE FILING OF THE PRESENT PETITION

8. That the contents of para no. 8 are a matter of record.

9. That the contents of para no. 9 are a matter of record. It is pertinent to mention here that the PPAs were signed by the Petitioners out of own free will and without any reservation.

10. That the contents of para no. 10 of the Petition are a matter of record that the Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019 were notified on 29.04.2019 and therefore does not call for reply.

11. That the contents of para no. 11 of the Petition are largely a reproduction of the "Procedure for Forecasting, Scheduling and Deviation Settlement of Solar & Wind Generation" approved by this Hon'ble Commission on 08.03.2021 and, to that extent, the same warrant no reply.

12. That the contents of para no. 12 of the Petition are matters of record that the communications/notices dated 22.04.2022, 01.06.2022 and 12.01.2023 were issued by the Respondent authorities calling upon the solar generators, including the Petitioners, to comply with the applicable regulatory framework.

13. That the contents of para no. 13 of the Petition are matters of record and warrants no reply. However it is submitted that the Petitioners have themselves acknowledged that identical reliefs relating to exemption from LTOA and QCA requirements were earlier sought by them before this Hon'ble Commission in the said proceedings.

14. That the contents of para no. 14 are substantially a reproduction of extracts from the final order dated 17.10.2023 passed by this Hon'ble Commission in PRO-21 of 2023 and, and warrant no reply. It is submitted that the said order clearly records that the applicability of the DSM Regulations, 2019 to solar plants of 1 MW and above had already been considered and that no justified grounds existed for granting relaxation.

15. That the contents of para no. 15 insofar as it relates to the granting of exemption to M/s Sunphotonics Private Limited by this Hon'ble Commission is a matter of record. However the rest of the contentions raised in the present para are wrong, misconceived and emphatically

denied. It is specifically denied that the order passed in above mentioned case gives rise to any fresh cause of action in favour of the Petitioners. It is respectfully submitted that the relief granted in the said matter was case-specific and confined to project developers covered under the PM-KUSUM Scheme and therefore the Petitioners cannot claim parity or derive any right from it.

16. That the contents of para no. 16 of the Petition are wrong, misconceived and hence denied**.** The Petitioners have erroneously sought to contend that the principle of res judicata is inapplicable on account of alleged changed circumstances. The judgments relied upon by the Petitioners are clearly distinguishable on facts and do not apply to the present case, as none of them pertain to a situation where an issue has been conclusively adjudicated between the same parties by a competent regulatory authority and has attained finality . It is respectfully submitted that the applicability of the doctrine of res judicata to the present proceedings has already been dealt with in detail in the Preliminary submissions/Objections above and the same is therefore not being repeated herein for the sake of brevity

GROUNDS IN SUPPORT OF PETITION

REPLY TO GROUND A. – PARITY LIABLE TO BE GRANTED TO THE PETITIONER

17. That the contents of Ground A of the Petition insofar it relates to the reproduction of the extracts from the order dated 20.08.2025 passed by this Hon'ble Commission in Petition No. 43 of 2025 is matter of record. The relaxation granted in the said order was based on the peculiar facts and policy considerations applicable to projects developed under the PM-KUSUM Scheme. The Petitioners herein admittedly do not fall within the ambit of the said scheme and therefore cannot claim parity as a matter of right. It is a settled principle of law that parity cannot be claimed in disregard of the statutory and regulatory framework, particularly when the issue regarding applicability of the DSM Regulations, 2019 already stands conclusively adjudicated between the parties vide order dated 17.10.2023 in Petition No. PRO-21 of 2023. The reliance placed on the decision in Adani Power (Mundra) Limited vs. Central Electricity Regulatory Commission is also misplaced, as the said judgment does not lay down that relief granted in a fact-specific regulatory proceeding must automatically be extended to all other generators irrespective of the governing contractual and regulatory framework.

REPLY TO GROUND B – PRECEDENT FROM OTHER STATES

18. That the contents of Ground B are the mere extracts reproduced from the regulations of the other states and therefore warrant no reply. However, the reliance placed by the generators on the Regulations of other States already stands rejected by the Hon'ble Commission vide order dated 17.10.2023. The applicability of the DSM Regulations, 2019 to generators of 1 MW and above in Haryana has already been examined and upheld by this Hon'ble Commission in PRO-21 of 2023 and cannot be circumvented by citing regulatory thresholds in other States. Further, mere comparison with other States cannot create a legal or equitable

right to allow exemption to the Petitioners. Therefore, the Petitioners cannot derive any enforceable entitlement from the provisions of other States' DSM Regulations. Further, the contents of the preliminary submissions/ objections may also be read as part and parcel of the reply to the present para, which is not being repeated here for the sake of brevity.

REPLY TO GROUND C – PROMOTION OF RE ENERGY

19. That the contents of Ground C are not disputed in principle. It is acknowledged that Section 86(e) of the Electricity Act, 2003 obligates the Hon'ble Commission to promote generation of electricity from renewable sources. The Petitioners' references to the Commission's orders in HERC/PRO-13 of 2019, HERC/Petition No. 23 of 2022, and the RE Tariff Regulations, 2017 are mere reproductions of judgments/orders and require no detailed reply. However it is submitted that while the promotion of the renewable energy is an overarching policy objective, such facilitation cannot justify blanket exemptions from the statutory applicability of the DSM Regulations, 2019 or the compliance obligations under the OA Regulations, 2012. Any exemption or relaxation must be considered strictly within the framework of the Regulations ensuring grid security, operational integrity and uniform application of law. Accordingly, this does not create an automatic entitlement to exemption from regulatory compliance.

REPLY TO GROUND D – PRACTICAL CONSTRAINTS

20. That the contents of Ground D are denied to the extent they are contrary to the DSM Regulations, 2019 and the associated Procedure. It is specifically denied that the DSM Procedure imposes an undue or disproportionate burden on the Petitioners. The Petitioners are fully capable of complying with the obligations under the DSM Regulations, including submission of day-ahead schedules, coordination with SLDC/STU/DISCOMs, and settlement of any deviation charges, as mandated. It is further submitted that the imposition of penalties is strictly contingent upon actual deviations from the schedules submitted by the Petitioners and does not apply in the absence of such deviations. Further the contention regarding unpredictability of weather or generation fluctuations cannot serve as a justification for non-compliance, as the DSM framework is designed to accommodate reasonable operational variations while ensuring grid stability and discipline. For the sake of brevity, the detailed submissions and objections made in the preliminary submissions which elaborate on this aspect may be read as part and parcel of this reply and are not repeated herein.

REPLY TO GROUND E – FINANCIAL IMPLICATIONS ON THE PETITIONER WITHOUT ANY CHANGE IN TARIFF IS UNJUST AND UNFAIR

21. That the contents of Ground E are misconceived and are denied. Compliance with the DSM Regulations, 2019, including scheduling and coordination through a QCA, is a standard operational requirement applicable to all grid-connected generators and does not impose any unforeseen or arbitrary financial burden on the Petitioners. The said obligations arise directly from the applicable regulatory framework as

well as the terms of the Power Purchase Agreements (PPA), of which the Petitioners were fully aware at the time of participation in the bidding process. The DSM Regulations and related procedures are duly notified and form part of the governing regulatory regime, and therefore the Petitioners cannot claim ignorance or seek relaxation on the ground of alleged financial hardship. The detailed preliminary submissions and objections already made herein may be read as part and parcel of the present reply for the sake of brevity.

REPLY TO GROUND F- OBLIGATIONS IMPOSED UPON THE PETITIONERS WITHOUT ANY CORRESPONDING OBLIGATION ON THE PART OF THE UTTILITIES IS CONTRARY TO THE PRINCIPLE OF LEGITIMATE EXPECTATION

22. That the contents of Ground F are misconceived and emphatically denied. The obligations relating to scheduling, coordination with the SLDC, and engagement of a QCA arise directly from the DSM Regulations, 2019 and the applicable regulatory framework governing grid-connected generators. These requirements are neither arbitrary nor contrary to the principle of legitimate expectation. Any loss due to grid tripping or operational contingencies is an inherent risk in electricity generation and does not absolve the Petitioners from compliance with the scheduling and deviation framework designed to maintain grid discipline. The allegation regarding lack of accountability on the part of the Utilities is therefore misplaced. For the sake of brevity, the detailed preliminary submissions already made regarding regulatory compliance and operational obligations may be read as part and parcel of the present reply.

REPLY TO GROUND G – NEGLIGIBLE IMPACT ON GRID STABILITY

23. That the contents of Ground G are wrong and vehemently denied. It is specifically denied that the small-scale generation projects operated by the Petitioners, even if individually 1 MW in capacity, are exempt from the DSM framework merely because their aggregate contribution to the State Grid is relatively small. It is submitted that the objective of the DSM Regulations is to ensure accurate scheduling, grid discipline, and commercial settlement irrespective of project size. Any deviation, however minor, affects the commercial accounting framework of the State Pool and is subject to the rules of deviation settlement. It is further submitted that the DSM framework is designed to apply proportionately, with built-in tolerances and mechanisms for minor deviations, and the Petitioners remain capable of complying with these provisions without any disproportionate impact on operational or financial performance. The suggestion that the Regulations are intended only for large-scale generators is incorrect, and the application of the DSM provisions to all eligible generators is consistent with the regulatory intent and statutory mandate under the Electricity Act, 2003.

24. That the contents of Ground H are denied as wrong and misconceived. It is specifically denied that compliance with DSM obligations is inconsistent with the broader policy objective of promoting renewable energy. On the contrary, the DSM framework facilitates the orderly integration of renewable energy into the grid, ensuring predictable

scheduling, reliability, and commercial settlement, which are critical for sustainable growth of the sector. It is submitted that the development of solar power projects, while contributing to renewable energy targets and livelihood objectives of the Petitioners, does not exempt them from complying with mandatory regulatory obligations. The assertion regarding unallocated or unsubscribed capacity is irrelevant to the statutory and regulatory requirements, which apply uniformly to all eligible generators to maintain grid discipline and system stability.

PROVISIONS UNDER WHICH THE PRESENT PETITION HAS BEEN PREFERRED

25. The contents of para 17, being a reproduction of certain Regulations, are a matter of record. However, the said Regulations have no applicability to the facts of the present case as no cause of action has arisen in favour of the Petitioners for invoking the powers or provisions referred to therein. The present Petition is, in essence, an attempt to re-agitate issues that already stand conclusively decided by this Hon'ble Commission through reasoned orders. If aggrieved by the said orders, the Petitioners ought to have availed the appropriate remedy by filing a Review Petition before this Hon'ble Commission, or by challenging the same before the Hon'ble APTEL, or before the Hon'ble High Court under Article 226 of the Constitution of India in its writ jurisdiction.

26. That the contents of para 18 are a matter of record. However, it is submitted that the Petitioners have filed a single consolidated petition despite involving three separate legal entities, thereby avoiding payment of separate fees that would otherwise have been payable under the Haryana Electricity Regulatory Commission (Fee) Regulations, 2005, as amended.

27. That the contents of para 19 are a matter of record.

Prayer clause is denied.

PRAYER

In view of the submissions made hereinabove, it is respectfully prayed that the present petition being non-maintainable and also devoid of merit may kindly be dismissed, in the interest of justice.

5. The case was heard on 04/06/2026. Sh. Raghujeet Singh Madan, Counsel for the Respondents submitted that the reply on behalf of R-1 (HVPN) has been filed and R-2 & R-3 have adopted the same reply. The counsel for the petitioners submitted the rejoinder and requested to place on record. He further submitted that some additional documents pertaining to R-2 & R-3 will be submitted with in a week. The counsel for the respondents requested to allow him to file additional documents in case of any requirement based on documents being submitted by the petitioner. Acceding to the requests of the parties, the Commission adjourns the matter and directs the petitioner to file additional documents with in a week and Respondents to file their averments with in two weeks thereafter with advance copies to either parties. The matter shall come up for arguments on 29/07/2026.

6. **Rejoinder received on 04/06/2026.**

6.1 That the present rejoinder is being filed to the reply submitted by Haryana Vidyut Prasaran Nigam Limited (HVPNL) to the petition filed by the Petitioners herein. At the outset, it is pertinent to note that the Power Purchase Agreements (PPAs) on the basis of which the Petitioner-Generators have been selling power to the State of Haryana were entered into with Respondent No. 3- Haryana Power Purchase Centre (HPPC). The Petitioners have no contractual relationship whatsoever with Respondent No. 1- HVPNL. Further, the generating plants of the Petitioners are connected at the interconnection point of Respondent No. 2- Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), which is the Distribution Licensee having jurisdiction over the area where the Petitioners' plants are situated. Significantly, neither HPPC nor DHBVNL have filed any reply in the present proceedings. It is therefore humbly submitted that this Hon'ble Commission may kindly be pleased to call upon HPPC and DHBVNL to file their replies, and thereafter grant an opportunity to the Petitioners to file a further rejoinder to such replies.

Without prejudice to the foregoing, the Rejoinder on behalf of the Petitioners to the reply filed by the Respondent No. 1-HVPNL is as under:

PRELIMINARY SUBMISSIONS/ OBJECTIONS:

A. THE DOCTRINE OF RES JUDICATA IS NOT STRICTLY APPLICABLE TO REGULATORY PROCEEDINGS BEFORE THE HON'BLE COMMISSION:

6.2 That at the outset, the preliminary objection raised by Respondent No. 1 regarding the applicability of the doctrine of res judicata is wholly misconceived and is liable to be rejected in limine. It is a well-settled principle of law that the doctrine of res judicata, as enshrined under Section 11 of the Code of Civil Procedure, 1908 (CPC), applies in its strict sense only to civil courts. Regulatory proceedings before a Statutory Commission exercising powers under the Electricity Act, 2003 (Act, 2003) are quasi-judicial, and in significant measure quasi-legislative in character. The strict procedural doctrines of the CPC, including res judicata, are neither mandated nor appropriate in such proceedings. The submissions in this regard are elaborated hereinbelow:

a. The provisions of the CPC are not applicable to proceedings before this Hon'ble Commission except to the limited extent specifically provided under the Act, 2003. Section 94(1) of the Act, 2003 enumerates only seven specified routine matters in respect of which the Commission may apply the CPC provisions. The legislative intent behind deliberately excluding a general application of the CPC to the Commission's proceedings is manifest: if the strict doctrine of res judicata as contemplated under the CPC were applied to regulatory proceedings, the very functioning of the regulatory framework would be paralysed. No true-up petitions would be maintainable. No re-determination of tariff would be permissible. No subsequent amendment or revision, even when necessitated by changed circumstances, would be open

to any stakeholder to seek. Such a consequence is plainly absurd and was never intended by the legislature.

b. It is respectfully submitted that Hon'ble commissions exercises a continuous, ongoing jurisdiction over the electricity sector in the public interest. The regulatory framework is not static, it is dynamic and evolves with changing policy objectives, national schemes, and interpretive orders passed from time to time. The Hon'ble Commission acts not only in a quasi-judicial but also in a quasi-legislative capacity and cannot be said to be bound by the finality of earlier orders in the same manner as civil courts. Reliance in this regard is placed on the decision of the Hon'ble Apex Court in the case of *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal* [AIR 1981 SC 606] wherein the Hon'ble Apex Court has held that wide powers have been granted to statutory tribunals and strict rules of CPC do not apply to such proceedings Assuming without admitting that the res-judicata is applicable, in view of the fact that powers are to be exercised for larger public interest.

c. Assuming without admitting that the doctrine of res-judicata has any applicability to the present proceedings, it is respectfully submitted that the said doctrine, even under the CPC, operates as a bar only in respect of grounds that *might and ought to have* been raised in the earlier proceedings. In the present case, the *Sunphotonics* order i.e., the order dated 20.08.2025 passed by this Hon'ble Commission in HERC/Petition No. 43 of 2025, did not exist at the time the earlier Petition No. PRO-21 of 2023 was filed or decided. The cause of action flowing from that order, and the principle of parity and equal treatment that it gives rise to, could neither have been raised nor argued in the earlier proceedings. The Respondent-HVPNL may kindly be called upon to identify any instance in the record of PRO-21 of 2023 where the ground arising from the *Sunphotonics* order was directly or substantially in issue. It is respectfully submitted that no such instance exists, and accordingly the ground of res judicata is, on the face of it, fallacious and unsustainable.

d. It is humbly submitted that the present petition is neither an appeal nor a review of the earlier order passed by this Hon'ble Commission. The present petition arises from a subsequent regulatory development, namely the decision of this Hon'ble Commission to extend exemption/relaxation from DSM applicability to similarly sized generators established under the PM-KUSUM scheme. The foundation of the present proceedings is therefore distinct and did not exist when the earlier petition was adjudicated.

e. Furthermore, even accepting for argument's sake that res judicata has some application, it is trite law that this doctrine does not operate as a bar where there has been a change in material circumstances or a fresh cause of action has arisen. The order dated 20.08.2025 in the *Sunphotonics Case* is a supervening

regulatory order passed by the very same Commission between the same subject parties (HVPNL on the one side and small-scale solar generators on the other), which has fundamentally altered the regulatory landscape governing the applicability of the DSM Regulations to such generators. This order unambiguously constitutes a fresh cause of action entitling the Petitioners to seek the same relief. The reliance placed by Respondent No. 1 upon the earlier order in PRO-21 of 2023 as a res judicata bar is therefore entirely untenable in law.

B. THE ORDER IN SUNPHOTONICS ITSELF RECOGNIZES EASE OF DOING BUSINESS AND THE PRACTICE IN OTHER STATES AS VALID GROUNDS FOR RELAXATION, THE SAID GROUNDS EQUALLY APPLY TO THE PETITIONERS:

6.3 That Respondent No. 1 has contended that the relaxation granted in the *Sunphotonics case* was case-specific and confined exclusively to project developers operating under the PM-KUSUM Scheme, and therefore the Petitioners cannot claim parity. This contention is fundamentally flawed and proceeds on a selective and incomplete reading of the *Sunphotonics order*. It is submitted that the PPAs between the Petitioners and HPPC were entered into between 2015 and 2017, whereas the Guidelines for implementation of the PM-KUSUM Scheme were notified only on 22.07.2019 — after the Petitioners had already set up their power plants and commenced supply. The Petitioners were therefore chronologically precluded from availing the PM-KUSUM Scheme, and cannot in equity be deprived of the benefit of a relaxation that would otherwise have been available to them had the scheme existed at the relevant time.

6.4 That the following material similarities between the Petitioners' case and the *Sunphotonics case* demonstrate that the Petitioners are, in every relevant respect, similarly situated:

Sr. No.	Similarities between the *Suphotonics Case* and the case of the Petitioner herein.
1.	Small-scale 1 MW renewable energy plants The PM-KUSUM Scheme, as described at paragraph 8.4 of the *Sunphotonics order*, targets plants of 500 kW to 2 MW capacity. Each of the Petitioners operates a 1 MW solar plant- identical in scale to PM-KUSUM Component-A projects.
2.	Located near 33/11 kV Sub-station to avoid Transmission Losses/ Fall under the purview of DHBVNL and not HVPNL: At paragraph 8.5 of the *Sunphotonics order*, the Commission noted that PM-KUSUM plants are located near 33/11 kV substations, power is evacuated at the 11 kV level into the local distribution grid under a PPA, and such projects fall under the purview of the DISCOM and not the STU. The Petitioners' plants are identically situated: they are connected to DHBVNL's distribution network at the 11 kV level and the transmission system of HVPNL is not involved in any manner. It has been stated as under: *"8.5 Further, under Component A of PM KUSUM Scheme, small scale power plants of 0.5 MW to 2 MW, are decentralized and*

	located near 33/11 kV sub-stations i.e. the point of consumption, leading to savings in transmission infrastructure and losses. Power is typically evacuated at the 11 kV level directly into the local distribution grid under a Power Purchase Agreement (PPA), not the state transmission network. Because these projects are designated for local injection into the nearest substation at 11 kV level, they fall under the purview of DISCOM rather than the STU." Further, at para no. 8.8 (Annexure P-1 at page 86), the Hon'ble Commission has stated- *"8.8... ... ... that the power generated from the solar power plants of the Petitioner (s), covered under PM-KUSUM scheme, is directly injected into the distribution system of the Respondent No. 2 and the power flow remains within the jurisdiction of the DICOM i.e. the Respondent No. 2"*
3.	Applicability of DSM may result in net losses for the Petitioners being small Generators: At para no. 8.7 of the order dated 20.05.2025 (Annexure P-1 at page 86), the Hon'ble Commission has held- *"8.7 The petitioner (s) herein have sought relief from applicability of two specific regulatory requirements i.e. signing of LTOA agreement and appointment of QCA on the grounds of ease of doing business for the power developer covered under a National Scheme and to avoid heavy penalties for deviations would could lead to net losses for farmers, thus defeating the basic objective of the scheme. The Commission has also considered the arguments of the petitioner (s) that in most of the other States in India, the DSM Regulations including the provisions of scheduling, are applicable on solar and wind developers with a capacity of 5 MW and above."* It is submitted that the Petitioners, operating at fixed tariffs agreed in 2015 with no provision for revision, face an identical risk of net financial losses if DSM penalties are imposed.
4.	The Petitioners herein as well as the Petitioners in *Sunphotonics case* are private limited companies. A perusal of paragraph 5.9(iv) of the *Sunphotonics order* shows that an argument was raised by HVPNL before the Hon'ble Commission that the *Sunphotonics* petitioners were not farmers but private limited companies (founded by IIT alumni). This argument was rejected by the Hon'ble Commission. The Petitioners herein are similarly private limited companies. The Hon'ble Commission's rejection of the 'farmer vs. company' distinction in *Sunphotonics* accordingly applies with equal force here.

6.5 That, as such, it abundantly clear that the Hon'ble Commission, while deciding to grant the relaxation, expressly took into account: (i) the principle of ease of doing business for small power developers; and (ii) the regulatory practice prevalent in most other States in India, where DSM Regulations are applicable only to generators with a capacity of 5 MW and above (iii) Net losses that would be suffered by the small generators in case DSM is made applicable (iv) Non-involvement of the transmission network i.e. power remains under the purview of Discom.

These are general grounds applicable to all small-scale solar generators, including the Petitioners herein.

6.6 That the Petitioners further submit that the Haryana Government's Ease of Doing Business (EoDB) policy is not a scheme-specific entitlement, it is a broad, overarching policy of the State Government applicable to all small enterprises and developers. The compliance burden of appointing a QCA, obtaining LTOA, establishing data communication infrastructure compliant with the DSM Procedure, and managing deviation penalty exposure is as onerous - financially and administratively for the Petitioners as it is for any PM-KUSUM developer. The formal label of 'PM-KUSUM' cannot be the determinative criterion when the substantive operational characteristics and the compliance burden are identical in every material respect.

C. THE ARGUMENT REGARDING GRID STABILITY IS INAPPOSITE AND THE PETITIONERS' CONCERN REGARDING ASYMMETRIC ACCOUNTABILITY REMAINS UNANSWERED:

6.7 That another objection raised by Respondent-HVPNL is that the relief sought by the Petitioners is detrimental to grid stability and regulatory discipline, and that the assertion of 'negligible impact' is misconceived. This submission is incorrect and self-contradictory, for the following reasons:

a. An identical argument regarding grid instability was raised by Respondent-HVPNL in the *Sunphotonics proceedings* and finds mention at paragraph 5.4 of the *Sunphotonics order*, where HVPNL had contended that granting exemption to a large number of PM-KUSUM generators would render the grid unstable. That argument was considered and expressly rejected by this Hon'ble Commission while granting the relaxation. Respondent-HVPNL has itself appended, as Annexure R-1/3, a list of projects under PM-KUSUM that have already been granted exemption, with an aggregate capacity of over 100 MW. If the grid has remained stable despite the exemption of over 100 MW of small generators, the Respondent's contention that exempting the 3 MW aggregate capacity of the present Petitioners would destabilize the grid is entirely without merit.

b. Significantly, in the Annual Revenue Requirement (ARR) Order dated 17.03.2026 filed by HVPNL itself before this Hon'ble Commission, the section on *'Annual Transmission Tariff and SLDC Charges'* which identifies beneficiaries of the Transmission System liable to contribute to HVPNL's revenues, does not include the Petitioner companies. A copy of the relevant extract of the ARR order dated 17.03.2026 is annexed. This is a formal admission by HVPNL, in its own regulatory filings, that the Petitioners are not 'beneficiaries of the Transmission System.' It is therefore wholly contradictory for HVPNL to simultaneously contend before this Hon'ble Commission that the Petitioners' plants form part of the transmission/grid infrastructure in a manner that necessitates DSM compliance under the STU/SLDC framework. HVPNL cannot approbate and reprobate in the same breath.

c. Be that as it may, Respondent-HVPNL has entirely failed to address, even in passing, the Petitioners' core grievance that DSM penalties are imposed upon the Petitioners for deviations in generation output, including deviations directly caused by grid trippings and outages attributable to HVPNL's/DHBVNL's own network, while the Utilities themselves face no corresponding penalty or accountability mechanism for such grid failures. The data at Annexure P-6 demonstrates multiple instances of grid trippings attributable to the Respondent's network, each of which directly curtailed the Petitioners' generation output. The Respondent has offered no response to this data and has advanced no argument addressing the asymmetry of obligations. The silence of the Respondent on this critical point must be construed against it.

6.8 That the Petitioners further submit that Annexure P-6 relates to grid defaults attributable to HVPNL/DISCOMs, which are a controllable factor within the Utilities' domain. Separately, there is the independent problem of uncontrollable weather variability, which makes micro-level generation forecasting for small rural solar plants practically impossible with currently available tools. By way of illustration: in the case of Petitioner No. 1's plant, on 05.04.2026, the day was a clear sunny day and the plant generated 5,142 units. On the very next day, there was an abrupt change in weather and the day remained overcast, with generation falling to 3,462 units, a difference of 1,680 units, representing approximately 32.68% of the previous day's generation. Under the DSM Regulations, where the deviation from the forecasted schedule exceeds 10%, the generator becomes liable to pay penalty charges. It is submitted that no forecasting software currently available is capable of providing solar irradiance/generation data at 15-minute intervals at the micro-level for a small rural plant. Imposing penalty for a deviation caused by circumstances that are entirely beyond the generator's control and beyond the reach of any available predictive tool is manifestly unjust.

6.9 That it is the case of the Petitioners that the DSM framework must, at minimum, operate symmetrically. If generators are to be penalized for deviations, including those caused by grid failures attributable to the Utilities then the Utilities must equally be held accountable for grid disruptions that directly cause those deviations. The imposition of penalties on generators for circumstances outside their control, in the absence of any corresponding obligation on the Utilities, is arbitrary, discriminatory, and contrary to the principles of fairness, proportionality, and legitimate expectation. This asymmetry, by itself, warrants the grant of relaxation sought.

6.10 That without prejudice to all the foregoing submissions, in the event this Hon'ble Commission does not grant the primary relief, the Petitioners respectfully submit that they may be permitted to raise a Change in Law claim before the appropriate forum. It is pertinent that the PPAs of the Petitioners executed in the year 2015, contain no provision whatsoever mandating compliance with LTOA requirements,

the appointment of a QCA, or the DSM framework. These regulatory obligations were introduced subsequently and without any corresponding adjustment to the tariff payable under the PPA. The imposition of such obligations, which impose significant financial and operational burdens, without any tariff revision constitutes a change in law affecting the Petitioners' projects, entitling them to seek appropriate relief.

PARA-WISE REJOINDER TO THE REPLY FILED BY RESPONDENT NO. 1:

1. That the contents of para no. 1 do not call for any reply.
2. That the contents of para no. 2 are a matter of record.
3. That the contents of para 3 of the reply are wrong, misconceived and hence denied. The Petitioners submit that the reliance placed upon Sections 86(1)(c), 86(1)(e) and 86(1)(k) of the Electricity Act, 2003 is fully justified and in accordance with law. The said provisions confer upon this Hon'ble Commission wide regulatory, adjudicatory and supervisory powers in relation to grid operations, promotion of renewable energy and discharge of such other functions as may be assigned under the Act. The Petitioners have not sought any blanket exemption from the statutory framework as incorrectly alleged by the Respondent. Rather, the Petitioners seek parity and equal treatment in light of the subsequent order dated 20.08.2025 passed by this Hon'ble Commission in Petition No. 43 of 2025 whereby similarly situated generators were granted relaxation from the very same requirements. It is specifically denied that the present Petition seeks to undermine grid discipline or dilute the regulatory framework. The Petition is founded upon a fresh cause of action arising from a subsequent regulatory determination of this Hon'ble Commission. The Respondent has deliberately ignored that the present proceedings arise after the passing of the order dated 20.08.2025 and therefore stand on an entirely different footing from the proceedings decided earlier. The remaining contents of the paragraph are denied being contrary to facts and law.
4. That the contents of para 4 are wrong and denied. The Petitioners have not sought amendment of any Regulation through the present adjudicatory proceedings. The Petitioners have merely sought extension of the same relaxation and treatment that has already been granted by this Hon'ble Commission to similarly placed solar generators. The Respondent has incorrectly attempted to characterize the relief sought as an indirect challenge to the Regulations. It is further denied that Clauses 8.10 and 14.3 of the Power Purchase Agreement do not support the Petitioners' case. The said clauses clearly recognize the jurisdiction of this Hon'ble Commission to adjudicate disputes and determine issues arising out of the implementation of the regulatory framework governing the parties. The Petitioners have rightly invoked such jurisdiction. The allegation that the Petition lacks statutory foundation is wholly baseless and denied.
5. The contents of para 5 are denied save and except those matters which are matters of record. It is denied that the Petitioners are deliberately evading any statutory or contractual obligations. The Petitioners respectfully submit that the present Petition specifically seeks a

determination from this Hon'ble Commission regarding the applicability of the LTOA, QCA and DSM requirements in light of the subsequent order passed in Petition No. 43 of 2025. The communications dated 22.04.2022 and 01.06.2022 relied upon by the Respondent are matters of record. However, the conclusions sought to be drawn therefrom are denied. The Petitioners have approached this Hon'ble Commission through lawful proceedings seeking adjudication of their rights and obligations. The filing of the present Petition cannot by any stretch be termed an attempt to evade compliance. The averments regarding alleged breaches and disentitlement to equitable relief are specifically denied.

6. The contents of para 6 are denied to the extent they are contrary to the submissions made in the Petition. The existence of the orders dated 08.03.2021 and 17.10.2023 is a matter of record. However, the Respondent has failed to appreciate that neither of the aforesaid orders considered or could have considered the subsequent order dated 20.08.2025 passed in Petition No. 43 of 2025. The reliance placed on the observations recorded in the order dated 08.03.2021 is misconceived. The said proceedings related to approval of a procedure and not to the question of parity arising from a subsequent relaxation granted by this Hon'ble Commission. Likewise, the order dated 17.10.2023 was rendered prior to the emergence of the fresh cause of action relied upon in the present Petition. It is denied that the aforesaid orders constitute a bar to the maintainability of the present Petition.

7. The contents of para 7 are wrong and denied. The objection based upon res judicata is wholly misconceived. The doctrine of res judicata, assuming without admitting that it applies in its strict sense to proceedings before this Hon'ble Commission, can operate only where the matter directly and substantially in issue has already been adjudicated upon. The principal basis of the present Petition is the order dated 20.08.2025 passed by this Hon'ble Commission in Petition No. 43 of 2025. The said order did not exist at the time of adjudication of Petition No. PRO-21 of 2023. Consequently, the cause of action, grounds and reliefs arising therefrom could neither have been raised nor adjudicated in the earlier proceedings. The present Petition is therefore founded upon a fresh and independent cause of action. The allegations regarding re-agitation of issues are denied.

8. The contents of para 8 are denied. While the order dated 17.10.2023 is a matter of record, the interpretation sought to be placed thereon by the Respondent is incorrect and misleading. The Petitioners are seek equal treatment in light of the subsequent regulatory development brought about by the order dated 20.08.2025. It is further denied that the Petitioners are seeking any relief on the basis of their status as farmers. The Respondent has raised a wholly irrelevant issue in this regard. The Petitioners' claim is founded upon the principles of parity, non-discrimination, equal treatment and legitimate expectation arising from the subsequent order of this Hon'ble Commission. Whether the Petitioners are private limited companies is a matter of record. However,

the same does not disentitle them from claiming equal treatment under law.

9. The contents of para 9 are wrong and denied. The reliefs sought in the present Petition are neither identical in substance nor founded upon the same cause of action as the earlier proceedings. The Respondent has failed to appreciate that the present Petition has been necessitated solely because this Hon'ble Commission, subsequent to the earlier order, granted relaxation from the same regulatory requirements to another class of similarly situated generators. The Petitioners respectfully submit that the principle of parity and equal treatment flowing from a subsequent order constitutes an independent and valid cause of action. The reliance placed upon Section 11 of the Code of Civil Procedure and the doctrine of res judicata is misplaced. The judgment cited by the Respondent is distinguishable on facts and has no application to the present proceedings where the cause of action itself arose after the earlier adjudication. The allegations regarding abuse of process, vexatious litigation and waste of judicial time are denied in toto.

10. That the contents of para 10 are denied. The Petitioners do not dispute the legal proposition that res judicata serves an important public purpose. However, the Respondent has failed to establish the foundational requirements necessary for invoking the doctrine in the facts of the present case. The order dated 20.08.2025 passed in Petition No. 43 of 2025 constitutes a material subsequent event and a fresh cause of action. The present Petition is therefore based upon circumstances that were not in existence when Petition No. PRO-21 of 2023 was decided. Consequently, neither the judgment in *C.R. Neelakandan* nor the judgment in *Daryao* has any application to the facts of the present case. Accordingly, the objection raised by the Respondent deserves to be rejected. Detailed reply has already been given in the preliminary submissions/ objections, the contents of which are not being repeated here for the sake of brevity.

11. That the contents of para 11 are wrong, misconceived and denied. It is denied that the present Petition constitutes an attempt to seek a "second bite at the apple" or to re-litigate an issue already decided. The Petitioners reiterate that the present proceedings arise out of a fresh and independent cause of action, namely the order dated 20.08.2025 passed by this Hon'ble Commission in Petition No. 43 of 2025, whereby similarly situated solar generators were granted relaxation from the applicability of the LTOA and QCA requirements. The said order was neither in existence nor capable of being considered when Petition No. PRO-21 of 2023 was decided. Consequently, the principles of res judicata and finality of adjudication have no application to the present proceedings. It is further submitted that the Petitioners are not seeking review, modification or reconsideration of the order dated 17.10.2023. Rather, the Petitioners seek extension of similar treatment on the principles of parity, equality and non-discrimination in light of a subsequent regulatory determination rendered by this Hon'ble Commission itself. The contents of the paragraph to the contrary are denied.

12. That the contents of para 12 are wrong and denied. It is specifically denied that the present Petition does not disclose an independent cause of action. The Respondent has itself acknowledged that the Petition is founded upon the order dated 20.08.2025 passed in Petition No. 43 of 2025. The said order constitutes a fresh regulatory development which fundamentally altered the position governing similarly situated small-scale solar generators in the State of Haryana. The Petitioners submit that the cause of action does not arise merely from the existence of the order dated 20.08.2025 but from the discriminatory consequences resulting from extending relaxation to one class of identically situated generators while denying the same treatment to the Petitioners. Such discrimination furnishes a distinct and continuing cause of action. It is denied that the Petitioners are merely seeking replication of relief granted in another proceeding without any legal basis. The Petitioners have specifically pleaded the principles of parity, equal treatment, legitimate expectation, ease of doing business and consistency in regulatory decision-making. The allegations to the contrary are denied.
13. That the contents of para 13 are wrong and denied. The Petitioners deny that the present Petition is founded merely upon a perceived claim of parity. The Petitioners respectfully submit that parity and equal treatment are recognized principles of administrative and regulatory law and are integral to ensuring fairness in the exercise of statutory discretion. It is denied that the present Petition amounts to re-agitation of issues previously decided. The Petitioners are not seeking re-adjudication of the issues determined in Petition No. PRO-21 of 2023. The Petitioners seek consideration of the impact and implications of a subsequent order passed by this Hon'ble Commission granting relaxation to similarly placed generators. The Respondent has failed to demonstrate any material distinction between the Petitioners and the generators who were granted relaxation in Petition No. 43 of 2025. The contents of the paragraph contrary to the aforesaid submissions are denied.
14. That the contents of para 14 are wrong, misleading and denied. It is specifically denied that the order dated 20.08.2025 is confined exclusively to PM-KUSUM projects or that the rationale adopted therein was limited only to policy considerations governing the PM-KUSUM Scheme. The Respondent has selectively relied upon portions of the said order while deliberately ignoring the findings recorded by this Hon'ble Commission regarding ease of doing business, the disproportionate compliance burden imposed upon small-scale generators, the practice prevalent in other States where DSM applicability generally commences from 5 MW capacity, the likelihood of net losses to small generators, and the fact that such projects inject power directly into the distribution system without involving the transmission network. The Petitioners respectfully submit that these considerations are not PM-KUSUM specific. The Petitioners' projects are also 1 MW solar projects, connected at the distribution level, supplying power directly under PPAs and facing the same compliance burden. Merely because the Petitioners' projects were commissioned prior to the introduction of the PM-KUSUM Scheme

cannot constitute a valid ground to deny them similar treatment. Accordingly, the attempt to distinguish the Petitioners from the beneficiaries of the order dated 20.08.2025 is arbitrary, artificial and unsustainable in law.

15. That the contents of para 15 are denied except to the extent the communications referred therein are matters of record. It is denied that the Petitioners have approached this Hon'ble Commission seeking substantially identical reliefs as those sought in the earlier proceedings. The Respondent has failed to appreciate that the present Petition has been necessitated solely because of the subsequent order dated 20.08.2025 passed by this Hon'ble Commission. The Petitioners further submit that the mere fact that compliance notices were issued by HVPNL cannot preclude the Petitioners from seeking adjudication of their rights before the competent regulatory forum. The filing of the present Petition is a lawful exercise of statutory remedies available under the Electricity Act, 2003 and cannot be characterized as an abuse of process. The allegations to the contrary are specifically denied.

16. That the contents of para 16 are wrong and denied. It is denied that the reliefs sought in the present Petition are substantially identical to those sought in Petition No. PRO-21 of 2023. While certain regulatory provisions may be common, the cause of action, factual matrix and legal foundation of the present Petition are entirely different. The Respondent has failed to appreciate that the present Petition arises from a subsequent regulatory order passed by this Hon'ble Commission granting relaxation to similarly situated generators. The issue before this Hon'ble Commission is therefore not whether the DSM Regulations exist, but whether similarly placed generators can be subjected to different treatment without any rational basis. It is further denied that the Petitioners are attempting to circumvent any binding adjudication. The Petitioners are merely seeking equal treatment in view of subsequent developments and therefore the principles of constructive res judicata have no application whatsoever.

17. That the contents of para 17 are misleading in nature wrong and denied. It is submitted that the contention raised by the Petitioners is a matter of record. Further, the Petitioners are already compliant with the terms and conditions of the PPA relating to the installation of ABT meters etc. Rest of the contents of the para are wrong and denied as no clause exists in the PPA which requires appointment of QCA or imposes applicability of DSM on the Petitioners. The Respondent has failed to place on record any PPA to show the existance of such clauses. As such, the contents of this para being misleading in nature are wrong and denied. Be that as it may, the Respondent has deliberately ignored the central issue raised in the Petition. The Petitioners' grievance is not merely the existence of infrastructure obligations but the disproportionate and uneconomic burden sought to be imposed upon small-scale 1 MW generators through mandatory compliance with QCA requirements, forecasting obligations, communication infrastructure requirements and exposure to DSM penalties. The Petitioners further submit that this Hon'ble Commission, while passing the order dated 20.08.2025, expressly

considered the objective of ease of doing business and the burden imposed upon similarly situated small generators. The Respondent cannot now seek to re-open issues that were considered by this Hon'ble Commission while granting relaxation in Petition No. 43 of 2025. It is further submitted that the Petitioners are operating under fixed tariffs determined years prior to introduction of the present regulatory obligations. The additional costs associated with DSM compliance have no corresponding tariff recovery mechanism and therefore materially affect project viability. he remaining contents of the paragraph are denied.

18. That the contents of para 18 are wrong and denied. It is denied that the Petitioners are merely repeating grounds already considered in earlier proceedings. As repeatedly stated hereinabove, the present Petition is founded upon subsequent events and a fresh cause of action. It is further denied that the judgments relied upon by the Respondent advance its case. The Petitioners do not dispute the binding nature of contractual obligations. However, the present Petition is not founded upon any challenge to the sanctity of the PPAs. Rather, the Petitioners seek equal treatment in light of the relaxation subsequently granted by this Hon'ble Commission to similarly situated generators. The Respondent has failed to explain why the principles relied upon in the present paragraph did not prevent the grant of relaxation in Petition No. 43 of 2025. The contents of the paragraph are therefore denied.

19. That the contents of para 19 are wrong and denied. It is denied that the present Petition is founded merely upon allegations of financial hardship. It is wrong and vehemently denied that any duty is cast on the Petitioners in terms of the PPA to enter into a LTOA Agreement/ appoint QCA and provide schedule as per DSM Regulations. No corresponding clauses imposing such burden exists. Be that as it may, the Petitioners have specifically demonstrated that the compliance burden imposed through the LTOA, QCA and DSM framework is disproportionate in relation to the size and nature of their projects and that similarly situated generators have already been granted relaxation by this Hon'ble Commission. It is further submitted that the Respondent has failed to address the Petitioners' specific contention regarding asymmetrical accountability. While generators are exposed to penalties arising from deviations, including deviations caused by grid outages and trippings attributable to the Respondents' own network, no corresponding accountability mechanism exists against the Utilities. The Petitioners submit that this issue remains completely unanswered by the Respondent and therefore the conclusions sought to be drawn in the present paragraph are denied.

20. That the contents of para 20 are wrong and denied. It is denied that the present Petition is founded merely upon a claim of parity or that it discloses no independent cause of action. The Petitioners reiterate that the order dated 20.08.2025 constitutes a fresh regulatory development and gives rise to a distinct cause of action. The Petitioners further submit that the principles of consistency, non-discrimination, legitimate expectation and equal treatment require that similarly situated

generators be treated alike unless a valid and rational distinction exists. The Respondent has failed to identify any material distinction between the Petitioners and the generators who were granted relaxation by this Hon'ble Commission. Accordingly, the objection regarding maintainability is misconceived and deserves to be rejected. The contents of the paragraph contrary to the aforesaid submissions are denied.

21. That the contents of para 21 are wrong, misconceived and denied. It is denied that the relief sought by the Petitioners is inconsistent with grid security, stability or regulatory discipline. The Respondent has merely raised speculative apprehensions without producing any technical study, data analysis or empirical material demonstrating that exemption of the Petitioners' aggregate capacity of 3 MW would adversely impact grid operations. The Petitioners submit that the Respondent itself has acknowledged that Power Purchase Agreements aggregating to approximately 100 MW have already been executed under the PM-KUSUM Scheme. It is an admitted position that generators covered under the PM-KUSUM Scheme have been granted relaxation from the requirements of LTOA and appointment of QCA by virtue of the order dated 20.08.2025 passed by this Hon'ble Commission. Having accepted and implemented the said order, the Respondent cannot now contend that grant of similar relief to the Petitioners would jeopardize grid security. The Petitioners further submit that if exemption granted to more than 100 MW of similarly situated projects has not resulted in any adverse impact upon grid operations, the contention that exemption to the Petitioners' projects would impair grid stability is wholly conjectural, self-contradictory and devoid of any factual foundation. Even otherwise, the plants of the Petitioners are running since the last about 9-10 years. No issue with respect to grid stability has ever been raised by the Respondent and conveyed to the Petitioners herein. Such a contention raised by the Respondent is nothing but an after-thought. As such, the contents of the paragraph to the contrary are denied.

22. That the contents of para 22 are wrong and denied. The Petitioners have never disputed the importance of grid discipline, frequency control or secure system operation. However, the Respondent has failed to establish any nexus between the objectives of the DSM framework and the denial of relief sought by the Petitioners. It is submitted that the Petitioners' projects are small-scale solar generating stations of 1 MW capacity each, connected directly to the distribution network at the 33/11 kV level. The power generated by the Petitioners is consumed within the distribution system itself and does not involve utilization of the transmission network of Respondent No. 1. In fact, this Hon'ble Commission in its order dated 20.08.2025 recognized that such projects fall substantially within the domain of the Distribution Licensee and not the State Transmission Utility. The Petitioners further submit that the Respondent has failed to explain how projects of identical size, configuration and operational characteristics covered under the PM-KUSUM Scheme can be exempted without affecting grid stability while the Petitioners are sought to be treated differently. Even otherwise, the

plants of the Petitioners are running since the last about 9-10 years. No issue with respect to grid stability has ever been raised by the Respondent and conveyed to the Petitioners herein. Such a contention raised by the Respondent is nothing but an after-thought. The contents of the paragraph are therefore denied.

23. That the contents of para 23 are denied. It is submitted that the Petitioners have never contended that grid security should be assessed solely on the basis of individual project capacity. However, the Respondent has deliberately ignored the fact that this Hon'ble Commission has already evaluated the cumulative impact of similarly situated projects while passing the order dated 20.08.2025. The Respondent's submissions regarding systemic impact stand contradicted by the implementation of the aforesaid order itself. The Respondent cannot simultaneously contend that exemption to a category comprising more than 100 MW of projects does not threaten grid stability while asserting that extension of similar treatment to the Petitioners would undermine system security. The Petitioners further submit that the issue involved in the present Petition is not the legality of the DSM framework but the discriminatory application thereof. The Respondent has failed to provide any rational basis for such differential treatment. Even otherwise, the plants of the Petitioners are running since the last about 9-10 years. No issue with respect to grid stability has ever been raised by the Respondent and conveyed to the Petitioners herein. Such a contention raised by the Respondent is nothing but an after-thought. The contents of the paragraph are accordingly denied.

24. That the contents of para 24 are wrong and denied. The Petitioners' case is that application of the existing framework to small 1 MW solar projects results in a disproportionate compliance burden and exposure to penalties, particularly when similarly situated projects have already been granted relaxation by this Hon'ble Commission. The Petitioners further submit that the issue is not merely financial in nature. The Petition specifically highlights the practical impossibility of achieving accurate forecasting at the micro level for small rural solar plants, the absence of accountability for grid failures attributable to the Utilities, and the disproportionate burden imposed through LTOA, QCA and DSM compliance requirements. The Respondent has failed to rebut these submissions and has merely repeated generalized assertions regarding grid discipline. Accordingly, the contents of the paragraph are denied.

25. That the contents of para 25 are wrong and denied. The Petitioners have never contended that promotion of renewable energy automatically overrides all other statutory obligations. However, it is equally settled that the provisions of the Electricity Act, 2003 must be interpreted harmoniously so as to advance the objective of renewable energy promotion while maintaining system reliability. The Petitioners submit that Section 86(1)(e) casts a positive obligation upon this Hon'ble Commission to promote generation from renewable sources. The order dated 20.08.2025 itself demonstrates that this Hon'ble Commission has exercised its regulatory jurisdiction in a manner that balances renewable energy promotion with operational considerations. The

Respondent's attempt to portray the Petition as seeking blanket exemption is therefore denied. Detailed reply has already been given in the preliminary submissions/ objections, the contents of which are not being repeated here for the sake of brevity.

26. That the contents of para 26 are wrong and denied. It is denied that the reference made by the Petitioners to unsubscribed or unallocated capacity in bidding processes is extraneous. The Petitioners have referred to such circumstances only to demonstrate the practical consequences of imposing disproportionate regulatory burdens upon small-scale solar generators and the adverse impact such burdens have upon renewable energy development within the State. It is submitted that the objective of the Petition is not to seek exemption solely on the basis of commercial considerations. The Petitioners have specifically relied upon the principles of ease of doing business, parity, proportionality and consistency in regulatory treatment, all of which were recognized by this Hon'ble Commission in its order dated 20.08.2025. The remaining contents of the paragraph are denied.

27. That the contents of para 27 are denied to the extent they are contrary to the submissions made by the Petitioners. The Petitioners do not dispute that each State Commission exercises independent regulatory authority under the Electricity Act, 2003. However, the Petitioners have not relied upon the regulations of other States as binding precedents. The reference to other States has been made solely to demonstrate that the regulatory approach adopted by Haryana is significantly more onerous than the prevailing framework in several other jurisdictions. Significantly, this Hon'ble Commission itself took note of such practices while passing the order dated 20.08.2025. Having relied upon the regulatory practices prevailing in other States while granting relaxation to PM-KUSUM projects, the Respondent cannot now contend that such considerations are wholly irrelevant. The contents of the paragraph are therefore denied.

28. That the contents of para 28 are denied. The Petitioners do not dispute the validity or binding nature of the HERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019. The present Petition does not seek invalidation of the said Regulations. The Petitioners respectfully submit that the issue before this Hon'ble Commission is whether similarly situated generators can be treated differently in the application of the regulatory framework without any rational basis and whether applicability of such Regulations would financially burden the small Generators. The Petitioners seek extension of the same treatment already granted by this Hon'ble Commission in exercise of its regulatory powers. Accordingly, the Respondent's submissions regarding the validity of the Regulations are irrelevant to the controversy involved in the present proceedings and are denied.

29. That the contents of para 29 are wrong and denied. The Petitioners have not contended that relief should be granted solely because other States have adopted a higher threshold for DSM applicability. The Petitioners have relied upon such practices merely as one of several factors demonstrating the reasonableness of the relief sought. It is further

submitted that the Respondent has once again relied upon the infrastructure obligations contained in the PPA while completely ignoring the subsequent regulatory developments arising from the order dated 20.08.2025. The issue involved in the present Petition is not whether certain obligations exist under the contractual framework, but whether similarly situated generators can be subjected to differential treatment without any rational basis. The contents of the paragraph contrary to the aforesaid submissions are denied.

30. That the contents of para 30 are wrong, misconceived and denied. It is denied that the present Petition is barred by the doctrine of res judicata or that it constitutes an attempt to reopen an issue already adjudicated. The Petitioners reiterate that the present proceedings arise from a fresh cause of action flowing from the order dated 20.08.2025 passed by this Hon'ble Commission. The Respondent's reliance upon the principle that Article 14 does not contemplate negative equality is wholly misplaced. The Petitioners are not seeking extension of an illegal benefit or an erroneous order. The Petitioners seek implementation of a valid and subsisting order passed by this Hon'ble Commission in exercise of its statutory jurisdiction. Unless and until the said order is set aside or modified by a competent forum, it constitutes a binding regulatory determination. The Petitioners further submit that where similarly situated entities are treated differently without any intelligible differentia having a rational nexus with the object sought to be achieved, such differential treatment offends the principles of equality, fairness and non-arbitrariness. The Respondent has failed to identify any material distinction between the Petitioners and the beneficiaries of the order dated 20.08.2025. Accordingly, the present Petition is fully maintainable, raises a fresh and independent cause of action, and deserves to be allowed. The contents of the paragraph to the contrary are specifically denied.

Further, the contents of the "PARA-WISE REPLY" submitted by the Respondents are misconceived, wrong and denied. The contents of the petition as well as the present rejoinder are reiterated and reaffirmed.

P R A Y E R

In view of the foregoing, it is most respectfully submitted that this Hon'ble Commission may kindly be pleased to:

A. Allow the present Petition and extend to the Petitioners the same reliefs/relaxations as have been granted by this Hon'ble Commission vide Order dated 20.08.2025 passed in HERC/Petition No. 43 of 2025, including exemption/relaxation from the requirement of execution of Long Term Open Access (LTOA) Agreement and appointment of Qualified Coordinating Agency (QCA), and such other consequential reliefs as may be deemed just and proper in the facts and circumstances of the present case;

B. *In the alternative, and without prejudice to the aforesaid prayer*s, in the event this Hon'ble Commission is not inclined to grant the reliefs sought herein, be pleased to hold that the imposition of obligations relating to LTOA, appointment of QCA, forecasting,

scheduling, deviation settlement mechanism and associated communication/infrastructure requirements, introduced subsequent to execution of the Power Purchase Agreements entered into by the Petitioners, constitutes a Change in Law event affecting the economic and commercial basis of the Petitioners' projects, and consequently grant liberty to the Petitioners to raise appropriate Change in Law claims before the competent forum/authority in accordance with law, including claims for restitution, compensation, tariff adjustment and recovery of all additional capital and operational expenditure incurred or required to be incurred on account of such subsequent regulatory requirements;

AND/OR pass such other order as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

7. **Additional Submissions by Petitioner made on 16/06/2026:**

7.1 That the present submissions are being filed on behalf of the Petitioners in furtherance of the interim order dated 09.06.2026 passed by this Hon'ble Commission, the operative part of which is reproduced hereunder for ready reference:

"3. The counsel for the petitioners submitted the rejoinder and requested to place on record. He further submitted that some additional documents pertaining to R-2 & R-3 will be submitted within a week.

.....

5. Acceding to the requests of the parties, the Commission adjourns the matter and directs the petitioner to file additional documents with in a week and Respondents to file their averments within two weeks thereafter with advance copies to either parties. "

7.2 That it is humbly submitted that during the course of hearing held on 04.06.2026, the undersigned counsel had drawn the attention of this Hon'ble Commission to the order dated 20.08.2025 passed in HERC/Petition No. 43 of 2025 — M/S Sunphotonics Private Limited v. Haryana Vidvut Prasaran Niqam (hereinafter referred to as the "Sunphotonics Case")- upon which the Petitioners place reliance in the present proceedings.

7.3 That it is relevant to note that while HVPNL has filed its reply in the present case, in the Sunphotonics Case, a separate reply was filed by DHBVNL. The said reply of DHBVNL stands reproduced in the order dated 20.08.2025 in the Sunphotonics Case, which has already been appended by the Petitioners as Annexure P-1 to the main petition. For the sake of convenience and ready reference, the relevant extract of the said order, reflecting the stand taken by DHBVNL, is reproduced hereunder:

"4. Reply of DHBVN dated 16/07/2025:

... ...

4.9 In the present facts and circumstances, however, the power generated from the solar power plants of the Petitioners would be supplied directly to the Respondent No.2 under the PPA, and would thus be injected into the distribution system of the Respondent No.2. Since the

Petitioners would be connected to the distribution network of the Respondent No.2, the power flow would remain within the jurisdiction of the DISCOM i.e. the Respondent No.2. As such. open access aqreements would have no relevance/ significance since there is no wheeling of power to third- party consumers or use of the transmission network. "

7.4 That the aforesaid extracted reply of DHBVNL unambiguously demonstrates that DHBVNL itself had conceded that Long Term Open Access (LTOA) has no relevance or applicability in cases where the generator is directly connected to the network of the Distribution Licensee, with no involvement of the transmission network. The factual position in the present case is identical i.e. no transmission network is involved and it is therefore submitted that a similar position ought to be placed on record by DHBVNL in the present proceedings as well.

7.5 That is further submitted that the contractual relationship of the Petitioners is with Respondent No. 3- HPPC, Any adverse order in the present petition would directly impair the commercial and financial viability of the Petitioners' projects, In those circumstances, and without prejudice to the primary reliefs sought, it is humbly prayed that in the event this Hon'ble Commission is not inclined to grant the reliefs prayed for in the petition, thig Hon'ble Commission may be pleased to grant liberty to the Petitioners to raise appropriate Change in Law claims,

7.6 That in light of the above, the attention of this Hon'ble Commission is respectfully drawn to the admitted position of Respondent No. 2- DHBVNL, as evinced from its own reply in the Sunphotonics Case. Since the order dated 20/08/2025 in the Sunphotonics Case is already on record as Annexure P-1, the Petitioners do not seek to place any further document on record with respect to Respondent No, 2, as contemplated under the interim order dated 09,06.2026,

7.7 That the present submissions are made bonafide, in the interest of justice, and in furtherance of the true and correct facts of the case.

7.8 That the prayers made in the main petition, as well as in the reply and rejoinder filed by the Petitioners, are hereby reiterated and reaffirmed in their entirety.

Prayer

In light of the foregoing submissions, it is most respectfully prayed that this Hon'ble Commission may be pleased to:

A. Take on record the present submissions filed by the Petitioners in furtherance of the interim order dated 09.06.2026;
B. Pass such other order or orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case.

8. **Additional Submissions by DHBVN made on 01/07/2026:**

8.1 That the present submissions is being filed through Mukesh Kumar, Dakshin Haryana Bijli Vitran Nigam Limited ("DHBVNL"), who is duly authorized and is otherwise is well conversant with the facts of the case on the basis of knowledge derived from the record.

8.2 That at the outset, it is respectfully submitted that all the submissions, preliminary objections, legal contentions and averments contained in

the Reply filed by Respondent No. 1, Haryana Vidyut Prasaran Nigam Limited (HVPNL), through e-mail dated 28.04.2026 and the hard copy filed before this Hon'ble Commission on 29.04.2026, to the extent they are applicable to the facts and circumstances of the present case, may be read as an integral part of the present submissions and are hereby adopted and relied upon by the answering Respondent as if reproduced herein verbatim.

8.3 Without prejudice to the aforesaid, and in response to the Submissions in furtherance of the Interim Order dated 09.06.2026 filed by the Petitioners on 16.06.2026, the present additional written submissions are being placed on record by the answering Respondent for the kind consideration of this Hon'ble Commission.

8.4 At the outset, it is respectfully submitted that the Petitioners, in their submissions dated 16.06.2026, have primarily sought to rely upon the order dated 20.08.2025 passed by this Hon'ble Commission in Petition No. 43 of 2025 (*M/s Sunphotonics Private Limited & Anr. vs. Haryana Vidyut Prasaran Nigam Limited & Ors.*) and have attempted to contend that the relief granted therein ought to be extended to the Petitioners on the ground of parity. The said contentions have sought extension of the benefit of the said order to the present Petition on the ground of parity. However, the Petitioners' reliance upon the said order is misplaced for the reasons set out hereinbelow.

8.5 The answering Respondent respectfully submits that the observations and directions contained in the order dated 20.08.2025 have to be read in the context of the issues, pleadings, statutory provisions and reliefs considered by this Hon'ble Commission in those proceedings. The Petitioners cannot rely upon isolated observations or selective extracts divorced from the reasoning contained in the said order. The said order is required to be read in its entirety and not by placing reliance on isolated observations or individual submissions made by any party therein.

8.6 Without prejudice to the aforesaid, it is respectfully submitted that merely because the answering Respondent had expressed a particular view or made certain submissions before this Hon'ble Commission in another proceeding, the same does not dispense with the obligation of the Petitioners to independently establish their entitlement to the reliefs sought in the present Petition. The burden squarely lies upon the Petitioners to demonstrate, on the basis of the applicable provisions of the Electricity Act, 2003, the Regulations framed thereunder, the contractual framework governing the parties and the facts peculiar to the present case, that they are entitled to the reliefs prayed for. The present Petition, therefore, is required to be examined and decided on its own merits and cannot succeed merely on the basis of reliance placed upon observations or submissions made in another proceeding.

8.7 The Petitioners have failed to demonstrate how the findings recorded in Petition No. 43 of 2025, when read in their entirety, automatically entitle every similarly placed generator to the relief sought in the present proceedings. Mere reliance upon the earlier order cannot relieve the Petitioners of establishing their own entitlement in accordance with law.

In the absence of complete identity of facts, connectivity arrangements, operational framework and applicable contractual obligations, the Petitioners cannot claim parity as a matter of right.

8.8 That compliance with the statutory and regulatory framework governing renewable energy generators, including the provisions relating to Long-Term Open Access, appointment of Qualified Coordinating Agency (QCA), forecasting, scheduling and the Deviation Settlement Mechanism (DSM), is regulated by the Electricity Act, 2003, the applicable Regulations framed by this Hon'ble Commission and the operational framework governing the concerned generating station. It is respectfully submitted that the answering Respondent neither frames the Regulations nor possesses any independent statutory authority to relax or dispense with the requirements prescribed under the applicable Regulations. Any such relaxation, modification or exemption can only be granted by this Hon'ble Commission in exercise of its statutory powers and after considering the facts of the individual case.

8.9 The Respondent further submits that forecasting, scheduling and the Deviation Settlement Mechanism constitute integral components of the regulatory framework intended to ensure secure, reliable and efficient operation of the electricity grid. Any relaxation or exemption from such requirements has implications for scheduling discipline, energy accounting, commercial settlements, forecasting accuracy and grid management and, therefore, can only be considered by this Hon'ble Commission in accordance with the applicable statutory and regulatory framework.

8.10 The contention advanced by the Petitioners that the electricity generated by them remains confined to the distribution system and does not utilise the transmission network is a mixed question of fact and technical assessment. Such determination depends upon the approved connectivity arrangement, actual network configuration, applicable Regulations, power flow studies and operational characteristics of the interconnected grid. Accordingly, no general declaration, as sought by the Petitioners, can be granted merely on the basis of their assertions.

8.11 Insofar as the alternative prayer relating to Change in Law is concerned, the answering Respondent respectfully submits that the same pertains to the contractual rights and obligations of the concerned parties and is required to be examined strictly in accordance with the applicable agreements and the governing regulatory framework. The said issue is presently premature and deserves no consideration in the present proceedings.

8.12 In view of the foregoing submissions, and for the reasons already recorded in the Reply filed by Respondent No. 1 as adopted herein, as well as the comments earlier filed by the answering Respondent, the present Petition, as well as the additional submissions filed by the Petitioners on 16.06.2026, are devoid of merit and deserve to be rejected. The answering Respondent respectfully prays that no blanket exemption from the applicable statutory and regulatory framework be granted and that the Petition be dismissed with costs.

PRAYER

In view of the foregoing submissions, it is most respectfully prayed that this Hon'ble Commission may be pleased to dismiss the present Petition being devoid of merit and pass such other or further order(s) as it may deem fit and proper in the facts and circumstances of the present case.

9. The case was heard on 13/08/2026, Sh. Irshan Kakkar advanced his arguments in the case and submitted that the petitioners are placed in the same situation wherein exemption has been allowed to Solar plants under PM-KUSUM scheme and further requested the same exemption may be extended to them for plants upto 1MW capacity. Ms. Aerika Singh, Counsel for the Respondents submitted that the petitioners are not falling under PM-KUSUM scheme further the similar petition of the same petitioners already stands rejected. After hearing arguments of both the parties, the Commission directs to submit their written submissions by 27/08/2026 and reserves the order.

10. **Written Submissions of Respondent received on 14/09/2026:**

10.1 That the present written arguments are being filed in addition to and to supplement the 'Note of Arguments' that had been filed by the Respondents herein during the hearing dated 13,08.2026, The contents of the same may also be read as part and parcel of the present written arguments, which are not being repeated here for the sake of brevity.

10.2 That the Petitioners are 1 MW solar generators have approached the Hon'ble Commission seeking exemption/relaxation from the mandatory requirements of Long-Term Open Access (LTOA) and appointment of a Qualified Coordinating Agency (QCA) under the DSM/Forecasting-Scheduling Regulations, 2019, relying solely on the order dated 20.08.2025 in HERC/Petition No. 43 of 2025 titled M/S Sunphotonics Private Limited & Anr. Vs. HVPNL & Ors., which granted schemespecific relaxation to PM-KUSUM generators.

THE PRINCIPLE OF RES-JUDICATA IS SQUARELY APPLICABLE TO THE FACTS AND CIRCUMSTANCES OF THE PRESENT CASE:

10.3 That at the outset, it is the case of the Respondents that the identical relief exemption from DSM Regulations, 2019, LTOA and QCA compliance - was sought by the same Petitioners in HERC/PRO-21 of 2023 and was rejected on merits vide order dated 17.10.2023. No appeal/review of the order was filed by the Petitioners and the order has attained finality. The relevant part of the order dated 17.10.2023 is reproduced below:

"6.4. The petitioners submitted that there are frequent grid outaqes and due to a licabilit of the DSM re ulations there will be unjust levy of DSM charqes for grid outages. The said contention is incorrect in view of the [a] explicit provision under Sr. no. 12 (xvii) of the DSM Procedure which provides that "In case of any grid disturbance, the schedule generation of all the generating station and schedule drawl of the discom shall be

deemed to have been revised to be equal to their actual generation/ draw/ for all the time blocks affected by the grid disturbance and its duration shall be done by SLDC. " Thus, the grid outages shall not lead to any excessive DSM charges on the petitioners.

6.5. The petitioners further alleged that they are connected to the distribution network of the State and, therefore, they shall not be asked to apply for Open Access Connectivity to HVPNL.

The counsel for the respondent, on this aspect, referred to the terms and conditions of the PPA which mandates the qenerator to comply with all the statutory laws as well as the direction of the SLDC. clause 8.10 of the PPA was referred to.

The Reliance by the petitioners on 'Procedure for Intra-State Short term Open Access of Transmission and/or Distribution System of the HVPNUUHBVN and DHBVNL' to contend that the existing generating company shall be allowed to continue as per the existing arrangement is incorrect as the said procedure is applicable to short term open access consumers only.

The Commission observes that the alleqed financial burden is uncalled for in view of the bindinq conditions of the PPA as well as the

Requlations. In a recentjudgement dated 06.04.2023 rendered by the Hon 'ble Supreme Court in Haryana Power Purchase Centre vs. Sasan Power Ltd. & Ors. (Civil Appeal No. 11826 of 2019), it was held that " in a case where the matter is qoverned by express terms of the contract, it mav not be open to the Commission even donninq the garb of a regulatory body to qo beyond the express terms of the contract."

The Supreme Court by its judgment delivered on 13.042023 in Civil Appeal No. 3480-3481 of 2020 (Gujarat Urja Vikas Nigam Limited and Ors. v. Renew Energy Private Limited and Ors. has settled that a Power Purchase Agreement is sacrosanct and binding on the parties. In the case of GUVNL v Solar Semiconductor, (2017) 16 SCC 498 the Supreme Court reiterated that the terms of the PPA are binding and cannot be reopened

6.8. The petitioners further alleqed that they will have to make expenditure for installation of infrastructure for transfer of real time data to SLDC. In this reqard. the Commission observes that clause 6.2 of the PPA obliqates petitioners to install at their own cost infrastructure for proper and reliable communication between the qeneration facility and Grid substation of Niqam/Discom/STU. Further, the installation of adequate infrastructure to ensure supply of schedule and actual generation data thereof for preparation of deviation charges is the obligation of the qenerators as per the DSM Procedure.

6.9. In view of the above, it is observed that no justified reasons have been submitted by the petitioner to relax the provisions, .to give the benefit to them and for considering exemption from the applicability of the DSM Regulations,2019.

The petition is therefore, dismissed "

10.4 That the bar of Section 11 CPC (Explanations Ill & IV) squarely applies. Reliance is placed on Reliance Infrastructure Ltd. vs. MERC (APTEL, Appeal No. 267 of 2013) and on C.R. Neelakandan vs. Union of India (2014 SCC OnLine SC 432) and Darvao vs. State of U.P. , which hold

that res judicata bars re-agitation of an identical cause of action between the same parties, and is founded on public policy against repeated litigation.

NO INDEPENDENT CAUSE OF ACTION I.E. THE CLAIM OF PARITY ALONE IS INSUFFICIENT

10.5 The present Petition discloses no fresh statutory violation or subsequent adverse order. It is founded purely on a claim of parity with the Sunphotonics order, which is itself distinguishable as a scheme-specific relaxation confined to PM-KUSUM developers on distinct policy considerations. A scheme-specific relaxation cannot be extended by analogy to non-PM-KUSUM generators. Mere rephrasing/relabelling of reliefs already rejected in PRO-21 of 2023 does not create a fresh cause of action (constructive res judicata). It is further submitted that the Sunphotonics order was passed in the context of PM-KUSUM generators being a distinct statutory and policy category created uhder a specific Central Government scheme with its own objectives, incentive structures, and implementation timelines, entirely different from those governing the Petitioners' category of generators. Parity or equal treatment applies only as between equals; treating unequals as equals would itself be a violation of the principle of equality, not a vindication of it. The Petitioners and PMKUSUM generators are not similarly circumstanced, and a scheme-specific dispensation crafted for one category cannot be mechanically extended to another category merely because both happen to be solar generators of comparable capacity.

THE BINDING CHARACTER OF THE PPA EXECUTED BETWEEN THE PARTIES ALREADY STANDS CONSIDERED AND DECIDED BY THIS HON'BLE COMMISSION

10.6 That it is submitted that this Hon'ble Commission's finding recorded at paras 6.7 to 6.9 of the order dated 17.10.2023, reproduced in full above, is not a passing observation but a considered determination arrived at after examining the very same PPA, the very same Clause 6.2, and the very same DSM Procedure that the Petitioners once again seek to avoid in the present proceedings. This Hon'ble Commission has, in terms, already held that the PPA is sacrosanct and binding, that the obliqation to install ABT-compliant infrastructure is squarely that of the generator, and that no financial hardship can override this bindinq contractual obliqation. The Petitioners, by filinq the present Petition, are not raisinq anv new question of law or fact; they are, in substance, asking this Hon'ble Commission to disagree with its own considered and unchallenged finding on an identical question, between the identical parties, arising from the identical contractual obligations. A contract does not become less binding merely because compliance with it has, in hindsight, become inconvenient to one party, and the Hon'ble Commission cannot go beyond the express and binding terms of the PPA, a position that itself already stands settled by the Hon'ble Supreme Court's judgments extracted at para 6.7 above.

FINANCIAL/INFRASTRUCTURAL HARDSHIP CANNOT OVERRIDE BINDING CONTRACTUAL OBLIGATIONS

10.7 The claim of hardship in installing ABT-compliant metering, communication and allied infrastructure stands squarely covered by Clause 6.2 and Clause 10.3 of the PPA and Clause 10 of the DSM Procedure, which cast this obligation on the generator at its own cost. This very plea was raised and rejected in para 6.7-6.8 of the order dated 17.10.2023, extracted above, and cannot be permitted to be reagitated by re-labelling the identical grievance as a claim founded on parity,

GRID DISCIPLINE AND REGULATORY FRAMEWORK CANNOT BE DILUTED ON MERE ASKING OF A PARTY

10.8 The Regulations are subordinate legislation with binding statutory force under Sections 32, 33, 73 and 86(1)(h) of the Electricity Act, 2003, framed to secure grid discipline, frequency control and real-time generation-drawal balance. The power to relax is conditional and cannot be used to create class-based exemptions through adjudicatory proceedings, nor to effect what is, in substance, an amendment of Regulations (a legislative function). It is submitted that the power conferred upon this Hon'ble Commission to relax the provisions of the Regulations in individual cases is, by its very nature, a narrow, fact-specific power to mitigate genuine and demonstrated hardship- it is not a general power to create a parallel class of exempted generatorS through successive adjudicatory orders. To grant blanket relaxation to all 1 MW solar generators similarly placed as the Petitioners, merely on the strength of the Sunphotonics order, would in substance amount to amending the Regulations themselves without following the due process of public consultation and notification mandated for framing or amending subordinate legislation- a legislative function that cannot be performed through adjudicatory orders passed in individual petitions.

10.9 That approximately 100 MW of cumulative PPAs stand executed under PM-KUSUM alone; extending exemption to non-PM-KUSUM 1 MW generators such as the Petitioners would have a cascading effect inviting similar claims from numerous similarly placed generators and materially impairing scheduling/deviation discipline and arid security.

10.10 That it is further submitted that insofar as the Petitioners seek to place reliance on submissions made on behalf of DHBVNL in the Sunphotonics matter, the same cannot be taken into account or read in aid of the Petitioners' case herein. The facts and circumstances of the present Petition are entirely separate and distinct from those in Sunphotonics. A statement or concession made by a party in the peculiar factual matrix of one proceeding cannot be lifted out of context and transposed onto an altogether different case merely because both cases pertain generally to solar generation.

NON-COMPLIANCE AND CONDUCT OF THE PETITIONERS

10.11 That despite repeated notices dated 22.04.2022 and 01 ,06.2022 (and Memo No. Ch-99/lSB-77 dated 22.042022) calling upon the Petitioners to obtain connectivity/open access approvals and QCA registration, the Petitioners have persisted in non-compliance for several years, without any explanation for such delay. A party in continuinq breach of statutory obliqations cannot invoke equitable jurisdiction, and the discretionary and equitable relief souqht by way of

exemption/relaxation is not available to a party that approaches the adjudicatinq forum after prolonqed, unexplained default; to hold otherwise would be to reward, rather than remedy, requlatory default.

ONCE DECIDED THE ISSUE CANNOT BE RE-AGITATED BEFORE THE SAME FORUM AND THE PETITIONERS CANNOT BE PERMITTED TO APPROBATE AND REPROBATE

10.12 That it is a settled and elementary principle that once a competent forum has pronounced upon a lis between the same parties and on the same subject matter, that decision binds the parties unless set aside in appeal, review, or writ jurisdiction. The Petitioners cannot, merely by re-drafting their prayer or by invoking a claim of parity, seek a second bite at an issue that has already been conclusively decided against them vide the order dated 17.10.2023. The Petitioners, having submitted themselves to the jurisdiction of this Hon'ble Commission in PRO-21 of 2023, having contested that petition on merits, and having accepted the resultant order without any challenge, cannot now be permitted to approbate and reprobate by filing a fresh petition seeking the very same relief on the strength of a subsequently passed, factually distinguishable order. To permit such re-agitation would mean that no order of this Hon'ble Commission could ever attain finality, and every unsuccessful party would be at liberty to file successive petitions until a favourable outcome is secured.

ALTERNATE REMEDY/ THE CLAIM OF PARITY LIES BEFORE THE HON'BLE HIGH COURT, NOT BEFORE THIS HON tBLE COMMISSION

10.13 That without prejudice to the above, it is submitted that if aggrieved by the orders in PRO-21 of 2023 or Sunphotonics (PRO-43 of 2025), the Petitioners' remedy lay in review before the Hon'ble Commission, appeal to APTEL, or writ under Article 226 not a fresh petition before the same forum seeking identical relief. It is submitted, without prejudice to and elaborating upon the foregoing, that even assuming for the sake of argument (without admitting) that the Petitioners are similarly circumstanced to the petitioners in Sunphotonics, the existence of two orders of this very Hon'ble Commission- one dated 17.10.2023 dismissing the claim for exemption, and another dated 20.08.2025 allowing scheme-specific relaxation to PM-KUSUM generators, cannot be reconciled or arbitraged by the Petitioners through a fresh original petition before the same Commission. Where a litigant's grievance is that it has been treated unequally vis-a-vis another similarly placed party by the same authority, the appropriate and well-recognised remedy is to approach the Hon'ble High Court in its writ jurisdiction under Article 14 read with Article 226 of the Constitution of India, seeking a mandamus directing extension of similar treatment, or to assail the order dated 17.10.2023. It-is not open to the Petitioners to ask the Hon'ble Commission to sit in judgment over the correctness or consistency of its own prior orders in a freshly instituted petition. To permit the Petitioners to bypass this route and instead reagitate the identical relief before this Hon'ble Commission itself would render the doctrine of finality wholly nugatory and would open the floodgates to every unsuccessful litigant approaching this Hon'ble Commission

afresh each time a differently-worded order is passed in some other, distinguishable matter.

PRAYER

In view of the facts and circumstances mentioned hereinabove, It is most respectfully prayed that the present Petition, being barred by res judicata, disclosing no independent cause of action, and being contrary to binding contractual obligations and grid discipline, may kindly be dismissed being non-maintainable and also devoid of merits, in the interest of justice.

11. **Written Submissions of Petitioner received on 14/09/2026:**

I.FACTUAL CONCEPTUS OF THE MATTER:

11.1 The Petitioners are small-scale, 1 MW solar power generators operating within the State of Haryana, supplying electricity to Respondent No. 3 - Haryana Power Purchase Centre ("HPPC") under Power Purchase Agreements ("PPAs") executed between 2015-2017. The Petitioners' plants are directly connected to the distribution network of Respondent No. 2 - DHBVNL, without involvement of the State transmission system.

11.2 Respondent No. 1 - HVPNL, by notices dated 22.04.2022, 01.06.2022 and 12.01.2023, called upon the Petitioners to obtain Long Term Open Access ("LTOA") and appoint a Qualified Coordinating Agency ("QCA") under the HERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019 ("DSM Regulations, 2019"). An earlier petition (PRO No. 21 of 2023) seeking exemption from these very requirements was dismissed on 17.10.2023.

11.3 Thereafter, the Hon'ble Commission, vide order dated 20.08.2025 in HERC/Petition No. 43 of 2025- M/s Sunphotonics Pvt. Ltd. & Anr. v. HVPNL & Ors. (“Sunphotonics Case”), invoked its power to relax under Regulation 20 of the DSM Regulations, 2019 and exempted PM-KUSUM Component-A generators - small, decentralised, 0.5 to 2 MW solar plants connected directly to the DISCOM network at 11 kV and selling at a fixed tariff - from the requirements of LTOA and scheduling/QCA. This constituted a fresh cause of action, giving rise to the present petition seeking parity.

11.4 HVPNL alone has filed a reply, principally raising the preliminary objection of res judicata (on the basis of the dismissal of PRO-21 of 2023) and contending that the relaxation in Sunphotonics was scheme-specific. Neither DHBVNL nor HPPC - the entities with which the Petitioners are directly interconnected/contractually bound - have filed any reply. The Petitioners' Rejoinder and Submissions dated 16.06.2026 (filed pursuant to the interim order dated 09.06.2026) are already on record.

II.ISSUES FOR CONSIDERATION

11.5 Whether the Petitioners are entitled to relaxation from the requirement of LTOA and appointment of a QCA under Regulation 20 of the DSM Regulations, 2019, on parity with the relaxation granted to PM-KUSUM Component-A generators in the Sunphotonics order dated 20.08.2025.

III. SUBMISSIONS

A. The objection of res judicata is misconceived and deserves rejection

11.6 Res judicata under Section 11 CPC applies, in its strict sense, only to civil courts. The Hon'ble Commission's proceedings under the Electricity Act, 2003 are quasi-judicial and quasi-legislative; Section 94(1) of the Act makes the CPC applicable only to seven enumerated matters, deliberately excluding a general application. Importing a strict res judicata bar would paralyse the regulatory process - no true-up, tariff re-determination or subsequent relaxation would ever be permissible. Reliance is placed on *Grindlays Bank Ltd. v. Central Government Industrial Tribunal*, AIR 1981 SC 606.

11.7 In any case the Regulatory powers of the Hon'ble Commission have been imposed in place of Adjudicatory Powers. Reliance in this regard is placed on the decision in Hon'ble Supreme Court, in *PTC India Ltd. v. Central Electricity Regulatory Commission*, [(2010) 4 SCC 603].

11.8 Even assuming applicability, res judicata operates only in respect of grounds that were, or ought to have been, raised earlier. The Sunphotonics order did not exist when PRO-21 of 2023 was decided (17.10.2023); the parity and equal-treatment ground flowing from it could not have been raised then. This is settled law: Narinder Kumar Sood v. Rakesh Kumar Verma, 2007(1) RCR (Civil) 153; Ram Gopal v. Babu Singh, 2009(2) RCR (Rent) 671; and Hope Plantations Ltd. v. Taluk Land Board, (1999) 5 SCC 590, all hold that res judicata does not bar a claim founded on a fresh cause of action or a subsequent change in the law/its interpretation by a competent forum.

The preliminary objection is accordingly liable to be rejected in limine.

B. Parity with the Sunphotonics relaxation is squarely made out

11.9 In Sunphotonics, the Commission relaxed the LTOA and QCA/scheduling requirements for PM-KUSUM Component-A generators (0.5-2 MW), reasoning (paras 8.4-8.12 of the order) that such plants are decentralised, located near 33/11 kV substations, evacuate power directly into the DISCOM's distribution network without involving the STU, and sell at a pre-fixed tariff - so that LTOA and independent scheduling serve no purpose and only burden small developers, defeating the underlying policy objective.

11.10 Every one of these features is present here: the Petitioners are 1 MW plants, decentralised, interconnected directly with DHBVNL's distribution network, and sell power to HPPC at a fixed tariff under PPAs pre-dating the DSM framework. That the NIT under which the Petitioners were selected preceded the formal notification of the PM-KUSUM scheme is a distinction without a difference - the object of both was identical, namely augmentation of small-scale renewable capacity. Further, at para no. 8.8 (Annexure P-1 at page 86), the Hon'ble Commission has stated- *"8.8... ... ... that the power generated from the solar power plants of the Petitioner (s), covered under PM-KUSUM scheme, is directly injected into the distribution system of the Respondent No. 2 and the power flow remains within the jurisdiction of the DICOM i.e. the Respondent No. 2"*

11.11 It is submitted that the DRAFT PPAs WITH THE TENDER INVITING APPLICATIONS FOR SETTING UP POWER PLANTS UNDER PM-KUSUM, ITSELF ALSO PROVIDES FOR APPLICABILITY OF DSM

REGULATIONS ON SUCH PLANTS; however such requirement has specifically been relaxed by the Hon'ble Commission. Attention in this regard is brought towards the Tender No. 02/SE/C/PMKUSUM Component-A- *"To invite walk in applications on 'First Come First Serve Basis' for Installation of decentralized ground/ stilt mounted grid connected solar power plants of capacity of 500 KW to 2 MW on barren/fallow/ uncultivativable / pasture/marshy land/agricultural land falling a radius of 5 Kms from Sub Stations notified by DHBVNL under Component A of PM Kusum..."*. The NIT is readily available online at https://www.dhbvn.org.in/staticContent/tender/other/others.htm. The terms and conditions enumerated in PM-KUSUM bid document are reproduced below:

"Article 4

g)The RPG shall be responsible to for directly coordinating and dealing with the DISCOM, and other authorities in all respects regarding declaration of availability, scheduling, and dispatch of Power and due compliance with deviation and settlement mechanism and the applicable Grid code/State Regulations.

… … …

ARTICLE 6: DISPATCH AND SCHEDULING

6.1Dispatch and Scheduling

6.1.1 The RPG shall be required to schedule its power as per the applicable regulations of SERC /SLDC or any other competent agency and same being recognized by the SLDC or any other competent authority / agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC from time to time. Any deviation from the Schedule will attract the provisions of applicable regulation / guidelines / directions and any financial implication on account of this shall be on the account of the RPG.

6.1.2 The RPG shall be responsible for directly coordinating and dealing with the DISCOM, State Load Dispatch Centers, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations.

6.1.3 The RPG shall be responsible for any deviation from scheduling and for any resultant liabilities on account of charges for deviation as per applicable regulations. UI charges on this account shall be directly paid by the RPG.

6.1.4 Auxiliary power consumption will be treated as per the concerned state regulations."

In other words, the specific requirement of DSM and scheduling under the PM-KUSUM PPA's was relaxed by the Hon'ble Commission.

11.12 Significantly, DHBVN's own reply in the Sunphotonics proceedings (reproduced at para 4.9 of the 20.08.2025 order) admitted that where power is injected directly into the DISCOM's distribution system with no wheeling through the transmission network, open access agreements have "no relevance/significance". The Petitioners' factual position is identical, yet neither DHBVNL nor HPPC has controverted

this in the present proceedings. Reliance is placed on *Adani Power (Mundra) Ltd. v. CERC*, Appeal No. 421 of 2019 (APTEL, 12.08.2021) and *Prem Chand Somchand Shah v. Union of India*, (1991) 2 SCC 48, for the proposition that a public utility cannot adopt different yardsticks for similarly placed parties, and that Article 14 protects persons similarly circumstanced against differential treatment absent an intelligible differentia.

11.13 HVPNL's contention that the Sunphotonics relaxation was confined to the PM-KUSUM scheme reads the order selectively. The Hon'ble Commission's reasoning proceeded on a number of functional and locational parity eg. ease of doing business, absence of transmission-network involvement, and a fixed tariff - not merely on the label "PM-KUSUM". Those very facts govern the Petitioners' case. At para no. 8.7 of the order dated 20.05.2025 (Annexure P-1 at page 86), the Hon'ble Commission has held- "*8.7 The petitioner (s) herein have sought relief from applicability of two specific regulatory requirements i.e. signing of LTOA agreement and appointment of QCA on the grounds of ease of doing business for the power developer covered under a National Scheme and to avoid heavy penalties for deviations would could lead to net losses for farmers, thus defeating the basic objective of the scheme. The Commission has also considered the arguments of the petitioner (s) that in most of the other States in India, the DSM Regulations including the provisions of scheduling, are applicable on solar and wind developers with a capacity of 5 MW and above."*

C. The argument on grid stability is unsustainable and the asymmetry in accountability remains unanswered

11.15 HVPNL's plea that exemption would compromise grid discipline was raised, and expressly rejected, in Sunphotonics itself, where relaxation was granted to PM-KUSUM generators of an aggregate capacity exceeding 100 MW (per HVPNL's own Annexure R-1/3) without any consequential instability. The Petitioners' aggregate capacity of 3 MW cannot plausibly pose a materially different risk.

11.16 Further, HVPNL's own ARR order dated 17.03.2026 (Annexure P-7), in the section on Annual Transmission Tariff and SLDC Charges identifying beneficiaries of the transmission system, does not list the Petitioners as beneficiaries. HVPNL cannot simultaneously treat the Petitioners as outside the transmission-beneficiary class for revenue purposes, and as within the STU/SLDC scheduling framework for compliance purposes.

11.17 Critically, HVPNL has not answered the Petitioners' core grievance: grid-tripping data for January-October 2025 (Annexure P-6) shows generation loss directly attributable to the Respondents' own network, for which no penalty or accountability mechanism exists, while the Petitioners face DSM deviation penalties for the resultant shortfall. A regulatory framework that penalises deviation without regard to its cause, while leaving the Utilities wholly unaccountable for grid failures within their control, is arbitrary and falls foul of the principle of legitimate expectation and equal treatment.

D. Independent grounds warranting relaxation under Regulation 20

11.18 Precedent in other States: The Punjab, Uttar Pradesh, Rajasthan, and Madhya Pradesh DSM/forecasting regulations all apply only to solar/wind generators of 5 MW and above (individually or in aggregate through pooling). Haryana's threshold of 1 MW is a stark outlier, and this comparative regulatory practice independently supports relaxation.

11.19 Promotion of renewable energy: Section 86(1)(e) of the Act obliges the Commission to promote generation from renewable sources. The Commission has repeatedly recognised this objective in its own orders (HERC/PRO-13 of 2019 - Piccadily Agro Industries; HERC/Petition No. 23 of 2022 - HPPC RPO shortfall order). Subjecting 1 MW plants to a compliance regime designed for large generators runs contrary to this statutory mandate, particularly where RPO targets remain substantially unmet.

11.20 For all other plants (except Solar and Wind) the threshold for applicability of DSM already increased to 10 MW and above: Attention of the Hon'ble Commission is brought towards Haryana Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2025. Though the same is not applicable to solar and wind generators, however, the Hon'ble Commission after due consideration and in its wisdom has notified Regulation 4(A) which provides- *"Deviation Settlement Mechanism under these Regulations shall be applicable for all General Seller(s) (GS), including Open Access Generators, Captive Generators, re-generators with capacity 10 MW and above (excluding In-Situ Captive Generators) connected to Intra-State Transmission system or Distribution Network but excluding Wind and Solar Generating Station(s)."* Meaning thereby, for all other plants (except solar and wind), the Hon'ble Commission had already proceeded to amend and re-notify the Regulations by making DSM applicable only to plants of capacity of 10 MW and above. Such similar amendments for Solar Power Plants, such as that of the Petitioner's also required.

11.21 Practical impossibility of accurate forecasting: Day-ahead/intraday forecasting of solar generation at the micro-level for small rural plants is not achievable with existing tools, as the illustrative data on record shows - a swing of over 32% in daily generation (Petitioner No. 1, 05-06.04.2026) attributable purely to unpredictable weather, well beyond the 10% tolerance under the DSM framework. The study "Challenges with Forecasting in Solar" by the National Solar Federation of India (expert in the domain) (Annexure P-5) corroborates this. Penalising deviations arising from a limitation of technology, rather than any fault of the generator, is manifestly disproportionate.

11.22 Absence of tariff adjustment/change in law: The Petitioners' PPAs, executed in 2015-2017, contain no provision for LTOA, QCA or DSM compliance costs, which were introduced subsequently without any corresponding tariff revision. Imposing these unbudgeted obligations without adjustment is inequitable and, in any event, without prejudice to the primary relief, entitles the Petitioners to raise an appropriate Change in Law claim.

IV. PRAYER

In view of the foregoing submissions, it is most respectfully prayed that this Hon'ble Commission may be pleased to:

A. Allow the present petition and grant relaxation from the requirement of Long Term Open Access and the appointment of a Qualified Coordinating Agency in respect of the Petitioners' 1 MW solar plants, on parity with the relaxation granted in HERC/Petition No. 43 of 2025 (Sunphotonics); and
B. In the alternative, and without prejudice to the foregoing, grant liberty to the Petitioners to raise appropriate Change in Law claims; and/ or
C. Pass such other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

Commission's Order:

1. The Commission examined the petition in detail along with the replies on record, rejoinders, additional submissions filed by the parties and heard the arguments of the Petitioner and Respondents alongwith written submissions made in the above matter.
2. The Petitioners operate a 1 MW solar power plant each in Haryana and supply electricity to R-3, HPPC, under Power Purchase Agreements (PPAs) executed on 19/06/2015, 16/06/2015, and 15/06/2015, connected directly at 11 kV to the distribution network of R-2, DHBVNL.
3. Following compliance notices dated 22/04/2022, 01/06/2022, and 12/01/2023 issued by R-1, HVPNL, demanding registration as a Qualified Coordinating Agency (QCA) and execution of Long-Term Open Access (LTOA) under the HERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019 (DSM Regulations, 2019), the Petitioners instituted the present petition seeking exemption from LTOA and QCA/scheduling requirements. In support of their claim, the Petitioners rely primarily on the Commission's subsequent order dated 20/08/2025 in HERC/Petition No. 43 of 2025 (M/s Sunphotonics Pvt. Ltd. v. HVPNL & Ors.), wherein scheme-specific relaxation was granted to PM-KUSUM Component-A solar generators. Reply submitted by HVPNL was adopted by HPPC and DHBVNL.
4. The Core issue crops, whether the present petition is barred by the doctrine of res judicata under Section 11 of the Code of Civil Procedure, 1908 (including Explanations III and IV) and the principle of finality of adjudication in view of the prior order dated 17/10/2023 in HERC/PRO-21 of 2023 between the identical parties. The Respondents contended that the Petitioners previously filed HERC/PRO-21 of 2023 seeking identical reliefs—exemption from DSM Regulations, 2019, LTOA, QCA compliance, and

withdrawal of compliance notices—which was dismissed on merits by this Commission vide final order dated 17/10/2023. Because the Petitioners did not challenge the order dated 17/10/2023 before the Appellate Tribunal for Electricity or through review, the findings attained finality and operate as res judicata under Section 11 CPC read with Explanations III and IV. Conversely, the Petitioners argued that strict res judicata does not apply to quasi-judicial regulatory proceedings under the Electricity Act, 2003 and that the Sunphotonics order dated 20/08/2025 constitutes a supervening regulatory event and fresh cause of action under the principles laid down. Res judicata does not bar proceedings where a supervening regulatory order fundamentally alters the legal framework or gives rise to a fresh cause of action grounded in equal treatment and non-discrimination. The order dated 20/08/2025 in the Sunphotonics case was not in existence when PRO-21 of 2023 was decided on 17/10/2023. Applying the principles laid down by the Hon'ble High Court and Apex Court in Narinder Kumar Sood v. Rakesh Kumar Verma [2007 (1) RCR (Civil) 153], Ram Gopal v. Babu Singh [2009 (2) RCR (Rent) 671], Hope Plantations Ltd. v. Taluk Land Board [(1999) 5 SCC 590], and R. Sulochana v. V. Sundar, the emergence of a fresh regulatory interpretation and supervening decision by the same Commission creates an independent cause of action; therefore, the preliminary objection of res judicata is legally untenable.

5. The petitioners demonstrated complete functional, technical, and operational identity with the projects exempted under the order dated 20/08/2025. In the Sunphotonics order, The reasoning rested on the facts that such small plants are decentralized, located near 33/11 kV substations, evacuate power directly at the 11 kV level into DISCOM distribution networks without utilizing the State Transmission Utility (STU) network, operate on pre-fixed tariffs without scope for revision, and face heavy deviation penalties that could lead to net financial losses. The petitioners operate 1 MW solar plants under Power Purchase Agreements (PPAs) executed in June 2015, commissioned in October 2016, connected directly to DHBVNL's 11 kV distribution grid at 33 kV Khatoti and Tohana substations, and sell power to Haryana Power Purchase Centre (HPPC) at fixed tariffs. The respondents' counter-argument that the Sunphotonics order was scheme-specific to PM-KUSUM Component-A projects and cannot be extended to private limited entities fails, as the petitioners' selection under an earlier Notice Inviting Tender (NIT) shared the exact same objective of augmenting decentralized renewable generation. Further, the argument

distinguishing private limited companies from individual farmers was found unsustainable as under Article 14 of the Constitution of India, public utilities are legally prohibited from adopting differential yardsticks for similarly circumstanced entities, as settled in Prem Chand Somchand Shah v. Union of India [(1991) 2 SCC 48] and Adani Power (Mundra) Limited v. Central Electricity Regulatory Commission (APTEL Appeal No. 421 of 2019).

6. Regarding contractual obligations under the PPAs, financial hardship, and the alternative plea for Change in Law, the respondents cite Clause 6.2.1 and Clause 10.3 of the PPAs along with Clause 10 of the DSM Procedure to argue that generators must install ABT-compliant infrastructure at their own cost. They assert that PPAs are sacrosanct and binding, citing Haryana Power Purchase Centre v. Sasan Power Ltd. [(2023) Civil Appeal No. 11826 of 2019], Gujarat Urja Vikas Nigam Ltd. v. Renew Energy Pvt. Ltd. [(2023) Civil Appeal Nos. 3480-3481 of 2020], and GUVNL v. Solar Semiconductor [(2017) 16 SCC 498]. While contractual sanctity is undisputed, the petitioners' PPAs executed in 2015–2017 contained no clause requiring LTOA execution or QCA engagement. Imposing unbudgeted operational compliance and communication costs without tariff adjustment creates severe financial hardship.
7. The Commission finds that the petitioners have successfully made out a complete case for grant of relief on parity with the Sunphotonics order dated 20.08.2025. The 1 MW solar plants of the petitioners are functionally and operationally identical to PM-KUSUM Component-A projects, evacuating power directly into DHBVNL's distribution network at 11 kV without utilizing the STU transmission grid. Subjecting these small rural generators to LTOA execution, QCA appointment, and rigid DSM penalties defeats the statutory mandate of Section 86(1)(e) of the Electricity Act, 2003 and offends Article 14 of the Constitution. Therefore, in exercise of the power to relax under Regulation 20 of the HERC DSM Regulations, 2019 and Regulations 55, 58, and 59 of the HERC Open Access Regulations, 2012, the present petition is allowed, with following directions:
   7.1 The requirement of executing Long-Term Open Access (LTOA) Agreements under the HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 is hereby relaxed in respect of the petitioners' 1 MW solar power plants.
   7.2 The requirement of forecasting, scheduling, and power settlement either self or through a Qualified Coordinating Agency (QCA) under the HERC

(Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2019 and the approved DSM Procedure dated 08.03.2021 is hereby relaxed and exempted for the petitioners' 1 MW solar generating units.

7.3 Respondents No. 1, 2, and 3 (HVPNL, DHBVNL, and HPPC) are directed to withdraw and treat as cancelled Memo No. Ch-99/ISB-77 dated 22/04/2022 as well as all subsequent compliance notices dated 01/06/2022 and 12/01/2023 issued to the petitioners and any coercive proceedings or threat of grid disconnection initiated pursuant thereto shall stand completely discharged.

7.4 In view of the full allowance of the primary prayer granting complete relaxation from LTOA and QCA/DSM requirements, the alternative prayer raised by the petitioners seeking liberty to agitate Change in Law claims for tariff adjustment or cost recovery is disposed of as infructuous.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 06/10/2026.

	Sd/-	Sd/-
Date: 06/10/2026	**(Shiv Kumar)**	**(Mukesh Garg)**
Place: Panchkula	**Member**	**Chairman**

HERC