



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 500/MP/2020

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 16th of October, 2023

IN THE MATTER OF:

Petition under section 79 (1) (a) & (f) of the Electricity Act, 2003 read with Article 10 of the PPA dated 30.03.2016.

AND IN THE MATTER OF:

NTPC Limited

NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003

.....Petitioner

Versus

- 1. Madhya Pradesh Power Management Company Limited (MPPMCL).**
Shakti Bhawan, Vidyut Nagar
Rampur, Jabalpur – 482 008
- 2. M.P. Poorv Kshetra Vidyut Vitaran Company Limited (MPPoKVVCL)**
Shakti Bhawan, Rampur,
Jabalpur- 482 008

3. **M.P. Madhya Kshetra Vidyut Vitaran Company Limited (MPMKVVCL)**
Nishtha Parisar, Govindpura,
Bhopal- 462 023
4. **M.P. Paschim Kshetra Vidyut Vitaran Company Limited (MPPKVVCL)**
GPH Compound, Pologround,
Indore- 452 015
5. **M.P. New and Renewable Energy Department (MPNRED)**
Main Road No. 2, Urja Bhawan,
Near 5 No. Bus Stop, Shivaji Nagar,
Bhopal- 462 016

....Respondents

Parties Present: Shri Venkatesh, Advocate, NTPC
Shri Ashutosh Srivastava, Advocate, NTPC
Shri Siddharth Nigotia, Advocate, NTPC
Shri Nitin Gaur, Advocate, MPPMCL

आदेश/ ORDER

The Petitioner, NTPC Limited is a generating company and has set up a 250 MW Solar Project in Mandsaur, Madhya Pradesh. The Petitioner is seeking a declaration of the seventh amendment to Regulation 10 of the *Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-1) Regulations, 2010* (MP RE Regulation 2008) as a 'Change in Law' along with consequential reliefs.

2. The Respondent No. 1, Madhya Pradesh Power Management Company Ltd. (MPPMCL) is the holding company of the MP Discoms and is an intermediary trading company which purchases electricity in bulk from the generating companies including from renewable sources and supplies in bulk to the distribution licensees in the State of Madhya Pradesh.
3. The Respondents No.2 to 4 are the distribution companies in the State of Madhya Pradesh, and Respondent No. 5 is the Nodal Agency for promoting Renewable Energy in the State of Madhya Pradesh.

4. The Petitioner has made the following prayers:

- a) *Declare the seventh amendment to Regulation 10 of the Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-1) Regulations, 2010 as a 'Change in Law' event as stipulated under Article 10 of the PPA and direct Respondent No.1 to make payment of Change in Law to be paid along with 18% interest;*
- b) *Modify the Invoices raised by Respondent No.4 which also includes charges for reactive power for the Petitioner's Project for the period Nov'2017 to till date and direct Respondent No.4, to not to, raise further invoices on this head and refund the illegally recovered amount of **Rs.2,44,94,479=00** (Rupees Two Crore Forty Four Lakhs Ninty Four Thousand Four Hundred and Seventy Nine Only) for the period of Nov'2017 to March 2020.*
- c) *Refund of net amount of **Rs.5,24,84,329=00** (Rupees Five Crore Twenty Four Lakh Eighty Four Thousand Three Hundred and Twenty Nine only) towards Payment in respect of energy bills paid by NTPC from Nov'2017 till Mar'2020 under Change in Law as described in (a) above.*
- d) *Quash the Invoices raised by Respondent No.2 on account of auxiliary consumption for the Petitioner's Project for the period June 2017 to October 2017 and direct Respondent No.2 to refund the illegally recovered amount of **Rs.42,02,128=00** (Rupees Forty-Two Lacs Two Thousand One Hundred Twenty Eight Only) along with 18% interest; and*
- e) *Pass such further order(s) as this Hon'ble Commission may deem appropriate and proper in the circumstances of the case*

Factual Backdrop:

5. The brief details of the petition are as under:

Location of the project	Mandasur District in the State of Madhya Pradesh
Capacity of the project	250 MW
Tariff	Rs. 5.00/kWh
Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations 2008 ("MP RE Regulation 2008") was notified on	22.10.2008
MPERC RE (Revision-1) Regulations 2010 (MP RE Regulations 2010) was notified on	09.11.2010

Power Purchase Agreement (PPA) was executed between Petitioner and Respondent No.1 on	30.03.2016
Achieved part-commissioning of the capacity and started commercial generation from	June, 2017
MPERC (Terms and Conditions for Tariff Determination for Energy from Renewable Energy Sources) Regulations, 2017 (MP RE Tariff Regulations, 2017) was notified on	07.07.2017
Commissioning date (CoD) of the full project (250 MW)	01.09.2017
7 th Amendment to MP RE Regulation 2010 was notified on	15.11.2017
Madhya Pradesh Electricity Grid Code (Revision-II), 2019 (MP EGC Regulations, 2019) related to Reactive Power Management was notified on	21.06.2019
Letter issued by the Petitioner to Respondent No.1 claiming refund towards wrongful billing during June 2017 till October 2017	20.04.2020
Letter issued by the Petitioner to Respondent No.1 claiming refund towards wrongful billing of reactive power from November 2017-March 2020	24.04.2020

6. The petition was listed for hearing on 08.04.2021 and after hearing the Petitioner's submissions, it was admitted, and the Commission directed the Petitioner to issue notice to the Respondents as per the amended Memo of Parties (dated 29.01.2021) filed by the Petitioner. The matter was again listed for hearing on 17.01.2023 but was adjourned due to a paucity of time. After hearing the submissions of the parties, the matter was reserved for orders on 23.03.2023. MPPMCL and NTPC filed their written submissions on 13.04.2023 and 17.04.2023 respectively, and the Petitioner filed the amended memo of parties on 19.04.2023 in which it has removed MPERC from the array of Respondents.

Submissions of the Petitioner:

7. The Petitioner has submitted as under:

Invoices raised by MP DISCOMS for the period from June 2017 to October 2017 are illegal

- a) The MP DISCOM i.e. Respondent No.4 started billing the Petitioner's project at a tariff applicable to Temporary Connection under the HT Industrial Category for the energy consumed on account of auxiliary consumption, from June 2017 (i.e. from the date of commercial operation of the Petitioner's Project) without any regulatory backing/sanction/ approval/determination.
- b) The provision which enables Respondent No.2 to charge the Petitioner's Project at temporary connection under the HT Industrial Category came into force only on

15.11.2017 when MPERC notified the Seventh (7th) Amendment to the MP RE Regulations, 2010. The said amendment is prospective in nature, and there is nothing in the said amendment which suggests that it could have been applied retrospectively. Therefore, the imposition prior to the notification of the seventh (7th) Amendment is illegal as it falls within the provision of Section 62 (6) of the Act and is violative of Article 265 of the Constitution of India.

- c) The tariff negotiated by the Petitioner has no consideration for the expenses for auxiliary consumption as the MP RE Regulations, 2010 applicable at the time when the PPA was signed did not provide for a mechanism for power consumed for auxiliary consumption. The imposition of such charges has made the project unviable for the Petitioner. Therefore, the impact of Change in law is to be refunded to the Petitioner.

Billing of Reactive Power

- a) Along with the charges for drawal of energy as Aux Consumption by NTPC-Mandsaur Solar PV Station, MPPKVCL also levied charges for reactive power drawn by the Petitioner's project @ of Rs 0.27/kVARH even though there is no such regulatory provision for charging Solar PV Station for Reactive Power. The MP RE Regulations 2010 do not have any provision for reactive power charge applicability to the applicant generator.
- b) Regulation 10(3) of MP RE Tariff Regulations 2017 and Regulation 9.6.1 of the MP EGC Regulations 2019 provide that the generators shall not be levied reactive power charges in line with *Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations 2010* (as amended) provisions (IEGC, 2010).
- c) MPERC while revising the MP RE Regulations, 2008 on 09.11.2010 deleted the provision, and hence the prevailing regulation as on the effective date of the PPA did not have any provision related to the charges for supply of reactive power.

Submissions of MPPMCL:

8. MPPMCL has submitted as under:

Jurisdiction

- a) In the instant case dispute has been raised with regard to the billing done by the Respondent No. 2 distribution licensee for the drawl of power by the Petitioner's plant as per 2010 Regulations issued by the State Commission. Therefore, such dispute does

not pertain to the matters provided in clauses (a) to (d) of Section 79(1) of the Act. Hence, the Petitioner has not raised any dispute with regard to the tariff for the supply of power generated from the Petitioner's power plant. Thus, the petition is not maintainable before the Central Commission to that extent for want of jurisdiction over the subject matter.

- b) The Petitioner's solar power plant is connected with the State Grid and the billing of power drawl as well as reactive energy charges is being done as per the Regulations/order of the State Commission. Therefore, the State Commission has the sole jurisdiction over any billing dispute in this regard.

Declaration of 7th amendment to MP RE Regulation 2010 as Change in Law event

- c) The amendment to Regulation 10 cannot be a change in law under Article 10 of the PPA after 15.11.2017 i.e. post the seventh (7th) amendment to Regulation 10 of the 2010 Regulations because the Commission by the said amendment has not introduced a new regulation or changed the tariff or applicability of the said clause. The Article does not put any additional financial burden on the Petitioner's plant for the drawl of power post 15.11.2017. The Petitioner and MPPMCL in clause 6.2 of the PPA have agreed to be governed by the appropriate regulation from time to time, there being no change in law as prayed by the Petitioner. Hence, the Respondent has rightly charged the plant of the Petitioner for the drawl of power from the grid as per 2010 Regulations from June 2017 onwards, and the same does not attract any change of law event thereby granting any relief to the Petitioner.

Refund of charges illegally levied upon by Respondent No.4

- d) The billing of reactive energy charges is in accordance with the prevailing statutory framework and no interference of the Central Commission is required in this regard.

Submissions of the Petitioner vide Rejoinder dated 13.05.2022 & Written Statement dated 13.04.2023

9. The Petitioner has reiterated the submissions already made in the plaint and as such the same are not being reproduced here for the sake of brevity. Additionally, the Petitioner has submitted as under:

- a) This Commission has the jurisdiction to entertain the present dispute as the Petitioner

herein is a Central Generating Company within the meaning of Section 2(28) read with Section 79 (1)(a) of the Act and falls within the exclusive jurisdiction of this Commission. This Commission has been empowered '*to regulate the tariff of generating companies owned or controlled by the Central Government*'. The issues raised in the present petition pertain to changes in law and illegal billing of reactive energy charges on the Petitioner. Since these issues have a direct bearing on the tariff of the Petitioner, any adjudication whatsoever is amenable to the jurisdiction of this Commission.

- b) The contention of MPPMCL that there is no effective change after the seventh (7th) amendment to the MP RE Regulations, 2010 is an afterthought. MP DISCOMs were generally following the process of 'netting off' till May 2017 i.e. adjusting the amount of energy consumed by the Petitioner's project as auxiliary consumption from the gross energy supplied by the Petitioner's project. Further, the tariff negotiated by the Petitioner has no consideration for the expenses for auxiliary consumption as the MPERC RE Regulations, 2010 applicable at the time when the PPA was executed did not provide for a mechanism for power consumed for auxiliary consumption.
- c) APTTEL vide judgment dated 12.02.2020 in A.No. 112/2017, relied upon by MPPMCL is entirely distinguishable from the present case.
- d) MPPMCL has issued letters dated 21.09.2015 and 29.01.2016 (executive directions) to the DISCOMs operating in the State of Madhya Pradesh to bill the Solar/wind developers for the energy drawn from the grid at HT industrial tariff. The said letters clearly indicate that the imposition of HT Industrial tariff on Solar/wind developers was not in terms of the MP RE Regulations 2010, rather it was in terms of the said executive instructions issued by MPPMCL.
- e) MPPMCL's reliance on Solar Tariff Order 2016 is misplaced for the reason that the said Order is not applicable to the present arrangement existing between the parties. In the present case, the tariff negotiated between the parties is Rs. 5/kWh, whereas the Solar Tariff Order 2016 is a generic Tariff Order which provides for a tariff of Rs. 5.45/kWh which is not applicable in the present case. Further, the Solar Tariff Order 2016 is applicable to the generators whose tariff has been determined under the said Order whereas the Petitioner's project is based on a negotiated tariff. Hence, the said Order is not applicable in the present case.
- f) Reliance placed by MPPMCL on MPERC (Terms and Condition for Intra-State Open

Access in Madhya Pradesh) Regulations, 2005, and the Policy for implementation of solar based project in Madhya Pradesh, 2012 is also misplaced as the Regulation governing the field i.e. MP RE Regulations has no such provision as being advocated by MPPMCL. In addition, there is no provision under the PPA which provides for a levy of reactive energy charges.

- g) In order to achieve the monetization target given to it under the National Monetisation Pipeline (NMP), NTPC decided to consolidate its Renewable Energy (RE) portfolio under one company by transferring its operating/ near operational RE units (15 in number) and its equity stake in its Wholly Owned Subsidiary (WOS) NTPC Renewable Energy Limited. Accordingly, a new company i.e. *NTPC Green Energy Limited (NGEL)* was incorporated on 07.04.2022 as a WOS and 15 RE assets (including the present generating station) were transferred by NTPC to NGEL on 28.02.2023.

Hearing on 23.03.2023

10. During the hearing on 23.03.2023, the Commission asked MPPMCL to clarify on the following:

- (i) *the relevant framework governing the applicable charges for power drawn by solar power generators for synchronisation purposes prior to the Seventh Amendment dated 15.11.2017 to MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010,*
- (ii) *relevant framework governing the applicable charges for auxiliary consumption by solar power generators prior to and post 15.11.2017, and*
- (iii) *practice adopted by MPPMCL/MP Discoms for levying aforesaid charges on other solar power generators for the period prior to and post 15.11.2017 in its written submissions. The Commission also directed the Petitioner to clarify as to the charges for auxiliary consumption considered by the Petitioner at the time of signing of the PPA and basis thereof in its written submission.*

Written Submission dated 17.04.2023 filed by MPPMCL

11. Briefly, MPPMCL has submitted as under:

- a) Drawl of power by the solar power generator from the grid is governed by Regulation 10 of the 2010 Regulations and is liable to be billed at the rate applicable to Temporary Connection under the HT Industrial Category during the period under consideration. Billing of the power drawn by the Solar Generator was discussed by APTEL in A.No.

112 of 2017 titled as *Malwa Solar Power Generation Pvt. Ltd. v. PERC & Ors. (Malwa Solar)* which upheld the billing of power drawl at the rate applicable to the temporary connection under the HT Industrial category.

- b) Vide seventh (7th) amendment, the State Commission, while keeping the original provision, also included a drawl for the purpose of synchronization in Regulation 10 of the 2010 Regulations and provided for the billing for such drawl for the period and at the rate as per retail supply tariff order under tariff schedule for synchronization. However, in the case of the Petitioner which is a solar power plant and regularly draws power during the period of non-generation, the billing had continued to be done as per the rate applicable to temporary connection under the HT Industrial category. In other words, the seventh amendment to the 2010 Regulations has no bearing on the billing of drawl by solar power plants, and there is no change with respect to solar power generators in the '2010 Regulations' vide the seventh amendment dated 17.11.2017. Therefore, during the period under consideration (before as well as after the 7th amendment) the distribution licensee was required to issue bills to the Petitioner as per the rate applicable to the temporary connection under the HT Industrial category, namely HV-3.1 category and the billing of drawls of petitioner's power plant has been done accordingly.
- c) The seventh amendment to the 2010 Regulations has no bearing on the billing of drawl by solar power plants. There is no change in the billing methodology of power drawn by solar power generators post the seventh amendment dated 17.11.2017, and all solar power generators have been billed accordingly during the period under consideration i.e. at the rate applicable to temporary connection under the HT Industrial category.

Analysis and Decision:

12. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records.
13. Before proceeding further in the matter, we feel it prudent to discuss the preliminary issue raised by MPPMCL with respect to the maintainability of the petition. MPPMCL has submitted that this Commission lacks jurisdiction to entertain the present dispute as the same pertains to billing done in terms of the regulations framed by MPERC. *Per Contra*, the Petitioner submitted that this Commission has the jurisdiction to adjudicate upon the present dispute as

the Petitioner is a Central Generating Company within the meaning of Section 2(28) read with Section 79 (1)(a) of the Electricity Act. The Petitioner has also submitted that, in terms of the provisions of the PPA, this Commission has the jurisdiction to entertain the dispute between the parties.

14. Section 79(1) of the Electricity Act, 2003 (the Act, 2003) stipulates as under:

Section 79. (Functions of Central Commission): --- (1) *The Central Commission shall discharge the following functions, namely:-*

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

(c) to regulate the inter-State transmission of electricity;

(d) to determine tariff for inter-State transmission of electricity;

(e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

(g) to levy fees for the purposes of this Act;

(h) to specify Grid Code having regard to Grid Standards;

(i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;

(j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;

(k) to discharge such other functions as may be assigned under this Act.

15. Relevant provisions of the PPA dated 30.03.2016 are as under:

Article 7.4.1 (Regulation of Power Supply and Third Party Sales):

“7.4.1 Notwithstanding the obligations of MPPMCL to pay all the dues as per this Agreement, in the event of default in opening/reinstatement of LC of requisite amount as per Article 7.3 in favour of NTPC or non-payment of bills, NTPC shall be entitled to regulate the supply of power to MPPMCL from any Power Station of NTPC for which PPA/BPSA has been signed by MPPMCL and/or divert to any other Bulk Power Customer(s)/ Third Party(ies) as per the provisions of generic procedure for regulation of power supply issued by CERC or any other competent authority from time to time read with the provisions of TPA.”

Article 10.2 Relief for Change in Law:

10.2.1 The Parties shall be required to approach the CERC for seeking approval of Change in Law.

10.2.2 The decision of the CERC to acknowledge a Change in Law and provide relief for the same shall be final and governing on both the parties.”

16. While explaining the scope of the term “regulate” under Section 79(1)(a) of the Act, 2003, the APTEL in its judgment dated 10.12.2009 in Appeal No. 161/2009 (*DVC v. BRPL and Ors.*) has held as under:

*“18. It cannot be debated that Section 79(1)(a) deals with the generating companies to regulate the tariff. The term “regulate” as contained in Section 79(1)(a) is a broader term as compared to the term “determine” as used in Section 86(1)(a). In various authorities, the Supreme Court, while discussing the term “regulation” has held that as part of regulation, the appropriate Commission can adjudicate upon disputes between the licensees and the generating companies in regard to implementation, application or interpretation of the provisions of the agreement and the same will encompass the fixation of rates at which the generating company has to supply power to the Discoms. This aspect has been discussed in detail in the Judgments of the Supreme Court in 1989 Supp (2) II SCC 52 *Jiyajirao Cotton Mills vs. M.P.Electricity Board, D.K.Trivedi & Sons vs. State of Gujarat, 1986 Supp SCC 20 and V.S.Rice & Oil Mills vs. State of A.P., AIR 1964 SC 1781, and also in Tata Power Ltd. Vs. Reliance Energy Ltd. 2009 Vol.7, SCALE 513.*”*

17. In this context, APTEL in its judgment dated 4.9.2012 in Appeal No. 94 and 95 of 2012 (*BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission and Ors.*) has also held as under:

“32. Sections 61 and 79 not only deal with the tariff but also deal with the terms and conditions of tariff. The terms and conditions necessarily include all terms related to tariff. Determination of tariff and its method of recovery will also depend on the terms and conditions of tariff. For example, interest on working capital which is a component of tariff will depend on the time allowed for billing and payment of bills. This will also have an impact on terms and conditions for rebate and late payment surcharge. Similarly, billing and payment of capacity charge will depend on the availability of power station. Therefore, the scheduling has to be specified in the terms and conditions of tariff.

33. Accordingly, the billing, payment, consequences of early payment by way of grant of rebate, consequences of delay in payment by way of surcharge, termination or suspension of the supply, payment security mechanism such as opening of the Letter of Credit, escrow arrangement etc. are nothing but terms and conditions of supply.

34. Section 79(1)(f) of the Electricity Act, 2003 provides for adjudication of disputes involving a generating company or a transmission licensees in matters connected with clauses (a) to (d) of Section 79. Thus, anything involving a generating station covered under clauses (a) and (b) as to the generation and supply of electricity will be a matter governed by Section 79(1)(f) of the Act.”

18. The Hon’ble Supreme Court judgement in the matter of *New Moga Transport Co. vs. United India Insurance Co. Ltd. & Ors. (2004) 4 SCC 677* has held as under:

“By a long series of decisions it has been held that where two Courts or more have under the CPC jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in any one of such Courts is not contrary to public policy and in no way contravenes Section 28 of the Indian Contract Act, 1872. Therefore, if on the facts of a given case more than one Court has jurisdiction, parties by their consent may limit the jurisdiction to one of the two Courts. But by an agreement parties cannot confer jurisdiction to a Court which otherwise does not have jurisdiction to deal with a matter.”

19. From the above, we find that Section 79(1)(a)(f) of the Act enables this commission to have a wider scope. It involves the adjudication of disputes involving the implementation, application, or interpretation of the provisions of the PPA and the terms and conditions of supply in cases involving the Central Government owned and controlled generating companies.
20. In terms of the provisions of the Act, the PPA and the above citations of the Hon’ble Supreme Court/APTEL, we hold that adjudication involving the Petitioner being wholly owned and controlled by the Central Government is to be governed by this Commission in terms of the provisions under Section 79 of the Electricity Act, 2003.
21. From the submissions of the contracting parties, the following issues emerge for adjudication before the Commission:

Issue No.1: Auxiliary Consumption:

*(a) Whether the invoices raised by Respondents on account of auxiliary consumption by the Petitioner for the period June 2017 till October 2017 required to be quashed being contrary to law **and** whether the excess amount recovered from the Petitioner for the period June 2017 till October 2017 should be refunded along with interest @ 18%?*

*(b) Whether the seventh (7th) amendment to Regulation 10 of the MP RE Regulations is a ‘Change in Law’ event as in terms of Article 10 of the PPA **and** whether the Respondents should be directed to make payment towards auxiliary consumption on account of Change in Law along with interest @ 18%?*

Issue No.2: Reactive Energy Charges: *Whether the invoices raised by Respondents on account of reactive power for the period November 2017 till date need to be modified being contrary to law **and** whether the excess amount recovered from the Petitioner for the period for the period November 2017 till March 2020 should be refunded?*

22. Now we discuss and analyse the issues.

Issue No.1

23. The Petitioner has submitted that MPPKVVCL has been levying the tariff of temporary connection under the HT Industrial category for the power consumed for auxiliary consumption for the period from June 2017 to October 2017, without any basis. Further, the seventh (7th) amendment to the MP RE Regulations, 2010 providing for levy of auxiliary consumption charge was notified on 15.11.2017, that is, after the effective date of the PPA being 30.03.2016. Hence, the said amendment to Regulation 10 of MP RE Regulations, 2010 dated 15.11.2017 is covered under Article 10 of the PPA as a change in law event and the charges paid by NTPC ought to be reimbursed to restore it to the same economic position such that change in law event had not occurred.

24. *Per Contra*, MPPMCL submitted that the seventh (7th) amendment to Regulation 10 of the MP RE Regulations, 2010 cannot be termed a change in law event because MPERC, vide the 7th amendment, has not introduced a new regulation or changed the tariff or applicability of the said clause. Billing of the power drawn by the solar generator came under the consideration of the APTEL in A.No. 112 of 2017 titled *Malwa Solar Power Generation Pvt. Ltd. v. PERC & Ors. (Malwa Solar)* wherein the APTEL has upheld the billing of the power drawn at the rate applicable to temporary connections under the HT Industrial category.

25. We observe that *Auxiliary Energy Consumption* is defined in the *MP RE Tariff Regulations, 2017*, as under:

‘Auxiliary Energy Consumption’ or ‘AUX’ in relation to a period in case of a generating station means the quantum of energy consumed by auxiliary equipment of the generating station, and transformer losses within the generating station, expressed as a percentage of the sum of gross energy generated at the generator terminals of all the units of the generating station;

26. We observe that Regulation 10 of the *MP RE Regulations, 2010* stipulate as under:

Regulation 10

10. Drawing power during shut down by Generator/Co-generator from Renewable Sources.

*The Generator/Co-generation from Renewable Sources would be entitled to **draw power exclusively for its own use from the Distribution Licensee’s network during shutdown period of its Plant** or during other emergencies. The energy consumed would be **billed at the rate applicable to Temporary Connection under HT Industrial Category.**”*

27. We observe that the 7th Amendment of the Regulation 10 of the *MP RE Regulations, 2010* stipulates as under:

*“10. Drawing power by Generator/Co-generation from Renewable Sources
The Generation/Co-generation from Renewable Sources would be entitled to draw power exclusively for its own use from the Transmission/Distribution Licensees’ network for synchronization of plant with the grid or during shutdown period of its plant or during such other emergencies. The power availed during **synchronization** of plant with the grid shall be billed for the period and at the rate as per retail supply tariff order under tariff schedule for synchronization. **In other cases, it would be billed at the rate applicable to temporary connection under HT Industrial Category.**”*

28. We also observe that the relevant Article of the PPA dated 30.03.2016 stipulates as under:

*Auxiliary Power consumption:
NTPC is entitled to draw the power for its auxiliary consumption. The energy supplied by the Discom to NTPC through a bilateral agreement, to maintain the auxiliaries of the power plant in situations of non-generation of solar power. The treatment of this energy shall **be as per appropriate regulations** from time to time.*

29. From the above, we note that *Auxiliary Energy Consumption* is defined as the quantum of energy consumed by auxiliary equipment of the generating station, and transformer losses within the generating station i.e. for its own use. Further, as per the PPA dated 30.03.2016, the energy supplied by the DISCOM to NTPC was to be treated as per a bilateral agreement between the contracting parties and as per the appropriate regulations from time to time. We observe that Regulation 10 of the *MP RE Regulations, 2010* stipulates that the generator/co-generation based on renewable sources is entitled to draw power exclusively “for its own use” during the “shutdown period” of its plant or during other emergencies and the energy consumed would be billed at the rate applicable to Temporary Connection under HT Industrial Category. It remains a fact that what the Petitioner claims as the auxiliary consumption is the ‘drawal of power for its own use during the night/non-generation hours’ and is covered under the said Regulation 10 of the *MP RE Regulations, 2010*.

30. We further observe that the 7th Amendment of Regulation 10 of the *MP RE Regulations, 2010* also stipulates that the generation/co-generation from renewable sources would be entitled to

draw power exclusively for its own use. It is further stipulated that the power availed by generation/co-generation from renewable sources for the synchronization of plant with the grid will be billed for the period and at the rate as per retail supply tariff order under tariff schedule for synchronization whereas in other cases the power drawn would be billed at the rate applicable to temporary connection under HT Industrial Category. We are of the view that there is no material change in the regulations with regard to auxiliary power consumption.

31. Further, APTEL in A. No. 112 of 2017 titled as *Malwa Solar Power Generation Pvt. Ltd. v. PERC & Ors. (Malwa Solar)* has ‘inter-alia’ held as under:

...
...

42. In the present case, the Appellant was charged for import of power at the rate applicable to temporary connection under HT industrial category in accordance with the directions of the State Commission's regulations. Therefore, this Tribunal in Appeal No. 297 of 2013 already opined that charging a solar power plant for import power at the rate applicable to HT temporary industrial category is valid and justified by opining that provision of extant tariff orders, directives and tariff determined by the State Commission are applicable to solar power plants for power imported from the grid.

43. Then coming to the arguments of the Appellant that the Appellant is being treated as temporary consumer, we are of the opinion that this argument is incorrect for the following reasons:

44. The Appellant has long term PPA for more than 25 years to supply power from its solar plant, which was entered into between the Appellant and SECI. That apart, a reading of definition of ‘consumer’ and also ‘temporary power supply’, as stated above, clearly indicate that the import of power from the grid by solar plants is not as a temporary power supply, since as long as solar plants supply power to SECI on long term basis, Appellant needs to get power from the grid for its auxiliary consumption during the period of non-generation in a routine manner.

45. The energy consumed by the Appellant is charged at the rate applicable to temporary connection under HT industrial category and not as a temporary consumer or not as a temporary supply.

46. In other words, the rate at which the power is imported from grid is in accordance with Regulation 10 of 2010 Regulations, and there is no question of temporary status of either temporary consumer or temporary supply so far as the Appellant is concerned.

47. The provision, which refers to ‘temporary power supply’ clearly shows that temporary connection can be extended to a maximum period of five years only for construction of buildings, power plants and for the purpose of setting up of industrial

units. The import of power by the Appellant, at any stretch of imagination, does not come within the above activity.

48. On the other hand, in terms of Regulation 10, it says during shut down period or during other exigencies, the generator from renewable sources who is entitled to draw power exclusively for its own use from the distribution network has be charged at the rate applicable to temporary connection under HT industrial category.

49. Therefore, viewed from any angle, reasoning and the finding of the State Commission cannot be found fault with. The Appellant has not made out any grounds warranting interference. Accordingly, the appeal is dismissed. All the pending IAs, if any, shall stand disposed of.

32. From the above, we observe that APTEL has held that charging a solar power plant, for import power at the rate applicable to HT temporary industrial category is valid and justified. During the shutdown period or during other exigencies, the generator based renewable sources are entitled to draw power exclusively for their own use from the distribution network and shall be charged at the rate applicable to the temporary connections under the HT industrial category.
33. In the instant case, we note that the MP RE Regulations, 2010 were notified on 09.11.2010. The effective date of the PPA is 30.03.2016. The Petitioner achieved part-commissioning of the capacity and started commercial generation in June 2017. Further, after the commissioning of a full capacity of 250MW, the project COD has been declared with effect from 01.09.2017. We note that the seventh (7th) amendment to the MP RE Regulations, 2010 was notified on 15.11.2017 i.e. after the effective date of the PPA dated 30.03.2016. However, we observe that the APTEL, in a similar case, has already held that charging a solar power plant, for imported power at the rate applicable to HT temporary industrial category is in accordance with Regulation 10 of the MP RE Regulations, 2010. We are of the view that vide the seventh (7th) amendment, MPERC, has only included a provision regarding drawl for the purpose of synchronization, which is to be billed at the rate as per the retail supply tariff order under the tariff schedule for synchronization. However, the imported power in other cases is to be billed at the rate applicable to the HT temporary industrial category. The Petitioner has admitted on records that *the Petitioner's project was being supplied energy on account of auxiliary consumption during night time*. Hence, the rate at which the power is imported from the grid is in accordance with Regulation 10 of the MP RE Regulations, 2010, viz. the rate applicable to temporary connections under the HT industrial category. Accordingly, we hold that the prayer that the seventh (7th) amendment to MP RE Regulations, 2010 dated 15.11.2017 be

declared a Change in Law event in terms of the PPA is not made out, and the Petitioner is not entitled to any relief.

23. The issue is decided accordingly.

Issue No.2: Reactive Energy Charges: *Whether the invoices raised by Respondents on account of reactive power for the period November 2017 till date need to be modified being contrary to law and whether the excess amount recovered from the Petitioner for the period for the period November 2017 till March 2020 should be refunded?*

24. The Petitioner has submitted that they are entitled to compensation on account of illegal levy qua reactive energy charges from November 2017 till March 2020. In this regard, the Petitioner has submitted that MPPKVCL has levied reactive power charges @ Rs. 0.27/kVARh despite there being no regulatory provisions for charging Solar PV Stations for reactive power. *Per Contra*, MPPMCL has submitted that in order to balance the reactive power flow in the grid, the distribution and transmission licensee of the State has provided reactors/capacitor banks at the grid sub-stations and the cost is being borne by the consumers of the State. MPERC, vide Solar Tariff Order 2016, has determined the tariff and provides for the related dispensation qua the wheeling/transmission charges, reactive power charges etc. which are applicable to the Petitioner as well.

37. We note that the relevant provisions of the *Tariff Order for Solar Energy Based Power Generation in Madhya Pradesh* dated 01.08.2012, *inter-alia*, stipulate as under:

4.1. The tariff determined by the Commission in this order shall be applicable to the following Projects located in the State of Madhya Pradesh and selling electricity to the distribution licensees within Madhya Pradesh only:--

(a) Solar PV Power Plants for which Power Purchase Agreements are signed by 31.3.2014 and the projects are commissioned by 31.3.2015.

(b) Solar Thermal Power Plants for which Power Purchase Agreements are signed by 31.3.2014 and the projects are commissioned by 31.3.2016.

(c) Rooftop and other small Solar Power Plants of capacity up to 2MW connected to distribution network (below 33 kV) for which Power Purchase Agreements are signed by 31.3.2014 and the projects are commissioned by 31.3.2016.

7.9.5. Reactive Power Charges

The Commission determines the charges for KVARh consumption from the grid as 27 paise/unit i.e. the rate which is already prevalent in the State and which may be revised by the Commission as and when necessary. Reactive energy charges would be Tariff

order for Solar Energy Based Power Generation in Madhya Pradesh paid by the developer to the Distribution Licensees in whose territorial area the generator unit is located.

38. We observe that vide Order dated 25.03.2014, MPERC held as under:

Sub: Extension of control period beyond 31.03.2014 in respect of tariff for solar based power projects.

*3. In view of the aforesaid, the Commission hereby directs that the provisions of the tariff order dated 01.08.2012 shall, subject to the modifications indicated hereinafter, **continue to apply to solar projects in Madhya Pradesh until further orders:-***

3.1 For clause 4.1(a),(b),(c) of the order, the following shall be substituted:

“4.1 (a) Solar PV Power Plant for which Power Purchase agreements (PPAs) are signed within the control period of this tariff order and the projects are commissioned within one year of signing of PPAs.

(b) Solar Thermal Power Plants for which Power Purchase Agreements (PPAs) are signed within the control period of this tariff order and the projects are commissioned within two years of signing the PPAs.

(c) Rooftop and other small Solar Power Plants of capacity up to 2 MW connected to distribution network (below 33 kV) for which Power Purchase Agreements (PPAs) are signed within the control period of this tariff order and the projects are commissioned within two years of signing the PPAs.”

3.2 All other terms and conditions of the order dated 01.08.2012 shall remain unaltered.

4. Ordered accordingly.

39. Further, the relevant provisions of *Tariff Order for Solar Energy Based Power Generation in Madhya Pradesh* dated 08.08.2016, *inter-alia*, stipulate as under:

A3: APPLICABILITY OF THE ORDER

*3.1. **The tariff determined by the Commission in this order** shall be applicable to the following Projects located in the State of Madhya Pradesh and selling electricity to the distribution licensees within Madhya Pradesh only*

(a) Solar PV Power Plants

(b) Solar Thermal Power Plants

6.10.5. Reactive Power Charges

The Commission determines the charges for KVARh consumption from the grid as 27 paise/unit i.e. the rate which is already prevalent in the State and which may be revised by the Commission as and when necessary. Reactive energy charges would be paid by the developer to the Distribution Licensees in whose territorial area the generator unit is located.

40. From the above, we observe that the various *Tariff Orders for Solar Energy Based Power Generation in Madhya Pradesh* provided for the reactive power charges to be paid by the solar generators to the distribution licensees in whose territorial area the generating unit is located.

The orders do not distinguish between the solar projects under the generic tariff route or project specific route as has been claimed by the Petitioner. We, therefore, hold that the billing of reactive power charges as per the *Tariff Order for Solar Energy Based Power Generation in Madhya Pradesh* dated 08.08.2016 is in accordance with the statutory framework. Accordingly, the invoices raised by the Respondents on account of reactive power for the period November 2017 till date are as per law, and the Petitioner is directed to pay accordingly. The issue is decided accordingly.

41. The Petition No. 500/MP/2020 is disposed of in terms of the above.

Sd/-
पी. के. सिंह
सदस्य

Sd/-
अरुण गोयल
सदस्य

Sd/-
आई. एस. झा
सदस्य

Sd/-
जिष्णु बरुआ
अध्यक्ष