

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT
PANCHKULA**

Case No. HERC/Petition No. 72 of 2023

Date of Hearing : 08.05.2024

Date of Order : 23.05.2024

In the Matter of

Petition under Clause 17 and 18 of HERC (Rooftop Solar Grid Interactive System Based on Net-Metering/Gross Metering), Regulation 2021 and along with relevant provisions of Electricity Act 2003.

Petitioner:

Delhi Metro Rail Corporation Ltd, Metro Bhawan, 13 Fire Brigade Lane, Barakhambha Road, New Delhi, 110001

versus

Respondents:

1. Dakshin Haryana Bijili Vitran Nigam, Vidyut Sadan, Vidyut Nagar, Hisar-125005 Haryana.
2. Uttar Haryana Bijili Vitran Nigam, Vidyut Sadan, IP No: 3&4 Sector-14, Panchkula, 134113 Haryana
3. Department of New and Renewable Energy /HAREDA, Akshay Urja Bhawan, Institutional Plot No-1, Sector 17, Panchkula, Haryana 134109.

Present:

On behalf of the Petitioner:

1. Sh. D. D. Chopra, Senior Advocate
2. Ms. Sonali Upadhyay, Advocate
3. Sh. Surendra Kumar Gupta, DMRC

On behalf of the Respondents:

1. Ms. Sonia Madan, Advocate
2. Sh. Maninder Singh, SE, UHBVN
3. Sh. Arun, AEE, UHBVN

QUORUM

Shri Nand Lal Sharma, Chairman
Shri Naresh Sardana, Member
Shri Mukesh Garg, Member

ORDER

1. **Petition:**

- 1.1. The Petitioner Delhi Metro Rail Corporation Ltd, New Delhi submitted as under:
- 1.2. That the Petitioner is filing this petition before the learned Commission seeking relaxation in Haryana Electricity Regulatory Commission (Rooftop Solar Grid Interactive System Based on Net-Metering/Gross Metering), Regulation 2021 (hereinafter referred to as 'HERC Regulations, 2021'), to the extent of allowing the petitioner to export power to Discoms beyond the ceiling limit of 500 kW fixed in the above regulation to enable the petitioner to export surplus power on net metering basis.
- 1.3. That the Petitioner *viz.* Delhi Metro Rail Corporation Limited (DMRC) was registered on 3rd May 1995 under the Companies Act, 1956 with equal participation of the Government of the National Capital Territory of Delhi and the Central Government to implement the dream of construction and operation of a world- class Mass Rapid Transport System (MRTS).
- 1.4. That the Petitioner has been instrumental in ushering in a new era in the sphere of mass urban transportation in India. The swanky and modern Metro system introduced comfortable, air conditioned and completely revolutionized the mass transportation scenario not only in the National Capital Region but in the country. DMRC has constructed a massive network of about 393 Km with 12 lines and 286 metro stations (including NOIDA Corridor and Rapid Metro Gurugram) it is rightly dubbed as Life-Line of Delhi, NCR.
- 1.5. That the Petitioner is an "Eligible Consumer" of distribution licensee under regulation 2(k) of HERC Regulations, 2021. To meet its energy requirement and to utilize Green Energy the Petitioner has set up several Rooftop Solar Plants in its premises under RESCO Model at different locations, each plant is well below the maximum rated capacity of 500kW prescribed under the Regulations 2021. The regulation 2 (k) of Regulations, 2021 is reproduced here below:-
"Eligible consumer" means a consumer of electricity other than Agriculture Tube well (AP) consumer in the area of supply of the distribution licensee, who intends to install or has installed a grid connected rooftop solar system in his premises."
- 1.6. That the Petitioner has installed these Solar Plants at its premises (i.e. Metro Stations / Depots / Receiving Substations / Staff Quarter Buildings) as per clause 3.2 of the Regulations 2021.
- 1.7. That the Petitioner is encouraging use of solar energy in all its activities. The petitioner has cumulative installed 50 MW capacity of Roof Top Solar Power Plant of various capacities at various establishments(i.e. Metro Stations / Depots / Receiving Substations / Staff Quarter Buildings) in the in line with National Solar Mission. The Petitioner has entered into PPA with various Power generators for installation of Rooftop Solar Plant on its stations in Gurugram, Faridabad and Bahadurgarh region in the state of Haryana. Details of PPA entered between Petitioner and Various Power Generators are provided hereinbelow:

S. No.	Solar Power Generator	PPA Date	Total Installed Capacity in (MW)
1	M/s Azure Power Saturn Pvt. Ltd	19.04.2016	14 MW
2	M/S Hero Solar Energy Pvt. Ltd	30.08.2018	8 MW
3	M/s HFM Roof Top Energy Pvt. Ltd.	22.02.2022	2MW
4	M/s Su-Kam Power System Ltd.	26.03.2015	0.25 MW

5	M/s Purushotam Greens Pvt. Ltd	12.06.2020	3 MW
6	M/s ReNew Solar Energy Pvt. Ltd	27.05.2016	6MW
7	M/s SEI Suncope Energy Pvt. Ltd	25.06.2015	2.5 MW

- 1.8. That the Solar Plants at DMRC are connected at 415 Volts to feed the Solar Energy to the Electrical Loads connected to the Auxiliary Substations (ASS) of each of the respective locations.
- 1.9. That the Petitioner is connected to the grid network of Haryana's DISCOM at 66kV voltage level through metered connections with DHBVNL and UHBVNL. At each drawl point, two bays are provided to ensure reliability. Petitioner has laid its own dedicated cables from State Transmission Utility Grid Substation to Petitioners Receiving Substations (RSS) to ensure reliability of the system. Thereafter , Petitioner has created its own power distribution network consisting of Receiving Sub Station , to supply Single Phase 25 kV to OHE (traction) and Three phase 33kV Auxiliary Power to its station and depots. Distribution system of DISCOM is not utilized for wheeling of power. The auxiliary power system is characterized by use of 33 kV cable network running from RSS to stations in ring-main system and at station level is converted to 415 V for auxiliary load like lights, lifts, escalators, air conditioners etc.
- 1.10. The Solar Energy generated by the above plants , is injected at 415V level to the Main Distribution Board (MBD) of Auxiliary Sub Station and depots and being used to meet the partial energy requirement of auxiliary load of the corridor. The power generated is primarily used for the lighting and other auxiliary requirements.
- 1.11. That the Petitioner has been a front runner and is globally recognized in utilizing Green Energy for its operations and in pursuant to its commitment towards National Solar Mission the Petitioner has installed Roof Top Solar Plants at its several premises like Depots, Stations, Offices etc. with a present cumulative capacity of 50 MW and is likely to reach 60 MW by the end of commissioning of complete Phase-4 Network.
- 1.12. That the Petitioner has installed the Solar Plants under RESCO Model and PPA has been signed regarding the same between Delhi Metro Rail Corporation with various Power Generators and the tariff decided will be paid to the Generator as per the power generation.
As per Haryana Solar Policy, 2016 "RESCO Mode" means the methodology in which entire investment is to be incurred by a company/individual other than the consumer for setting up of the solar power project in the consumer premises and the consumer pays for the electricity generated from such solar power project at mutually agreed tariff to such investor company/individual.
- 1.13. That the Solar Energy generated from these Solar Plants set up at in premises of the petitioner is being utilized to meet the day time energy requirement of various Electrical Loads at the concerned location. However, as the Electrical Load Requirements varies at different Location significantly during the daytime, therefore, the Excess Solar Energy (if any) at that particular location is fed to 33kV Grid of the DMRC's Auxiliary Network and a portion of the above excess energy (if not utilized in DMRC's Network) gets exported through the concerned Receiving Sub-stations (RSSs) at 66/132 kV Voltage Level at the Metering Point to the respective State Transmission Utility / Discoms Network in the State of Haryana.
- 1.14. That in addition to excess power generated from Roof Top Solar Power Plant transmitted to grid, DMRC is also generating power from Regenerative Braking system in metro trains. In Regenerative Braking system whereby whenever ,

the 'Metro Train' is to be stopped at the station, the kinetic energy of the 'Metro Train' is converted into Electrical Energy by operating the traction motor as a generator and the electrical energy so regenerated is fed to the 25kV overhead Traction Power Network. The Energy so regenerated is utilized by the other metro train in the network which are powering (acceleration). In case the, the quantum of Regenerated is more than the Energy required for traction, then at that point of time, the excess Energy is fed back into the system. It is important to note that in Metro Rail network, stations are separated by a distance of 1-1.5kms. Therefore the trains are accelerating and breaking very frequently. As such, on an average approximately 40% of Electricity consumed by Metro Trains is being Regenerated. This translate into reduction of load on the Grid equivalent to the amount of electricity Regenerated and also reduces carbon emission, in addition to energy saving.

- 1.15. That it is pertinent to mention here that the energy generated through Regenerative Braking of Rolling Stocks (Metro Trains) is a source/ system/technology to generate Electricity, wherein no fossil fuel is utilized and thereby no carbon emission. The Unutilized portion of Energy getting generated from Regenerative Braking of Metro Trains at 25kV Level, also gets exported through the concerned Receiving Sub-stations (RSSs) at 66/132 kV Voltage Level at the Metering Point to the respective State Transmission Utility / Discom's Network in the State of Haryana.

As a consequence of above all Unutilized Energy from the Solar Plants and the Regenerative Braking of Metro Trains as brought out above, gets exported through the concerned Receiving Sub-stations (RSSs) at 66/132 kV Voltage Level at the Metering Point to the respective State Transmission Utility / Discom's Network in the State of Haryana. Hence, Total Energy Exports is a combination of energy from solar plant and energy from Regenerative Braking System.

- 1.16. The details of Total Energy Exported (Energy from Solar Plants and Regenerative Braking of Metro Trains) from Petitioner's premises into the Grid of DISCOM from April 2022 to March 2023 are provided below for reference-
Line-2 Huda City Centre (Sushant Lok) – 1.17 Million Units
Line-5 Bahadurgarh- 1.55 Million Units
Line-6 Faridabad- 1.79 Million Units.

- 1.17. That existing regulation 5.3 HERC (Rooftop Solar Grid Interactive System Based on Net-Metering/Gross Metering), Regulation 2021 allows net-metering for the loads up to 500kW Roof Top Solar plants.

Therefore, based on the above-mentioned Regulation 5.3, the Petitioner is facing difficulty and is being deprived from injecting energy more than 500kW power into the grid.

- 1.18. That in spite of adopting 'State of the Art' Technology and 'Energy Efficient' Rolling Stock (i.e. Metro Trains) to ensure efficient use of Electrical Energy and also harness Electrical Energy from Renewable Sources (i.e. Solar Plants) to support National Solar Mission for promoting Green Energy, the present Regulations do not appear to be supporting DMRC's Initiatives for adoption of above-mentioned Advanced Technology and harnessing energy from Renewable Sources, as the benefits on account of 'Exported Energies' are not able to reach DMRC due to limitation of the present Regulations in the State of Haryana

- 1.19. That it is pertinent to mention that it is well within the scope of adjudicatory powers of Hon'ble Commission to do away with difficulties/hardships being faced by Petitioner as per the provisions of Clause 17 of the Regulations.

- 1.20. That the Regulations puts ceiling of 500kw on maximum rated capacity and the same is causing hardship to the Petitioner which is unjust since the ceiling is causing monetary loss to the petitioner on daily basis. The Petitioner gets

- no return on the energy exports above 500kW that gets injected by default on to the Grid and the respondent DISCOM is availing the same for free.
- 1.21. That Petitioner would like to bring on record that Government of Haryana has announced Haryana Solar Energy Policy, 2016 with the objective to reduce and minimize carbon emission in the environment and to promote the electricity production by non-conventional sources in the State. Solar Policy 2016 aims to achieve a target 16,00MW Rooftop Solar Power Plant by 2021-22. Haryana Solar Energy Policy, 2016 provides various subsidies, incentives and State supports to create a conducive environment in the field of Solar Energy Generation and Storage. It also provides promotion of deployment of rooftop solar photovoltaic plants for captive/self-consumption under Net Metering arrangement on the State Government buildings/office buildings or premises under the control of the State Government/office buildings of the Government of India.
 - 1.22. That the Petitioner submits that learned Uttar Pradesh Electricity Regulatory Commission in its order dated 16.10.2020 in Petition No. 1329 of 2018 in the case of Noida Metro Rail Corporation Vs. UPPCL has allowed metering to NMRC for its 10MW solar power plant under RSPV Regulations.
 - 1.23. That in the case of NTPC Limited vs Madhya Pradesh State Electricity Regulatory Commission 2007 ELR APTEL 7 Hon'ble APTEL has categorically stated that the Commission has "power to relax" any provision of regulation. The tribunal in the said judgment, i.e. in 2007 ELR APTEL 7 recorded the following observations:
"It must be held, that the power comprised in Regulation 13 is essentially the "power to relax". In case any Regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, the Regulation can be relaxed. The exercise of power under Regulation 13 of the Regulation is minimized by the requirement to record the reasons in writing by the Commission before any provision of the Regulations is relaxed. Therefore, there is no doubt that the Commission has the power to relax any provision of the Regulations".
Hon'ble Tribunal further states that the power to relax any provision by the Commission can be invoked by the Commission itself or on an application made by an interested/aggrieved person.
 - 1.24. That the Petitioner further submits that it is a Government entity installing the solar PV plant to reduce the cost of operation of metro rail which is meant for general welfare of public at large. Accordingly, as per the Haryana Solar Energy Policy, 2016 and keeping in view the public interest this is the fit case for grant of exemption from ceiling limit of 500kW load transfer under Regulation 5.3 of HERC (Rooftop Solar Grid Interactive System Based on Net-Metering/Gross Metering), Regulation 2021.
 - 1.25. That by virtue of Clause 18 of the Regulations the power has been conferred upon Hon'ble to relax any provision of these Regulations. the contents of Clause 18 of HERC (Rooftop Solar Grid Interactive System Based on Net-Metering/Gross Metering), Regulation 2021 is reiterated below:
*"18. **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, may relax any of the provisions of these Regulations."*
 - 1.26. That besides the above exemption the Petitioner prays that necessary directions may be issued to HAREDA and the DISCOM to allow Petitioner net-metering facility of the above plants.
 - 1.27. That the Petitioner would like to state that it is a Government Organization, installing the solar PV plant to reduce the cost of operation of metro rail which is meant for general welfare of public at large.

1.28. That the Petitioner's plant is commissioned and owing to 500kW ceiling the Discom is availing free power which is causing financial loss to the Petitioner which is ultimately the loss of the public money. The relaxation in 500kW cap on net metering, if and when allowed will help to prevent the loss being incurred to the Petitioner and eventually will benefit public at large.

1.29. GROUNDS

- 1.29.1. That the petitioner is a government entity for public utility.
 - 1.29.2. That the Petitioner is striving for cleaner and green energy use for its operations and the same is objective of the Haryana Solar Policy 2016.
 - 1.29.3. That the petitioner is working in the domain of public utility and serving the public in meeting the very essential need of commutation.
 - 1.29.4. That the present regulation are onerous on the part of Petitioner.
 - 1.29.5. That the perusal Clause 17 of the Regulation elucidates that it is well within the scope of adjudicatory power of Learned Commission to do away with difficulties/hardships being faced by Petitioner.
- 1.30. That the Learned Commission has been conferred upon with Power to Relax any provision under the Regulations. By virtue of Clause 18 of the Regulations the Commission may relax any provision to do away with any difficult or hardship on an application made by a Petitioner.
- 1.31. That in the case of NTPC Limited vs Madhya Pradesh State Electricity Regulatory Commission 2007 ELR APTEL 7 Hon'ble APTEL has categorically stated that the Commission "power to relax" any provision of regulation
- 1.32. That the Learned Uttar Pradesh Electricity Regulatory Commission in its order dated 16.10.2020 in Petition No. 1329 of 2018 in the case of Noida Metro Rail Corporation Vs. UPPCL has allowed metering to NMRC for its 10MW solar power plant under RSPV Regulations of Uttar Pradesh.

PRAYER

WHEREFORE, under the legal provisions, facts and circumstances detailed above it is most respectfully prayed upon that the Learned Commission may be pleased to;

- (a) Pass suitable order allowing to Petitioner w.r.t ceiling limit of 500kW set in RSPV Regulations, 2021 for installing Rooftop Solar PV Plant of capacity exceeding 500kW; and to pass suitable order allowing facility of Net Metering to the Petitioner beyond the ceiling limit of 500kW as fixed under Regulations.
 - (b) Allow the Petitioner to avail Net-Metering facility for all type of Solar Plants installed on Roof Top, Ground or Open Land, set up under RESCO model on various establishments (that is Metro Stations/Depots/Receiving Substations/Staff Quarter Buildings) of Petitioner in the State of Haryana even beyond the ceiling limit of 500kW.
 - (c) Allow 'Regenerative Braking of Metro Trains as Renewable Energy Source/Technology, so that Net Metering is easily extended by the DISCOM to DMRC, duly considering, the Exported Energy from 'Solar Plants' as well as 'Regenerative Braking of Metro Trains', for the purpose of Net Metering.
 - (d) DISCOM be directed to provide 'Net Metering Facility' for the Energy being fed back by DMRC into the Grid being utilized by them irrespective of the fact whether it is from Solar Plant or Regenerative Braking of Metro Trains.
 - (e) Pass any or such further order as may be deemed fit and proper in the facts and circumstances of the case.
2. The case was heard on 10/01/2024. Ms. Sonali Upadhyay counsel for the petitioner requested for adjournment due to non-availability of their main counsel. Ms. Sonia Madan requested for some time to file the reply on the maintainability of the petition. Acceding to request of the petitioner, the Commission adjourns the matter.

3. **Reply by R1 & R-2 (DISCOMs) 15/01/2024:**

- 3.1. The present reply is being filed on behalf of Respondent No. 1- Dakshin Haryana Bijli Vitran Nigam (“DHBVNL”) and Respondent No. 2- Uttar Haryana Bijli Vitran Nigam (“UHBVNL”), being the distribution licensees (collectively hereinafter referred to as “Discoms” or “Answering Respondents”) in the State of Haryana, through their authorized representatives who are fully conversant with the facts of the case based on knowledge derived from the record.
- 3.2. The petition has been filed by the Petitioner-Delhi Metro Rail Corporation Limited under Regulation 17 & 18 of the Haryana Electricity Regulatory Commission (Rooftop Solar Grid Interactive System Based on Net Metering/ Gross Metering) Regulations, 2021 (hereinafter referred to as “Regulations, 2021”) seeking relaxation of norms as per which Net Metering is restricted up to 500kV or up to the sanctioned load/contracted load whichever is lower.
- 3.3. All submissions are made 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 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.

3.4. **PRELIMINARY OBJECTIONS/ SUBMISSIONS:**

- 3.4.1. The present petition has been filed under Regulations 17 and 18 of the Regulations, 2021 seeking relaxation of norms as per which Net Metering is restricted up to 500kV or up to the sanctioned load/contracted load whichever is lower. The relief has been sought mainly on the grounds that the Petitioner is a public utility striving for green energy use - an objective that is in line with the Haryana Solar Policy, 2016. It has been contended that the Regulation reproduced above is onerous on the part of the Petitioner. As such, it is well-within the scope of the Hon’ble Commission to do away any difficulty or hardship being faced by the Petitioner. It is the case of the Answering Respondent that the present petition is not maintainable under the provisions of Regulations 17 and 18 of the Regulations, 2021.

SCOPE AND REALM OF “POWER TO REMOVE DIFFICULTIES” VERY LIMITED:

- 3.4.2. It is the case of the Answering Respondent that the scope and realm of application of the ‘powers to remove difficulty’ is very limited. A bare perusal of the provisions shows that directions with respect to the removal of difficulty can be passed only in case any difficulty arises in ‘giving effect to the provisions of these regulations’ and not in case the Regulation becomes onerous on the part of the Petitioner. Reliance in this regard is placed on the following judgments:
- i. In Madera Upendra Sinai V. Union of India [(1975) 3 SCC 765] the Hon’ble Apex Court held as under:

“Now let us turn to Clause (7) of the Regulation. It will be seen that the power given by it is not uncontrolled or unfettered. It is strictly circumscribed, and its use is conditioned and restricted. The existence or arising of a "difficulty" is the sine qua non for the exercise of the power. If this condition precedent is not satisfied as an objective fact, the power under this Clause cannot, be invoked at all. Again, the "difficulty" contemplated by the Clause must be a difficulty arising in giving effect to the provisions of the Act and not a difficulty arising aliunde, or an extraneous difficulty. Further, the Central Government can exercise the power under the Clause only to the extent it is necessary for applying or giving effect to the Act etc., and no further. It may slightly tinker with the Act to round off angularities, and smoothen the joints or remove minor obscurities to make it workable, but it cannot change, disfigure or do violence to the basic structure and primary features of the Act. In no case, can it, under the guise of removing a difficulty, change the scheme and essential provisions of the Act.”

- ii. The Hon'ble APTEL in *Ratnagiri Gas and Power Private Ltd. Uttar Pradesh Vs. Central Electricity Regulatory Commission & Another* [2011 ELR (APTEL) 0532], observed that:
"10.3. In our opinion, power to remove difficulties is to be exercised when there is difficulty in effecting the Regulations and not when difficulty is caused due to application of the Regulations. Thus, the exercising of power to remove difficulties does not arise in the present case"
- iii. Attention of the Hon'ble Commission is also brought towards the decision of the Hon'ble APTEL in *Madhya Pradesh Power Generation Company Ltd v. Madhya Pradesh Electricity Regulatory Commission* [Review Petition No. 3 of 2011. D/d. 1.3.2012], wherein the Hon'ble Tribunal observed as under:
"55. To our understanding, the exercise to remove difficulties cannot have different connotation in different statutes or distinguishable between statute and regulation. If we closely read Regulation 57 of the MYT Regulations, 2009 we find that power to remove difficulties which is given to the Commission is basically an administrative power not a legislative power which the Commission may by general or special order do or undertake or direct a generating Company to do or undertake things which the Commission find necessary for the purpose of removing the difficulty. This power is exercisable only to ensure that the Act is implemented and it is in furtherance of the Act that the power to remove difficulties is conferred. It is only to give effect to the provisions of the regulations that this power is exercised. It has been rightly argued by Mr. Sanjay Sen, learned Advocate for the Commission that the power to remove difficulty does not contemplate removal of hardship that may arise as a result of giving effect to the regulation."

As such, the present petition is not maintainable in its present form as the relief being sought is beyond the scope of power conferred upon the Hon'ble Commission under Regulation 17 of the Regulations, 2021.

THE POWER TO RELAX CAN NOT BE EXERCISED IF THE SAME WOULD RESULT IN ABROGATION OF AMENDMENT OF THE REGULATIONS:

- 3.4.3. Further, insofar as Regulation 18 relating to 'Power to Relax' is concerned, it is submitted that condition imposed by a Regulation may be dispensed with by the Hon'ble Commission only under special circumstances and not in a routine manner. The power under Regulation 18 cannot be exercised owing to commercial hardships being faced by the Petitioner. The power to relax should not have the effect of amending the regulation itself. An attempt to relax the regulations will fall out if it leads to abrogation or amendment of the Regulations. Further, it is well settled that the power of relaxation is a species of public power to be exercised in the public interest, rationally equitably, and on legitimate classification parameters. It cannot be discriminatorily applied to the case of the Petitioner while leaving other parties. Attention in this regard is brought towards the following judgments passed by this Hon'ble Commission:
- a. In *Shree Cement Limited, Panipat Vs. The Chairman-cum-Managing Director, UHBVNL & Anr.* [PRO-35 of 2019, Decided on 10.07.2020], the petitioner had sought to relax the requirement of Regulation 3.5 of Haryana Electricity Regulatory Commission (Rooftop Solar Grid Interactive System based on Net Metering) Regulations, 2014 thereby permitting use of both net metering facility and open access to the Petitioner. However, the Hon'ble Commission had disallowed the same. Similarly, in the present case, the Regulations have been issued after due diligence and only after a public hearing was conducted in the matter. It is relevant to mention here that the Petitioner never made any

submission before the Hon'ble Commission at the time of the public hearing and cannot be permitted to re-open the issue which already stands decided after due deliberation.

b. Similarly, in *M/s NGK Spark Plugs (India) Pvt. Ltd. Vs. the Managing Director, Dakshin Haryana Bijli Vitran Nigam & Ors.* [PRO-38 of 2022, Decided on 09.02.2023], the Petitioner had approached the Hon'ble Commission seeking relaxation of the Regulation 3.5 of the Regulations, 2021 to the effect that open access shall be allowed to the consumers having net metering connection. It may be noted that one of the grounds taken by M/s NGK Spark is that the generation of electricity through net metering facility has resulted in the saving of fossil fuel, reduction in carbon footprint, and conservation of energy. The Hon'ble Commission while dismissing the petition vide order dated 09.02.2022 held that the Regulations have been incorporated with a specific reasoning and after detailed deliberation and no deviation/ relaxation of the same is permissible.

c. Further, the Hon'ble Commission vide its order dated 26.06.2019 (in Petition no. 13 of 2018) filed by *Haryana Chamber of Commerce and Industries, Panipat* while rejecting the request regarding relaxations/amendment of Regulations held as under:

"The Petitioner has primarily raised a challenge to ibid Regulations under the garb of seeking relaxation thereto. Any such exercise cannot be undertaken by the Commission in an adjudicatory framework. The same is more in the nature of exercising legislative function of the Commission as the Regulations framed by it are in the nature of subordinate (delegated) legislation. Hence, ordinarily relaxation in the Regulations cannot be considered on a Petition filed by the Petitioner comprising particular category of consumers."

3.4.4. Even otherwise, if the statute prescribes for a thing to be done in a particular manner, then it should be done in that manner alone and in no other manner. It is submitted that the Petitioner is seeking relaxation/ exemption from the mandatory conditions/ qualifications stipulated in Regulation 5.3. In this regard, attention is drawn towards a settled principle of law that if the statute prescribes for a thing to be done in a particular manner, then it should be done in that manner alone and in no other manner. The Hon'ble Supreme Court in *State of Uttar Pradesh v. Singhara Singh and Ors.* [AIR 1964 SC 358], held as under:

"8. The rule adopted in Taylor v. Taylor (1876) 1 Ch D 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted."

Therefore, the requirements of Regulation 5.3 cannot be varied/modified/ relaxed for the benefit of the Petitioner.

GROUND WITH RESPECT TO 'PUBLIC INTEREST' IS MIS-PROJECTED AND MERITLESS:

3.4.5. That one of the grounds taken by the Petitioner for seeking relaxation is that the Petitioner is performing a function of public importance, as such relaxation may be granted in the public interest. However, such an argument is without any merit as it fails to take into account the consequent losses the Discoms may accrue which would ultimately get passed on to the consumers of the State at large. It is submitted that the Electricity Act, 2003 does not permit or further fulfilling the interest of a few consumers at the

cost of other consumers at large. Under the net metering facility, the consumer already has the advantage of injecting surplus cheaper power at the cost of the prevailing tariff. Removing the cap of 500kW would result in a loss of revenue and would further lead to subsidising one category of consumers at the cost of another.

- 3.4.6. It is further submitted that such an argument is flawed in view of the fact that the rooftop space is available in Government Organizations, Educational Institutions (Universities/ Schools/ Colleges), and other such organizations which are performing public functions. In fact, all the organizations are performing functions of public importance, in one way or the other. In case the argument of the Petitioner is accepted, the same would automatically entitle the other organizations performing public functions to seek deviation from Regulation 5.3 of the Regulations, 2021. Attention in this regard is brought towards the judgment passed by the Hon'ble Commission in *MM Education Trust Vs. Uttar Haryana Bijli Vitran Nigam Limited* [PRO-55 of 2018, Decided on 28.03.2019], wherein the Petitioner-an Educational Trust having a large number of independent educational institutions sought relaxation of Regulation 6.1 and 7.2 to the HERC (Rooftop Solar Grid Interactive System based on Net Metering) Regulations, 2014. However, the Hon'ble Commission held as under:

“Commission (Rooftop Solar Interactive System based on Net Metering) Regulations, 2014 under the garb of seeking relaxation thereto. Any such exercise cannot be undertaken by the Commission in an adjudicatory framework. The same is more in the nature of exercising a power of judicial review that is not conferred on the Commission. Any such relaxation/interpretation as is not within the scope of the Regulatory framework, cannot be undertaken by the Commission. However, while deciding not to look further into the petition on account of lack of jurisdiction, the Commission being in the process of undertaking amendment in the aforesaid Regulations in performance of its legislative functions, shall take the suggestions into consideration. The petitioner may, if so advised, further upload its comments and/or make appropriate submissions on the draft regulations published by the Commission and available on the website. The petitioner may send its comments, if any, in addition to the grounds raised in the instant petition, within a period of one week of the receipt of this order and the same shall be taken into consideration by the Commission for the purposes of carrying out appropriate amendment in the Regulations.

iv) Further, in view of the Regulation in vogue, no relaxation as prayed in existing cap of 30% of the peak capacity of the distribution transformer in case of interconnection with the grid at low tension and 15% of the peak capacity of the power transformer in case of interconnection with the grid at high tension and/or the maximum installed capacity of 1 MWp for a single eligible consumer can be allowed.

In view of the above the present Petition is disposed off.”

REGULATION IN LINE WITH THE ELECTRICITY (RIGHTS OF CONSUMER) RULES, 2020- LIABLE TO BE COMPLIED WITH:

- 3.4.7. It is submitted that Rule 11(4) of the Electricity (Rights of Consumer) Rules, 2020 as amended up to date, provides as under:

“11. Consumer as prosumer.-

(4) The arrangement for net-metering, gross-metering, net billing or net feed-in shall be in accordance with the regulations made by the State Commission, from time to time:

Provided that where the regulations does not provide for net-metering, net-billing or net feed-in, the Commission may allow net metering to the consumer for loads up to five hundred Kilowatt or upto the sanctioned load, whichever is lower and net-billing or net feed-in for other loads.”

It is pertinent here to refer to the order passed by the Hon’ble Commission in PRO-77 of 2020 and PRO-78 of 2020 on “True-up for the FY 2019-20, Annual (Mid-Year) Performance Review for FY 2020-21, Aggregate Revenue Requirement of UHBVNL and DHBVNL and Distribution & Retail Supply Tariff for the FY 2021-22.” wherein, with respect to the net-metering arrangement, the Hon’ble Commission has held as follows:

“9.14 Net Metering and gross metering

Haryana Discoms have proposed that Net Metering be allowed only for Domestic and Agricultural consumers and to be limited upto 10 KW as per Electricity (Rights of Consumers) Rules 2020. For all remaining consumers, Gross Metering mechanism as mentioned in the Electricity (Rights of Consumers) Rules 2020 be adopted.

The Discoms have also proposed that any kind of generation-based incentive for the consumers opting for Net Billing mechanism be discontinued. As currently in Haryana, an incentive of Rs. 1.00/unit is given to the Domestic and Bulk Domestic consumers under net metering mechanism, which has been proposed to be discontinued.

The Commission has considered the submission of the petitioners and is of the considered view that the rules notified by the Central Govtt. are required to be complied with and the relevant provisions of the regulations, already notified by the Commission, that are in conflict with the above rules, are required to be modified accordingly. The Commission has initiated the process of amending the existing Regulations and net metering regulations will come into force after completion of the requisite procedure. The Commission Orders that till such time the net metering regulations are appropriately amended, the existing net metering regulations will be applicable. The Commission has already determined tariff for solar power projects under KUSUM scheme @ Rs. 3.11 / kWh. Till such time feed in tariff is determined by the Commission the same shall be applicable once Net / gross metering Regulations are notified.

The petitioners have also requested that the incentive of Rs. 1.00/units given to the Domestic and Bulk Domestic consumers under net metering mechanism, be discontinued. The Commission observes that the incentive was given to encourage the consumers having lower tariffs to actively participate in installing rooftop solar power plants as the net metering regime was not sufficiently attractive for such consumers. The Commission is of the considered view that the cost of setting up Solar Power project is continuously declining and net metering facility is available to small consumers, hence there is no necessity of continuing with the incentive of Rs. 1.0 / Unit to such consumers.

Therefore, the Commission decides to discontinue the said incentive.”

It is the case of the Answering Respondent, that a perusal of the aforesaid order shows that the Hon’ble Commission has taken a view that the Rules notified by the Central Government are required to be complied. It is submitted that the Electricity (Rights of Consumer) Rules, 2020 amended up to date provides that net metering be allowed for load up to 500 kW or up to sanctioned load, whichever is lower. It is further submitted that the aforementioned Rule 11(4) of the Electricity (Right of Consumer) Rules, 2020 was also taken into account at the time of the public hearing dated

22.04.2021 before the notification of the Regulations, 2021. As such, no relaxation, contrary to the Rules notified by the Central Government may be granted to the Petitioner.

3.4.8. It is submitted that this Hon'ble Commission is a creature of statute, and no deviation from the Act and the Rules made thereunder is permissible. Reliance in this regard is placed on the decision in case of *Gujrat Urja Vikas Limited Vs. Solar Semiconductor Power Co. India P Limited* [Civil Appeal No. 6399 of 2016, Decided on 25.10.2017] wherein the Hon'ble Apex Court held that the Hon'ble Commission cannot take recourse to exercise of a power, the procedure for which is otherwise specifically provided under the Act and Rules made therein. Relevant paragraphs of the said judgement are reproduced below:

“33. Under Regulation 81, the Commission is competent to adopt a procedure which is at variance with any of the other provisions of the Regulations in case the Commission is of the view that such an exercise is warranted in view of the special circumstances and such special circumstances are to be recorded in writing. However, it is specifically provided under Section 181 that there cannot be a Regulation which is not in conformity with the provisions of the Act or the Rules.

34. Under Regulation 82, the Commission has powers to deal with any matter or exercise any power under the Act for which no Regulations are framed meaning thereby where something is expressly provided in the Act, the Commission has to deal with it only in accordance with the manner prescribed in the Act. The only leeway available to the Commission is only when the Regulations on proceedings are silent on a specific issue. In other words, in case a specific subject or exercise of power by the Commission on a specific issue is otherwise provided under the Act or the Rules, the same has to be exercised by the Commission only taking recourse to that power and in no other manner. To illustrate further, there cannot be any exercise of the inherent power for dealing with any matter which is otherwise specifically provided under the Act. The exercise of power which has the effect of amending the PPA by varying the tariff can only be done as per statutory provisions and not under the inherent power referred to in Regulations 80 to 82. In other words, there cannot be any exercise of inherent power by the Commission on an issue which is otherwise dealt with or provided for in the Act or the Rules.”

REGULATIONS NOTIFIED ONLY AFTER DETAILED STUDY- CAN NOT BE VARIED OR MODIFIED TO THE BENEFIT OF THE PETITIONER:

3.4.9. That various parameters/provisions specified/ made in the HERC Regulations, 2021 that were framed by this Hon'ble Commission are based on an exhaustive study and discussions inviting comments from all stakeholders. Therefore, any amendment/ relaxation in the Regulations sought to be made should also be based on a similar comprehensive study wherein various implications/ repercussions that could arise on account of proposed amendment/relaxation have been examined beforehand. Thus, there is no basis with the Hon'ble Commission for affecting any amendments/relaxations in the HERC Regulations, and that too on the request of a single stakeholder. It is further submitted that in case the relaxation being sought by the Petitioner is allowed, the same would result in a multiplicity of such petitions by different stakeholders. No provision of the regulations permits amendment in regulations in favor of a single stakeholder. Hence, the present Petition is untenable.

3.4.10. Even otherwise, the Petitioner has made bald, self-serving averments without a single document in support of such statements. It is a well-settled rule of law that a claim which is not supported by evidence is not admissible. The Petitioner has failed to clarify as to what benefit will be caused to the consumers of the State of Haryana in case the petition is allowed. It seems that the benefit would be caused to the Petitioner alone. It is further submitted Act/Rules/Regulations bring about a balance between the competing objectives. The norms must be designed to promote efficiency and to ensure that the gains that accrue on account of efficient operations are shared with the consumers of electricity. It is submitted that the present is not a case where the Regulations have become infeasible to comply with any difficulty being faced by the Petitioner in compliance with the same. As such, any submission of the Petitioner without any cogent supporting document showing the need and benefit to relax the Regulations in the favour of the Petitioner is liable to be rejected outrightly.

RELIANCE OF THE PETITIONER ON THE JUDGMENT PASSED BY THE LD. UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION MISPLACED:

3.4.11. It is further submitted that the Petitioner has relied upon the decision of the Ld. Uttar Pradesh Electricity Regulatory Commission (UPERC) in *Noida Metro Rail Corporation (NMRC) Vs. UPPCL* [Petition No. 1329 of 2018, decided on 16.10.2020] whereby the Ld. UPERC has allowed metering to NMRC for its 10MW solar power plant. It is submitted that the reliance of the Petitioner on the said decision is completely misplaced- Firstly, because the said decision is not binding on the Hon'ble Commission and Secondly, a perusal of para 10 of the order shows that the same was not opposed by the Respondents. As such, the decision was made *per-incuriam*, whereby the relief was granted since the same was not objected to by the Respondents. The concluding paragraphs of the order dated 16.10.202 are reproduced below for ready reference:

“10. The Commission observed that besides the commercial concerns raised by UPPCL, UPPCL as well as UPNEDA have submitted their affirmative comments in respect of granting of net-metering facility to the petitioner, NMRC, for its 10MW capacity rooftop solar plant under RSPV Regulations, 2015.

11. Considering above, the Commission decided to grant permission to the petitioner to install 10MWp rooftop solar plant with net-metering facility under RSPV Regulations, 2015 keeping all other provisions of the RSPV Regulations, 2015 intact. It must also be ensure that all the Regulatory, technical as well as safety criterion in the installation as well as operation of the plants are strictly adhered to.”

As such, the order dated 16.10.2020 (Annexure No. 2) may kindly not be taken into consideration.

In view of the above, the present appeal is liable to be dismissed as being non-maintainable under Regulations 17 and 18 of the Regulations, 2021 and also being devoid of merits.

3.5. PARA-WISE REPLY:

- 3.5.1. The contents of para no. 1 to the extent it relates to the filing of the present petition, the same is a matter of record.
- 3.5.2. That the contents of para no. 2 are a matter of record.
- 3.5.3. That the contents of para no. 3 are a matter of record.
- 3.5.4. That the contents of para no. 4 are a matter of record.
- 3.5.5. That the contents of para no. 5 are a matter of record.

- 3.5.6. That the contents of para no. 6 are a matter of record. However, it is made clear that the encouraging use of solar energy on the part of the Petitioner cannot be a ground for seeking relaxation/ deviation of the Regulations in vogue.
- 3.5.7. That the contents of para no. 7 are a matter of record.
- 3.5.8. That the contents of para no. 8 are a matter of record.
- 3.5.9. That the contents of para no. 9 are a matter of record.
- 3.5.10. That in reply to contents of para no. 10, it is made clear that use of Green Energy for commercial operations cannot be a ground for relaxation of the Regulations. 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.
- 3.5.11. That the contents of para no. 11 are a matter of record.
- 3.5.12. That the contents of para no. 12 are a matter of record.
- 3.5.13. That the contents of para no. 13, insofar as it relates to the Regenerative Braking System being used in metro trains, the same is a matter of record. However, in reply to the contents of rest of the para wherein it has been mentioned that the Regenerative Braking System leads to reduction of load on the Grid equivalent to the amount of electricity regenerated and also reduced carbon emission in addition to energy saving, it is submitted that the initiative steps taken by the Petitioner cannot entitle to Petitioner to any relaxation. It is submitted the consumer already has the advantage of injecting surplus cheaper power at the cost of the prevailing tariff. Removing the cap of 500kW would result in loss of revenue and would result in subsidizing one category of consumers at the cost of another.
- 3.5.14. That the contents of para no. 14 are a matter of record, however, the contents of the Preliminary Submission/ 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.
- 3.5.15. That the contents of para no. 15 are a subject matter of verification.
- 3.5.16. That the contents of para no. 16 are a matter of record.
- 3.5.17. That the contents of para no. 17 insofar as it relates to Regulation 5.3 of the Regulations, 2021, the same is a matter of record. However, it is wrong and vehemently denied that the Petitioner is facing any difficulty or is being deprived of injecting energy more than 500kW power into the grid. It is submitted directions with respect to the removal of difficulty can be passed only in case any difficulty arises in '*giving effect to the provisions of these regulations*' and **not** in case the Regulation becomes onerous on the part of the Petitioner. The commercial difficulty, if any, being faced by the Petitioner cannot entitle him to any relief.
- 3.5.18. That the contents of para no. 18 are wrong and denied. It is denied that the present Regulations do not support the Petitioner's initiative. It is further denied that benefit on account of exported energy is not being able to reach the Petitioner due to the limitation of the present Regulations. In this regard, it is submitted that any challenge against the Regulations cannot be made by way of the present petition. The validity of the Regulations can only be tested before the Court exercising judicial review.
- 3.5.19. That the contents of para no. 19 it is submitted that the scope and realm of 'power to remove difficulties' is limited. The directions with respect to the removal of difficulty can be passed only in case any difficulty arises in '*giving effect to the provisions of these regulations*' and **not** in case the Regulation becomes onerous on the part of the Petitioner. 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.

- 3.5.20. That the contents of para no. 20 are wrong and denied, in reply to which it is submitted that commercial difficulty is no ground to seek modification/relaxation of the Regulations in vogue.
- 3.5.21. That the contents of para no. 21 to the extent it relates to the Solar Energy Policy, 2016, the same is a matter of record. However, it is submitted that under the net metering facility, the consumer already has the advantage of injecting surplus cheaper power at the cost of the prevailing tariff. Removing the cap of 500kW would result in loss of revenue and would result in subsidizing one category of consumers at the cost of another. 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.
- 3.5.22. That in reply to the contents of para no. 22 it is submitted that the reliance of the Petitioner on the decision passed by Ld. UPERC is completely misplaced. 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.
- 3.5.23. That in reply to the contents of para no. 23, it is submitted that 'power to relax' cannot be exercised owing to commercial hardships being faced by the Petitioner. The power to relax should not have the effect of amending the regulation itself. An attempt to relax the regulations will fall out if it leads to abrogation or amendment of the Regulations. Even otherwise, condition imposed by a Regulation may be dispensed with by the Hon'ble Commission only under special circumstances and not in a routine manner. In case the present petition is allowed, the same will lead to multiplicity of such petitions by different stakeholders. 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.
- 3.5.24. That in reply to the contents of para no. 24, it is submitted that the reliance of the Petitioner on the decision in case of *Lalitpur Power Generation Company Limited Vs. UPERC* [Appeal No. 285 of 2019] is completely misplaced as no 'legal injury' is being suffered by the Petitioner in the instant case.
- 3.5.25. That in reply to the contents of para no. 25, it is submitted that the argument of the Petitioner with respect to the general welfare of public/ public interest is misconceived and devoid of any merit in view of the fact that the rooftop space is available in Government Organizations, Educational Institutions (Universities/ Schools/ Colleges) and other such organizations which are performing public function. As a matter of fact, all the organizations are performing functions of public importance, in one way or the other. In case the argument of the Petitioner is accepted, the same would automatically entitle the other organizations performing public function to seek deviation from Regulation 5.3 of the Regulations, 2021, which is not the objective behind the Regulations, 2021. 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.
- 3.5.26. That the contents of para no. 26 are a matter of record.
- 3.5.27. That in reply to the contents of para no. 27, it is submitted that no such direction is liable to be issued either to HAREDA or to the Answering Respondent, in view of the preliminary submissions/ objections made hereinabove.
- 3.5.28. That in reply to the contents of para no. 28, it is submitted that subsidizing one category of consumers would result in a loss of revenue for the Answering Respondent which would ultimately impact the consumers of the State of Haryana at large.

3.5.29. That in reply to the contents of para no. 29, it is submitted that firstly, commercial loss cannot be a ground for seeking relaxation of the Regulations and secondly, it is submitted that the Answering Respondent is also performing public function of supply of electricity being an essential commodity. The Petitioner has tried to pit the interest of metro consumers against the interest of electricity consumers of the State. The interests of both the organizations cannot be pitted against each other. 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.

3.6. REPLY TO 'GROUNDS':

- A. That the contents of para A is a matter of record. However, it is submitted that public function being performed by the Answering Respondent and the public function being performed by the Petitioner cannot be pitted against each other.
- B. That the contents of para B do not call for any reply.
- C. That the contents of para C is a matter of record. However, the Answering Respondent is also performing the public function of supply of electricity being an essential commodity. If loss of revenue is caused to the Answering Respondent the same may impact the consumers of the State of Haryana.
- D. That the contents of para D are wrong and denied. Even otherwise, no relief is liable to be granted to the Petitioner only on the ground that the Regulation is onerous on the part of the Petitioner.
- E. That in reply to the contents of para E, it is submitted that power under Regulation 17 of the Regulations, 2021 can only in case any difficulty arises in '*giving effect to the provisions of these regulations*' and **not** in case the Regulation becomes onerous on the part of the Petitioner. 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.
- F. That in reply to the contents of para F, it is submitted that Power to Relax cannot be exercised if the same would result in abrogation of amendment of the Regulations. 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.
- G. That the contents of para G are a matter of record, however, as have been detailed in the preliminary submissions/objections hereinabove, power to relax can only be exercised under special circumstances and not in routine manner owing to any financial difficulty being faced by the Petitioner.
- H. That in reply to the contents of para H, it is submitted that no legal injury is being caused to the Petitioner. 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.
- I. That in reply to the contents of para I, it is submitted that the reliance of the Petitioner on the order dated 16.01.2020 passed by Ld. UPERC is misplaced. 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.

Prayer clause is denied.

3.7. PRAYER:

In view of the submissions made hereinabove, it is respectfully prayed that the present petition being non-maintainable under the provision of Regulations 17 and 18 of the HERC (Rooftop Solar Grid Interactive System Based on Net Metering/ Gross Metering) Regulations, 2021 and also being devoid of merit may kindly be dismissed, in the interest of justice.

4. **Reply by R-3 (HAREDA) 21/03/2024:**

- 4.1. That New and Renewable Energy Department has notified Haryana Solar Energy Policy, 2016 with the objective to promote generation of green and clean power in the state using solar energy and further create conditions conducive to the participation of private and public sector as well as PPP in the promotion and setting up of Solar Energy based power projects in the state. As per Policy 1600 MW rooftop solar power plants were required to be added by the year 2021-22. But, upto march,2023, nearly 400MW of rooftop solar power plants have been installed in the State.
- 4.2. That Grid Connected Rooftop (GCRT) Solar Power Plants with net metering arrangement has proved to be very successful technology and has attracted interest of industrial, commercial and residential units for getting affordable electricity.
- 4.3. That Distribution Licensees (DISCOMs) have been designated as State Nodal Agency for setting up of GCRT Solar Projects in the State and they have issued procedure and guidelines for setting up of GCRT Solar Projects. As per the Haryana Electricity Regulatory Commission (Rooftop Solar Grid Interactive Systems based on Net Metering/Gross Metering), Regulations,2021, DISCOMS are entitled to achieve their Renewable Purchase Obligation from quantum of electricity consumed by eligible consumer, who is not an obligated entity, from the rooftop solar system under net metering/gross metering arrangement.
- 4.4. That DISCOMs have achieved their RPO targets during the year 2022-23. But, major portion of Renewable Energy have been purchased from the RE projects setup outside Haryana. Promoting GCRT Solar Power Projects with net metering arrangement has potential to add substantial installed capacity within Haryana.
- 4.5. That in Para 4, Para 5 and Para 6 of Petition, Petitioner has claimed that they have set up several Rooftop Solar Plants in its premises under RESCO model at different locations (Metro Stations/Depots/Receiving Substations/Staff Quarter Buildings) , each plant is well below the maximum rated capacity of 500kW prescribed under the Regulations 2021. The Petitioner has cumulative installed 50 MW capacity of Roof Top Solar Plant.
- 4.6. That in Para 7, 8 and 9 of Petition, Petitioner has claimed that Solar Plants at DMRC are connected at 415 volts to feed the solar energy to electrical loads connected to Auxiliary Substations (ASS) of each of the respective locations. Further, Petitioner is connected to the grid network of Haryana's DISCOMs at 66kV voltage level through metered connections with DHBVNL and UHBVNL and Petitioner has created its own power distribution network.
- 4.7. That as per the Haryana Electricity Regulatory Commission (Rooftop Solar Grid Interactive Systems based on Net Metering/Gross Metering), Regulations,2021, "Premises" means rooftops or/and any area on the land, building or infrastructure or part or combination thereof in respect of which a separate meter or metering arrangements have been made by the licensee for supply of electricity to the consumer.

In light of Petitioner's claim mentioned above, it is not clear at how many locations Discoms have made metering arrangement within premise of petitioner and out of which at how many locations they have installed GCRT Solar Plants of upto 500kW capacity. It will appropriate to consider individual site, metered by Discom, as separate premises and net metering arrangement may be considered accordingly.

Regenerative Braking of Metro Trains has not been defined as Renewable Energy Source/Technology by Ministry of New and Renewable Energy. However, increase of ceiling limit of 500 kW under Haryana Electricity Regulatory Commission (Rooftop solar Grid Interactive Systems based on Net

Metering/Gross Metering), Regulations,2021 may be considered at appropriate ceiling limit for promoting and increasing installed capacity of GCRT solar power plants.

5. The case was heard on 27/03/2024. Ms. Sonali Upadhyay counsel for the petitioner requested for short adjournment for filing the rejoinder as the reply has been received shortly. Acceding to request of the petitioner, the Commission adjourns the matter

6. **Rejoinder of petitioner dated 17/03/2024:**

Gp Capt. Sanjay V Kute (Retd), General Manager Legal Delhi Metro Corporation Limited, submitted as under:

- 6.1. That I am the Authorized Representative of the Petitioner in the above matter and am duly authorized by the said petitioner to make this affidavit.
- 6.2. That the content of paragraph no. 1 is matter of record.
- 6.3. That the content of paragraph no. 2 is matter of record.
- 6.4. That the content of paragraph no. 3 is matter of record.

REPLY TO PRELIMINARY OBJECTION/SUBMISSION.

6.5. That the averments made in the preliminary objection/submission is matter of record. The petitioner is facing legal hardship and injustice, this fails the entire purpose of the Regulation to bring both the consumer and the discoms at level playing field. In regard to contents brought out in Para 1, it is very humbly submitted that, the Petitioner operates and provides it's service in the National Capital Region and there is no capping of Solar Plant Capacity for availing the Net Metering facility in the State of Delhi. The removal of capping actually promotes installation of Solar Plants thereby, promoting use of Green and Clean Energy from Renewable Sources like Solar Plants. Such Solar Plants also help Discoms to meet their Renewable Purchase Obligations (RPO).

Further, Uttar Pradesh Electricity Regulatory Commission vide its order dated 16.10.2020 in Petition No. 1329 of 2018 in the case of Noida Metro Rail Corporation Vs. UPPCL has allowed metering to Noida Metro Rail Corporation (NMRC) for its 10MW solar power plant under RSPV Regulations. Therefore, DMRC's Petition submitted before Hon'ble HERC is well-within the scope of Hon'ble Commission in terms of Clause 18 (Power to Relax) of Rooftop Solar Grid Interactive System Based on Net Metering / Gross Metering) Regulations, 2021.

The power to relax is the remedy for the injury being caused to petitioner and therefore it is most humbly submitted that the petition is maintainable.

REPLY TO SCOPE AND REALM OF "POWER TO REMOVE DIFFICULTY" VERY LIMITED.

- 6.6. That the averments made in point 2 are vehemently denied, it is most humbly submitted that it is well settled that power to remove difficulty is well within the scope of Learned Commission. The contents of para no. 2 are denied, since, it is the case of the Petitioner that prayed to the Hon'ble Commission to exercise the Power to Relax which is well-within the scope of Hon'ble Commission in terms of Clause 18 (Power to Relax) of Rooftop Solar Grid Interactive System Based on Net Metering / Gross Metering) Regulations, 2021. Further the power conferred upon the commission to remove difficulty is not a limited power rather discretionary in nature, where the power has to be applied judiciously and in case specific manner and as per the circumstances of the case.
- 6.7. That the Apex Court's decision in Point 2.1 the case of Madera Upendra Sanai vs Union Of India Hon'ble Supreme Court has annotated about removal of difficulty but it is most humbly submitted that the same is not applicable as

the facts and circumstances of the above mention case are different and do not have any similarity with present petition. Hence denied.

REPLY TO THE POWER TO RELAX CANNOT BE EXERCISED IF THE SAME WOULD RESULT IN ABROGATION OF AMENDMENT TO THE REGULATIONS:

- 6.8. That the averments made by the Respondent with regard to Power to Relax in point no. 2 is vehemently denied.
- 6.9. That the mere perusal of the abovementioned clause makes it clear that any aggrieved party with appropriate reason may approach the Learned Commission seeking relaxation.
Further it is most humbly submitted that in case of Lalitpur Power Generation Company Limited vs UPERC (Appeal No. 285 of 2019) Learned APTEL has enumerated that if the party is deprived of its legal rights and as a result of its deprivation, some legal injury has been caused to the aggrieved party, the injured part deserves relief in the shape exercise of power to relax. Also the same does not leads to amendment in the Regulations.
- 6.10. That Learned APTEL in 2007 ELR APTEL 7 in the case of NTPC Ltd. vs. Madhya Pradesh State Electricity Board has held as under: "It must be held, that the power comprised in Regulation 13 is essentially the "power to relax". In case any Regulation causes hardship to a party or works injustice to him Page 21 of 67 Appeal No. 130 of 2009 or application thereof leads to unjust result, the Regulation can be relaxed. The exercise of power under Regulation 13 of the Regulation is minimized by the requirement to record the reasons in writing by the Commission before any provision of the Regulations is relaxed. Therefore, there is no doubt that the Commission has the power to relax any provision of the Regulations". 10.7. The above Regulations and the decision give the judicial discretion to the Central Commission to relax norms based on the circumstances of the case. However, such a case has to be one of those exceptions to the general rule. There has to be sufficient reason to justify relaxation. It has to be exercised only in exceptional case and where non exercise of the discretion would cause hardship and injustice to a party or would lead to unjust result. In the case of relaxation of the Regulations the reasons Page 22 of 67 Appeal No. 130 of 2009 have to be recorded in writing. Further, it has to be established by the party that the circumstances are not created due to act of omission or commission attributable to the party claiming the relaxation. In context of contents brought out in para no. 3, it is very humbly submitted that DMRC didn't made any submission before the Hon'ble Commission at the time of Public hearing because at that point of time DMRC has not envisaged that the Solar energy being generated from these solar plants would be getting Exported to the Grid.
- 6.11. The contents of para no. 4 are denied, as Solar Plants installed by DMRC are in in line with the 'National Solar Mission' and 'Swachh Bharat Mission' of Govt. of India, and these plants also mitigate the adverse effect on 'Environment' & 'Climate Change'.
- 6.12. The contents of para no. 5 are denied, since Discoms and other Consumers are not incurring any loss. The unutilized solar energy generated from the solar plants installed by the Petitioner are exported in the Grid and this unutilized solar energy is being utilized by other Consumers through the Discoms network in the State of Haryana, for which the other Consumers are paying Discoms at a specific Tariff rate as per Tariff Schedule. Thus, the Discoms are getting financially benefited from the Exported Energy but the Discoms are not willing to extend Net Metering facility to DMRC.
- 6.13. In context of para no. 6, it is humbly submitted that as per Hon'ble HERC's Tariff Order DMRC lies in the category *{i.e. HT Supply (above 50 kW) including Traction & DMRC}* and DMRC takes Power Supply from Haryana Discoms at

66 kV. Most of the Organizations/Educational Institutions referred in para 6.0 may not be taking Power Supply at 66 kV and thus, the plea taken by Discoms that consideration of DMRC's case to Relax the existing Regulations would entitle the other Organizations/Educational Institutions to seek deviation from existing regulations may be exaggerated and it is quite possible that Solar Energy may not be getting Exported to Grid in the case of most of the Organizations/Educational Institutions.

Thus, DMRC's Prayer for Allowing relaxation with respect to ceiling limit of 500 kW set in RSPV Regulations, 2021 for installing Rooftop Solar PV Plant is reasonable and the same also stand supported with the Hon'ble DERC's Regulations with respect to Net Metering related to 'Solar Plants / Renewable Energy'.

It is also a fact that the unutilized solar energy generated from the solar plants installed by the Petitioner are exported in the Grid and this unutilized solar energy is being utilized by other Consumers through the Discoms network in the State of Haryana, for which the other Consumers are paying Discom at a specific Tariff rate as per Tariff Schedule. Thus, the Discoms are getting financially benefited from the Exported Energy but the Discoms are not willing to extend Net Metering facility to DMRC.

REPLY ONGROUNDS TO WITH RESPECT TO PUBLIC INEREST IS MISPROJECTED AND MERITLESS.

- 6.14. That the facts and averments made in Point No.5 is wrong and misleading and hence denied. There can not be any doubt about the DMRC's service to public interest by providing affordable and efficient service to the masses in the NCR Region. The glaring problem of transportation in the region would unimaginable to be solved had there been no service of DMRC.
- 6.15. Further here it is pertinent to mention that there will be no loss to the respondent Discoms because the Discoms has been getting surplus above 500kw free of cost whereas on the contrary it is the Petitioner who has been persistently incurring loss on its surplus energy export to Discom. Here it is pertinent to mention that the injustice which is being inflicted upon the petitioner is the extra revenue being earned by Discom. Infact the revenue which is being incurred by Discom is nothing but legal due which should be paid to the petitioner for its surplus energy exported to the Discom. If the Petitioner gets its legal dues paid, consequently it will be none other than the commuters and the public at large who will be benefited.

That in the light of Section 108 it can be clearly understood that direction of State Government in public interest is binding upon the Discom.

Section 108-Electricity Act, 2003. 108. Directions by State Government. –

In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing.

It is humbly submitted that the Solar Policy are directives to be bore in mind while framing the regulation and while adjudicating upon a matter. Here it is pertinent to mention that the Solar Policy of Haryana itself is formulate on the lines of National Solar Policy and to achieve the aims and objective of the same. It is also humbly submitted that that the Petitioner as an Organization, has No Statutory Obligation, to procure and use Energy from Renewable Sources. However, being a responsible Organization, and, in order to contribute towards 'Environment' & 'Climate Change', 'National Solar Mission', 'Swachh Bharat Mission' of Govt. of India, the Petitioner took the initiative to tap the Renewable Energy Sources (like On-site Rooftop Solar Plants, Off-site Solar Plant at Rewa in Madhya Pradesh and Waste to Energy Plant at Ghazipur in Delhi). The contribution towards the larger objective of the Society i.e. Pollution, Climate Change, and meeting the Missions of Govt.

of India towards Renewable Energy cannot be compared with monetary benefits.

REPLY TO REGULATIONS NOTIFIED ONLY AFTER DETAILED STUDIES CANNOT BE VARRIED OR MODIFIED TO BENEFIT OF THE PETITIONER:

- 6.16. That the propositions made in the paragraph no.9 is inconsistent with the provisions of clause 18 that is "Power To Relax" of the Regulations because the said clause nowhere prevents a single stake holder to seek relaxation. Further it categorically elucidated in the regulations that the any aggrieved party can approach The Learned Commission with reasons to seek relaxation. At several occasions Learned APTEL and several State Electricity Commissions have relaxed the norms in case and circumstances of legal injury and injustice, the cases regarding the same has been mentioned above and the same is not being repeated for the sake of brevity. Also in the Regulation provision of Power To Relax is incorporated with a judicious foresight to correct the wrong and unjust and to subsequently relief the aggrieved party from legal injury caused to it. Denying an aggrieved party to relax the norm in case of legal injustice will be unfair and will fail to provide level playing field to the consumer/solar power producer.
- REPLY TO REGULATION IN LINE WITH THE ELECTRICITY (RIGHTS OF CONSUMER) RULES 2020 – LIABLE TO COMPLIED WITH:
- 6.17. That in context of para no. 7, it is humbly submitted that the Petitioner (i.e DMRC) is a Consumer of Electricity in the State of Delhi, Haryana and Uttar Pradesh. It is the fact that the certain Rules have been notified by the Central Govt. but these Rules have been revised by the various Hon'ble State Electricity Regulatory Commission's depending upon the concerned State Policy's and Targets.
- 6.18. It is very humbly submitted that, there is no capping of Solar Plant Capacity for availing the Net Metering facility in the State of Delhi. The removal of capping actually promotes installation of Solar Plants thereby, promoting use of Green and Clean Energy from Renewable Sources like Solar Plants. Such Solar Plants also help Discoms to meet their Renewable Purchase Obligations (RPO).
- 6.19. It is the fact that the certain Rules have been notified by the Central Govt. but these Rules have been revised by the various Hon'ble State Electricity Regulatory Commission's depending upon the concerned State Policy's and Targets. It is very humbly submitted that, there is no capping of Solar Plant Capacity for availing the Net Metering facility in the State of Delhi. The removal of capping actually promotes installation of Solar Plants thereby, promoting use of Green and Clean Energy from Renewable Sources like Solar Plants. Such Solar Plants also help Discoms to meet their Renewable Purchase Obligations (RPO).
- 6.20. It is also a fact that the unutilized solar energy generated from the solar plants installed by the Petitioner are exported in the Grid and this unutilized solar energy is being utilized by other Consumers through the Discoms network in the State of Haryana, for which the other Consumers are paying Discom at a specific Tariff rate as per Tariff Schedule. Thus, the Discoms are getting financially benefited from the Exported Energy but the Discoms are not willing to extend Net Metering facility to DMRC.
- 6.21. In context of para no. 9, it is humbly submitted that the facts brought out in Point 1 to 8 above may please be referred, and Hon'ble Commission is humbly requested to kindly consider DMRC's Prayers brought out in the Petition as Hon'ble Commission has the Power to Relax the existing Regulations in the interest of State and its Consumers.

REPLY TO RELIANCE OF THE PETITIONER ON THE JUDGEMENT PASSED BY LEARNED UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION MISPLACED:

6.22. That the submission made by the respondent in paragraph 11 is misleading and are vehemently denied.

6.23. That the respondent discoms in NMRC vs UPPCL in petition no. 1329 of 2018 has opposed the net metering for petitioner on the ground of revenue loss that will happen if net metering is allowed to the petitioner. Para 9 of the 1329 of 2018 has been reproduced here:

“However since NMRC is HV3 category consumer and is across subsidizing consumer if net metering is permitted this shall result in loss of revenue and increase in tariff for cross subsidizing category of consumer UPPCL submitted that considering above final decision may be taken by the Commission”.

Further with respect to content of para no. 11, it is humbly submitted that although Orders of Hon’ble UPERC passed in the case of Noida Metro may not be binding on Hon’ble HERC but Hon’ble HERC has the Power to Relax the existing Regulations in the interest of State and its Consumers, and thus, the Petitioner (i.e DMRC) has made certain Prayers in the Petition No. 72/2023 before Hon’ble HERC to relax certain existing provisions, as DMRC had built the Metro System of Noida Metro (i.e. NMRC) and DMRC’s & NMRC’s case are same as the Systems of both (i.e DMRC as well as NMRC) are almost similar.

Further, in the case of Noida Metro (i.e. NMRC) before Hon’ble UPERC, the concerned Respondents had not opposed NMRC’s case before Hon’ble UPERC because there was merit in NMRC’s case. Since, DMRC’s & NMRC’s case are same as the Systems of both (i.e DMRC as well as NMRC) are almost similar, therefore, Hon’ble Commission is humbly requested to kindly consider DMRC’s Prayers brought out in the Petition as Hon’ble Commission has the Power to Relax the existing Regulations in the interest of State and its Consumers.

REPLY TO PARAWISE REPLY

6.24. That the content of paragraph no. 1 is matter of record needs no comments.

6.25. That the content of paragraph no. 2 is matter of record needs no comments.

6.26. That the content of paragraph no. 3 is matter of record needs no comments.

6.27. That the content of paragraph no. 4 is matter of record needs no comments.

6.28. That the content of paragraph no. 5 is matter of record needs no comments.

6.29. That the content of paragraph 6 is incorrect to the extent that use of solar energy by the Petitioner cannot be ground to seek for relaxation in this regard it is submitted that Haryana Solar 2016 itself promotes use of solar energy in the state and have fix a target of 1600 MW of Rooftop Solar energy production by 2021-22.

6.30. That the content of paragraph no. 7 is matter of record needs no comments.

6.31. That the content of paragraph no. 8 is matter of record needs no comments.

6.32. That the content of paragraph no. 9 is matter of record needs no comments.

6.33. That the content of paragraph no. 10 of the petition has wrongly represented as the petitioner does not utilizes its solar energy for commercial purpose. Instead it utilizes the solar energy for its own purpose and consumption.

6.34. That the content of paragraph no. 11 is matter of record needs no comments

6.35. That the content of paragraph no. 12 is matter of record needs no comments.

6.36. That the contents of paragraph no. 13 is wrong and misleading. It is most humbly submitted that Regenerative Braking System is an innovative step to generate non fossil fuel energy. The Solar Policy of Haryana 2016 mentions promotion of green energy as one of its important aim and objective.

6.37. That the content of paragraph no. 14 is matter of record needs no comments.

6.38. That the content of paragraph no. 15 is matter of record needs no comments.

- 6.39. That the content of paragraph no. 16 is matter of record needs no comments.
- 6.40. That the content of paragraph is denied to the extent where it affirms that the petitioner is deprived in injecting power to the grid. Here it is pertinent to mention that the respondent is misrepresenting the fact because once the power is generated the surplus power will be transmitted on its own but the petitioner is not getting billed for the surplus power more than 500kw.
- 6.41. That the content of paragraph 18 is denied because the power to relax is well with in the scope of commission and the same does not amount to amendment in the regulations.
- 6.42. That the content of paragraph 19 is false and denied. It is most humbly submitted that the scope of Power to Relax is not limited rather it has wider scope to the extent that the clause reads that any provision of the regulation can be relaxed at the same time it is discretionary in nature.
- 6.43. That the content of paragraph 20 it is humbly submitted that petitioner has not raised the issue of commercial difficulty rather it has raised the issue of non-payment of surplus energy export to the discoms. Further it is reiterated that non-payment of the of the due is in violation with provision of the Electricity Act 2003, Section 61(h) the promotion of co-generation and generation of electricity from renewable sources of energy; the petitioner is a co generator and non-payment of its legal due is discriminatory, arbitrary and against the principles of Electricity Act 2003.
- 6.44. That the content of para 21 is false and denied. It is humbly submitted that though the petitioner is able to inject the surplus power but is not getting paid by the Discoms for the surplus power export.
- 6.45. That the content of is vehemently denied the detailed to has already been given in reply to preliminary submission and the same is not being repeated for the sake of brevity.
- 6.46. That the content of para 23 is false and misleading hence denied. The power to relax is an enabling clause which is provided in the regulations to correct the wrong for the sake of justice. The power to relax if and when applied will not lead to amendment.
- 6.47. That the content of paragraph 24 is denied as the case of Lalitpur Power Generation Company Limited Vs UPERC is well in conformity with the present petition and legal injury has been caused to the petitioner because then petitioner is not getting paid for its surplus energy export and the same is being availed by the respondent discoms for free.
- 6.48. That the contents of paragraph 25 is false. it is humble submitted that in the light of section 108 it can be clearly understood that direction of State Government in public interest is binding upon the Discoms.
Section 108-Electricity Act, 2003,
Directions by State Government. - (1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing.
- 6.49. That the content of paragraph no. 26 is matter of record needs no comments.
- 6.50. That the content of paragraph no. 27 is denied because the hardship caused to the petitioner in order to be resolved calls for relaxation in the norms and hence the respondents are liable to be issued directions by this Learned Commission.
- 6.51. That the content of the paragraph no. 28 is false and erroneously interpreted hence denied. It is humbly submitted that the extra revenue is being earned by Discom. In fact the revenue which is being incurred by Discom is nothing but legal due which should be paid to the petitioner for its surplus energy exported to the Discom. If the Petitioner gets its legal dues paid, consequently it will be none other than the commuters and the public at large who will be benefited.

6.52. That the content of paragraph no.29 is misleading that the averments regarding commercial loss herein is misinterpreted because loss being incurred is the form of non-payment of remuneration of surplus energy being exported to the Discom. This is causing legal injury to the petitioner. Further the respondent in submission has mentioned about itself to be performing public function and the interest of two organization cannot be pitted against each other but in actuality it is only the petitioner who is at losing end but the petitioner as a consumer/producer is not getting paid for its surplus energy export above 500kw and per contra the respondent discom is availing the same free of cost.

REPLY TO REPLY TO GROUNDS

- 6.53. That the content of paragraph A is wrong and denied because firstly no public function being performed by respondent and petitioner is being pitted against each other and also the same cannot to ground of denial.
- 6.54. That the content of paragraph B is misleading because the averment made in point B of Ground pertains to Solar Policy of 2016 which is directives of state government which is guiding principles and ideals to be followed the Hon'ble Commission while framing the regulations.
- 6.55. That the content of paragraph C is denied, there will be no loss to the answering respondent by paying to the due which the respondent ought to pay.
- 6.56. That the content of paragraph D is denied, detailed reply has been given and the same is not being repeated for the sake of brevity.
- 6.57. That the content of paragraph E is denied and the same has replied in reply to preliminary submission of respondent and the same s not being repeated for the sake of brevity.
- 6.58. That the content of the paragraph E is denied, it is submitted that the power conferred upon the commission to remove difficulty is not a limited power rather discretionary in nature, where the power has to be applied judiciously and in case specific manner and as per the circumstances of the case.
- 6.59. That the content of paragraph F is denied it is submitted that if the party is deprived of its legal rights and as a result of its deprivation, some legal injury has been caused to the aggrieved party, the injured part deserves relief in the shape exercise of power to relax. Also the same does not leads to amendment in the Regulations.
- 6.60. That the content of paragraph G is denied the detailed reply has given in reply to preliminary submission/objections and the same is not being repeated for the sake of brevity.
- 6.61. That the content of paragraph H is false and denied, the legal injury has been caused to the petitioner in the shape of non payment of dues and the detailed reply has been made in reply to scope of power to relax and same is not being repeated for the sake of brevity.
- 6.62. That the content of paragraph I is denied because the order of Learned UPERC is rightly quoted and detailed reply has been given in reliance of the petitioner on the judgement passed by Learned UPERC.
- 6.63. That I solemnly affirm at Lucknow on this 17th Day of March,2024 that the contents of paragraphs 1 to 62 of the above Rejoinder affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there.

Proceedings:

7. The case was heard on 08/05/2024, as scheduled, in the court room of the Commission.

8. Sh. D.D.Chopra, Sr. Advocate, counsel for the petitioner re-iterated the contents of the petition and submitted that the petition has been filed seeking relaxation in the regulation for allowing Net Metering to the Petitioner beyond the ceiling limit of 500kW as fixed under Regulations.
9. Sh. D.D.Chopra, Sr. Advocate, Counsel for the petitioner further submitted that DMRC is a Govt. Company and has installed several Solar plants having capacity below 500 kW but has got only 3 connections and combined capacity of Solar plants against each connection is higher than 500 kW. DMRC is allowed net metering up to 500 kW on each connection as per regulations and the units generated over and above 500 kW which are injected in the grid free of cost. The Solar plants of DMRC were installed in the year 2020 when the limit of net metering as per regulations was 1MW and the limit of 500kW in the regulations has been introduced subsequently in the year 2021.

In some of the states the limit of connection on which net metering is allowed is higher than 500 kW.

The counsel for the petitioner further pleaded that there are judgements of the APTEL and Hon'ble Supreme Court, wherein it has been held that the Commission can relax the regulation for providing relief to the petitioner.

10. On query as to why the petitioner is insisting for relaxation in the regulation for net metering whereas the option of gross metering is also available with the petitioner, the petitioner argued that in case of gross metering all the power produced is to be exported to the grid and for their consumption supply is to be imported from the grid only.
11. The counsel for the respondents Ms. Sonia Madan argued that the regulations are applicable for every consumer whether it is a Govt. company or a private entity and cannot be relaxed for a particular consumer on the ground that the consumer is a public sector company. The relaxation of net metering limit of 500 kW for any particular consumer shall be discriminatory in nature and the commercial gain earned by the consumer due to relaxation of limit has to be borne by other consumers. The Commission, cannot incentivise one consumer at the cost of other users.

The petitioner had not raised any issue during public hearing regarding load for net metering at the time the regulation was being revised in 2021 and seeking of relaxation at this stage is an afterthought and may not be allowed.

The Counsel for respondent DHBVN further submitted that the power of the Commission to remove difficulty is limited to the difficulty arising out of the circumstances where it becomes difficult/impossible to *'giving effect to the provisions of these regulations.'* In this particular case there is no such difficulty made out by the petitioner except that there is financial loss to the consumer due to limit of 500 kW for net metering as per regulation.

Such petition seeking relaxation for ceiling limit of solar capacity in net metering for individual consumer was preferred by MM Education Trust Mullana, was disposed off by the Commission on 28.03.2019 and no relief was allowed.

Commission's Analysis and Order:

12. The case was called for hearing on 08.05.2024, wherein the Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by the parties. The petitioner herein (M/s. Delhi Metro Rail Corporation Ltd) has approached this Commission seeking relaxation in Haryana Electricity Regulatory Commission (Rooftop Solar Grid Interactive System Based on Net-Metering/Gross Metering), Regulation 2021 (HERC Regulations, 2021), to the extent of allowing the petitioner to export power to Discoms beyond the ceiling limit of 500 kW fixed in the above regulation to enable the petitioner to export

surplus power on net metering basis. The petitioner has further prayed to allow 'Regenerative Braking of Metro Trains as Renewable Energy Source/Technology, so that Net Metering is easily extended by the DISCOM to DMRC, duly considering, the Exported Energy from 'Solar Plants' as well as 'Regenerative Braking of Metro Trains', for the purpose of Net Metering.

13. At the outset, the Commission has considered it appropriate to refer to the relevant provisions of the HERC (Net Metering) Regulations, 2021, framed pursuant to the Electricity (Rights of Consumers) Rules, 2020, notified by the Ministry of Power, Govt of India (GoI) on 31.2.2020 along with its subsequent amendment on 28.06.2021.

The Regulation 2 (k) of HERC Regulations, 2021, defines eligible consumer as under:-

"Eligible consumer" means a consumer of electricity other than Agriculture Tube well (AP) consumer in the area of supply of the distribution licensee, who intends to install or has installed a grid connected rooftop solar system in his premises."

The Regulation 5 of HERC Regulations, 2021, defines 'Eligible Consumers and Project Capacity' as under:-

"The maximum rated capacity of rooftop solar system, to be installed by any eligible consumer in his premises, shall not exceed its connected load/sanctioned load in case of Low-Tension connection and contract demand in case of High-Tension connection."

Provided that net metering to the consumer shall be allowed for the loads up to 500 kW or up to sanctioned load/contracted demand, whichever is lower and in case of gross metering for the loads up to sanctioned load/contracted demand of the eligible consumer."

Provided further that minimum rated capacity of rooftop solar system that can be set up under net metering/gross metering arrangement shall not be less than 1 kW."

Provided also that a variation in the rated capacity of the system within a range of five percent shall be allowed with reference to the capacity caps given above."

Provided also that distribution licensee shall accept SPV Power as per useful life of SPV System to install or has installed a grid connected rooftop solar system in his premises."

14. The petitioner has set up its case that due to the fact that DMRC is a Government owned company, it may be allowed Net Metering beyond the ceiling limit of 500kW as fixed under Regulation 5 of HERC Regulations, 2021. Per-contra, the respondent discoms have opposed the aforesaid relief sought primarily on the ground that the regulations framed by this Commission, after following the due process of public consultation and prior publication, cannot be discriminatory in nature for a particular class of consumer (Public Sector Company in this case), particularly when such consumer has not raised any issue during public hearing held for the purpose regarding ceiling limit of load for net metering. The respondent discoms cited a few case laws including Hon'ble Apex court's order dated 07.11.1974 (Madera Upendra Sinai V. Union of India [(1975) 3 SCC 765]). The sum and substance of the said order cited by the respondent discoms is that under the guise of removing a difficulty, under no circumstances, the essential provisions

of the Regulations can be changed. The "difficulty" must be a difficulty arising in giving effect to the provisions of the Act and not a difficulty arising aliunde, or an extraneous difficulty. Further, reliance was placed on the judgement of Hon'ble Appellate Tribunal for Electricity (Ratnagiri Gas and Power Private Ltd. Uttar Pradesh Vs. Central Electricity Regulatory Commission & Another [2011 ELR (APTEL) 0532]), wherein it has been held power to remove difficulties is to be exercised when there is difficulty in effecting the Regulations and not when difficulty is caused due to application of the Regulations. The Hon'ble Supreme Court in its judgement in PTC India Ltd V. CERC (2010) 4 SCC 603 (Para 54 to 56) has held that the Regulations framed by the Commissions are binding on the Commission as well.

15. The Commission has carefully considered the submissions and arguments of the parties, including case laws cited, in the matter. The Commission has taken note of the judgement dated 16.08.1963 of Hon'ble Supreme Court in the case of State of Uttar Pradesh V. Singhara Singh and Ors. (Criminal Appeal No. 31 of 1962) , wherein it has been observed that *"the rule adopted in Taylor v. Taylor (1875) 1 Ch D 426, 431 is well recognized and is founded on sound principles. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed"*. Further, Hon'ble Supreme Court, in its judgement dated 20.01.1960, in the matter of Alopi Parshad and Sons Ltd V. Union of India (Civil Appeal No. 693 of 1957 2 SCR 793, AIR 1960 SC 588), had decided that *"22. There is no general liberty reserved to the courts to absolve a party from liability to perform his part of the contract, merely because on account of an un contemplated turn of events, the performance of the contract become onerous"*.
16. The Commission has taken note of its earlier order dated 26.06.2019 (in Petition no. 13 of 2018) filed by *Haryana Chamber of Commerce and Industries, Panipat*, wherein while rejecting the request regarding relaxations/amendment of the HERC (Duty to Supply) Regulations, 2016, held as under:
"The Petitioner has primarily raised a challenge to ibid Regulations under the garb of seeking relaxation thereto. Any such exercise cannot be undertaken by the Commission in an adjudicatory framework. The same is more in the nature of exercising legislative function of the Commission as the Regulations framed by it are in the nature of subordinate (delegated) legislation. Hence, ordinarily relaxation in the Regulations cannot be considered on a Petition filed by the Petitioner comprising particular category of consumers."
17. The Commission considers that HERC (Net Metering) Regulations, 2021 were framed pursuant to the Electricity (Rights of Consumers) Rules, 2020, notified by the Ministry of Power, Govt of India (GoI) on 31.2.2020 along with its subsequent amendment on 28.06.2021. The Regulations of the Commission framed in exercise of the powers vested under Section 181 of the Electricity Act, 2003 has to be consistent with the Act and the rules framed thereunder.
18. In view of the above and considering the facts placed on record, the Commission observes that the scope of inherent power granted under the Regulations with respect to 'powers to remove difficulty' and 'power to relax' is confined to a narrow space and can be exercised only in case any difficulty arises in *'giving effect to the provisions of these regulations'* and not in a routine manner owing to merely commercial hardships, as it has the effect of amending the Regulations itself more so when it contravenes the Rules framed by the Ministry of Power. Accordingly, the prayer of the petitioner to relax the regulations/remove the difficulty, is declined.
19. Regarding the other prayer of the petitioner to allow 'Regenerative Braking of Metro Trains' as Renewable Energy Source/Technology, the Commission agrees

with the view of the respondent no. 3 i.e. HAREDA that 'Regenerative Braking of Metro Trains' has not been defined as Renewable Energy Source/Technology by Ministry of New and Renewable Energy. The Commission is not empowered to declare any technology as 'Renewable Energy Source', which is not defined by MNRE as such.

20. The present petition is disposed of in above terms.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 23/05/2024.

Date: 23/05/2024
Place: Panchkula

(Mukesh Garg)
Member

(Naresh Sardana)
Member

(Nand Lal Sharma)
Chairman

Haryana Electricity Regulatory Commission