BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISISON

GANDHINAGAR

Petition No. 1858 of 2020 along with
I.A. No. 01 of 2020

In the Matter of:

Petition under Sections 42, 43, 50, 86 and Other applicable provisions of the Electricity Act, 2003 read with the GERC (Electricity Supply Code and Related Matters) Regulations, 2015, GERC (Standard of Performance of Distribution Licensee) Regulations 2005 and other applicable Regulations of the Commission seeking grant of additional time for completion of 66 kV transmission line for 5000 kVA Contract Demand and consequently directing MGVCL to restrain from issuance of Two Months' Notice (TMN) to the Petitioner for levying demand charges on contract demand of 5000 kVA on deemed release basis.

Petitioner	:	Concord Biotech Limited
Represented By	:	Mr. D. S. Doshi along with Mr. Kalyan Pattnaik

V/s.

Respondent No. 1	:	Madhya Gujarat Vij Company Limited
Represented By	:	Ld. Adv. Ms. Ranjitha Ramchandran, Ld. Adv. Mr. Utkarsh Singh along with Mr. J. R. Shah and Mr. Alpesh Patel
Respondent No. 2.	:	Gujarat Energy Transmission Corporation Limited
Represented by	:	Ld. Adv. Ms. Ranjitha Ramchandran, Ld. Adv. Mr. Utkarsh Singh along with Mr. S. K. Nair, Mr. H. G. Karia and Mr. Shobhraj Jaiswal

CORAM:
Mehul M. Gandhi, Member
S. R. Pandey, Member

Date: 12/11/2025

ORDER

1. The present Petition is filed by the Petitioner, Concord Biotech Limited, under Sections 42, 43, 50, 86 and Other applicable provisions of the Electricity Act, 2003 read with the GERC (Electricity Supply Code and Related Matters) Regulations, 2015, GERC (Standard of Performance of Distribution Licensee) Regulations 2005 and other applicable Regulations of the Commission seeking grant of additional time for completion of 66 kV transmission line for 5000 kVA Contract Demand and consequently directing MGVCL to restrain from issuance of Two Months' Notice (TMN) to the Petitioner for levying demand charges on contract demand of 5000 kVA on deemed release basis.

2. The Petitioner has prayed as under:

(a) *"In the facts and circumstances of the case, the Commission may please to take on record the present petition,*

(b) *In the facts and circumstances of the case, the Commission may please to grant the opportunity of being heard to the Petitioner,*

(c) *In the facts and circumstances of the case, the Commission may please to invoke its powers to relax / inherent power for allowing time period up to May 2020 for completion of line work, and*

(d) *Consequently, direct the Respondent No. 1 to restrain henceforth from issuance of Two Months' Notice to the Petitioner during the period for which the extension of time as may be granted by the Commission in the present Petition.*

(e) *The Commission may allow to amend / alter / modify the contents of the Petition as and when required in the given facts and circumstances of the case.*

(f) *Pass such further order or orders as the Commission may deem just and proper in the circumstances of the case."*

3. Brief facts of the Petition are as under:

3.1. The Petitioner, M/s. Concord Biotech Limited (Concord Biotech), is a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 1482-1486, Trasad Road, Dholka, Dist: Ahmedabad - 382225. The

Petitioner is engaged with business of manufacturing of different types of active pharmaceuticals ingredients and related products.

3.2. The Respondent No.1, Madhya Gujarat Vij Company Limited (MGVCL), is a Distribution Licensee (Discom) in the State of Gujarat within the meaning of Section 2 (17) of the Electricity Act, 2003 and is undertaking Distribution and retail supply of electricity in Central part of the State.

3.3. The Respondent No. 2, Gujarat Energy Transmission Corporation Limited (GETCO) is the transmission licensee in the State of Gujarat and also holding the status of 'State Transmission Utility' (STU) under section 39 of the Electricity Act 2003.

3.4. It is submitted that before going into the merit of case and prayer made in the present petition, the Petitioner would like to put on record certain factual aspects relevant to the case as under.

3.5. The Petitioner has established new manufacturing facility Unit III plant at Limbasi-Sojitra Road, Village: Ranasar, Tal: Matar, District: Kheda for manufacturing of Enzymes and subject to regulatory approvals would add different types active pharmaceuticals ingredients. The new manufacturing facility is falling within supply jurisdiction of electricity distribution licensee - MGVCL.

3.6. On 11.01.2019, the Petitioner has applied for power demand of 5000 KVA to Respondent No. 1, MGVCL at new manufacturing facility Unit III plant at Limbasi-Sojitra Road, Village: Ranasar, Taluka: Matar District: Kheda. It is submitted that this was the first experience of the Petitioner seeking power supply at Extra 26 High Tension level involving role of MGVCL as well as GETCO and requirement of close coordination amongst various agencies.

3.7. Pursuant to the application for new connection of 5000 KVA on 11.01.2019, there were various communications, correspondence and meetings between the Petitioner and GETCO/MGVCL during the period from 11.01.2019 to date of issue of Estimate on 20.06.2019 in regard to submission of Tikka plan, Site Survey, Survey and Drawing approval for Point of Supply etc.

3.8. During the meeting with GETCO, it was given to understand that the power supply can be given from 66 KV Limbasi substation of GETCO and the work for erection of around 3 KM of 66 KV line work from 66 KV Limbasi substation of GETCO to the premises of the Petitioner is to be undertaken by the Petitioner itself under Option-III as GETCO would not be granting Option-I to the private applicants. As such Option-I is only granted to Government applicants.

3.9. Under the circumstances, the Petitioner was having two options at relevant time namely, (i) to wait until GETCO issue estimate under Option-III and thereafter challenge the said action of GETCO, (ii) to accept Option-III and get the work done on its own without challenging Option-III. Considering the practical difficulties in challenging each and every action of GETCO / MGVCL that too when the Petitioner was setting up new plant investing huge money, in interest of timely availability of power supply, the Petitioner had no option but to carry out 66 KV line works at its own under Option-III.

3.10. It is further submitted that the Petitioner had acted swiftly in this regard and accordingly evaluated various alternatives and configurations for erection of 3 KM 66 KV line from 66 KV Limbasi substation for availing 5000 KVA power supply. After detailed evaluation and discussion, it was considered to construct 66 KV line with underground cable network using 630 sq. mm XLPE power cable with Aluminum corrugated sheath as proper and best viable alternative.

3.11. Accordingly, at the initial stage of application itself, before issuance of estimate by GETCO/MGVCL, the Petitioner during the meeting with GETCO on 18.05.2019 and also vide letter dated 21.05.2019 had specifically requested GETCO to allow underground power cable type 630 sq. mm XLPE with Aluminum corrugated sheath instead of poly sheathed XLPE cable. The above request of the Petitioner to allow 630 sq. mm XLPE with Aluminum corrugated sheath was as per the approved / accepted norms and framework of GETCO. This is also proven from the fact that at later stage GETCO had allowed said cable configuration to the Petitioner without any objection.

3.12. The Petitioner received estimate from MGVCL vide letter dated 20.06.2019 along with GETCO estimate dated 04.06.2019 (hereinafter referred to as Original Estimate). The GETCO estimate clearly states that *"M/s. Concord Biotech limited (Unit-II) shall undertake the work for power demand under Option-III - consumer will carry out the entire work."*

3.13. It is further submitted that in the estimate, GETCO has considered 3 KM, 66 KV underground cable network with poly sheathed XLPE cable. The underground power cable specifications considered in the estimate was not in accordance with the requirement of the Petitioner conveyed on 21.05.2019.

3.14. MGVCL estimate dated 20.06.2019 clearly provides that if the payment of estimate is not received within one month from the date of issue of estimate, the estimate will be treated as cancelled and application will be filed, forfeiting the reservation deposit paid by us. Thus, taking cognizance of this condition that if the estimate is not paid within the period of one month, the application for new connection will be cancelled by MGVCL, which will necessitate to repeat the entire time consuming procedure a fresh, the Petitioner had paid the estimate on 13.07.2019, pending the issue of allowing underground power cable specifications as per the requirement of the Petitioner.

3.15. Upon payment of estimate on 13.07.2019, MGVCL vide letter dated 26.07.2019 had called upon the Petitioner to execute Power Supply Agreement with MGVCL with a specific stipulation that in case the Petitioner fails to execute the agreement within 7 days from the letter, it will be presumed that the Petitioner is not interested to avail power supply and it will proceed for cancellation of application without further correspondence in the matter. Therefore, the Petitioner had no option but to honour the advice of MGVCL and accordingly sign the Power Supply Agreement with MGVCL on 05.08.2019.

3.16. Pursuant to signing of the agreement, MGVCL vide letter dated 07.08.2019 had informed GETCO to follow up the erection of line work as per the scope of estimate. Further, GETCO vide letter dated 08.08.2019 had informed the Petitioner to fix up the erection agency for transmission line and bays from approved list of GETCO and also to make material procurement from approved vendor list of GETCO. Moreover, it was intimated in the letter that after selection of agency and vendor for material procurement, a kick off meeting jointly with Engineering and Project Department of GETCO will be arranged to work out planning, drawing approval, inspection requirement etc. Accordingly, as intimated by GETCO, the Petitioner had acted swiftly and proceeded for selection of external agency for erection of 66 KV line and bays from GETCO approved list of agencies. Further, the Petitioner vide letter dated 20.08.2019 had communicated to GETCO regarding selection of M/s. HEC Infra Project Limited as agency for erection of 66 KV line work.

3.17. In meantime, the issue of allowing underground cable with alternate specifications being not considered in the original estimate, was to be kept aside, as after issuance of original estimate the focus of the petitioner was on meeting various timelines and requirements conveyed by MGVCL/GETCO.

3.18. Immediately after selection of external agency for execution of 66 kV line work, the Petitioner had approached GETCO for arranging a kick off meeting. Accordingly, the meeting was convened at GETCO Corporate Office, Vadodara on 03.09.2019 to discuss the requirements and action plan for erection of 66 KV line and bays works under Option-III. During the meeting, the Petitioner had specifically raised the issue that while issuance of the estimate dated 20.06.2019, GETCO had not considered the request of the Petitioner made vide letter dated 21.05.2019, for allowing underground cable with alternate specification i.e. corrugated XLPE cable. Recognizing the mistake, it was given to understanding to the Petitioner that a fresh formal request for the same may be made by the Petitioner to Superintending Engineer (TR), Nadiad Circle (GETCO) for taking appropriate action in this regard. Accordingly, very next day, the Petitioner vide letter dated 04.09.2019 had made fresh request to Superintending Engineer (TR), Nadiad Circle (GETCO) to revise the estimate with 630 sq. mm corrugated XLPE aluminum cable giving reference to the earlier request made in the meeting dated 18.05.2019 and vide letter dated 21.05.2019 on the subject matter.

3.19. Since the decision of GETCO for allowing power cable with required alternate specification was pending, it was not possible for the Petitioner to proceed further in terms of taking actions for the procurement of cable and materials and undertake physical execution of work during pendency of such decision from GETCO end. Further, the Petitioner was under bonafide belief that the time required for taking decision and revising the estimate by MGVCL/GETCO would be adjusted in the time limit of 180 days specified in the estimate / agreement for completion of line work.

3.20. MGVCL vide letter dated 14.11.2019 had issued additional / revised estimate to the Petitioner along with GETCO estimate letter dated 25.10.2019, incorporating the revised cable configuration i.e. XLPE cable with Corrugated aluminum sheath in place of Poly Al sheathed XLPE power cable. As per the revised / additional estimate and revised scope of work, the amount of Rs. 1,85,117/- was payable to MGVCL/GETCO. This additional/ revised estimate amount was paid by the Petitioner on 27.11.2019. Further, it is submitted that in the revised / additional estimate, it was categorically stated that the timeframe for work completion is 180 days which will be counted from the date of agreement with MGVCL, i.e.180 days from 05.08.2019. In case the Petitioner fails to complete the work within specified timeframe, MGVCL shall take further action to commence billing of demand charge as per provision of Clause 4.3 of Supply Code.

3.21. The above stand of MGVCL to reckon the timeframe of 180 days from the date of signing of agreement and not considering adjusting the time period involved for revising the estimate, was a shock and surprise to the Petitioner. MGVCL had ignored to consider the time period of more than 3 months taken for procedural requirement at GETCO/MGVCL end for revising the estimate. Further, MGVCL/GETCO also not considered the fact that only 83 days were left with the Petitioner to commence and complete the work after communicating revised scope of work on 14.11.2019 and payment of the revised estimate on 27.11.2019 as against 180 days' time limit provided in the original estimate.

3.22. Thus, against above approach of the Respondents, the Petitioner vide letter dated 12.12.2019 to GETCO with a copy to MGVCL has represented to grant time limit up to May 2020, among others, mainly on the ground that the revised scope of work was communicated to the Petitioner only on 14.11.2019 and the revised estimate was paid on 27.11.2019. Accordingly, no actions could be taken before 27.11.2019 for execution of line and bays works. Further, the reason for revision in estimate was not on account of the Petitioner as the Petitioner had well in advance, before issuance of original estimate, shown the requirement of specific cable configuration to GETCO. The requirement was within framework of accepted norms of GETCO. Despite that, the estimate dated 20.06.2019 was issued without taking into account the request of specific cable configuration. This has necessitated for the revision in the estimate. There was no occasion for the Petitioner to commence the line work during pendency of the decision to allow cable with alternate specification.

3.23. In response, MGVCL vide letter dated 31.12.2019 has rejected the request for allowing time limit extension for completion of work under Option-III stating that the provision of Clause 4.33 (2) of Supply Code 2015 and Clause 9.3(3) of Standard of Performance Regulations 2005, the request for time limit extension cannot be entertained. Further, GETCO in its letter dated 02.01.2020 has simply referred the decision of MGVCL conveyed vide letter dated 31.12.2019.

3.24. With an aim to make one more attempt to represent the case and to apprise MGVCL with regard to the requirement for time limit extension up to May 2020, the Petitioner vide letter dated 22.01.2020 has communicated to MGVCL for the same. However, the request of the Petitioner to the authorities of Respondents went in vain as no formal relief is granted to the Petitioner.

3.25. It is submitted that total quantum of work includes approx. 3 Km of 66 KV cable lying along with associated bays works at Limbasi sub-station and Petitioner's sub-station.

3.26. It is submitted that the Petitioner has already issued PO to the GETCO approved external agency for amount of @ Rs. 2.73 Cr. for execution of above work. It is submitted that acting on the instruction of the Petitioner, the Agency has already planned the deployment of resources for execution of work on site. The Petitioner has submitted for plan approval to GETCO on 20.12.2019. The Petitioner is recently in receipt approval of plan from GETCO, vide their letter dated 29.01.2020. It will be followed by publication of gazette notification by GETCO giving 60 days' notice period.

3.27. After receipt of approval of plan from GETCO, the application for RoW consent / crossing approval from Irrigation Department, Forest Department, R&B Department and Gujarat Gas Department will be processed parallel with the gazette notification. Once preliminary activities / procedure is completed and approval / consent is received, it will not take much time to execute the physical work on site as it involved laying of Underground cable and the agency is already ready to mobilize the resources at site. As per the estimate of the Petitioner, the entire work as per the scope of an estimate including seeking RoW consent / crossing approval and physical execution of work will be completed by 31.05.2020.

3.28. Under the provision of Supply Code, the Commission has jurisdiction and authority to grant extension of time for completion of line work for providing power supply. In the given circumstances and facts of the case as outlined in the present Petition that the reasons for additional time requirement for completion of 66 KV line work is not attributable to the Petitioner and when MGVCL has shown its constraint to grant any additional time period on the basis of provisions of Supply Code Regulations, the Petitioner has no alternative but to invoke the jurisdiction of the Commission seeking to grant additional time for completion of 66 KV line works up to May 2020 and consequent direction to the Respondent No. 1 to restrain from issuance of Two Months' Notice considering 180 days' time limit from the date of Power Supply Agreement dated 05.08.2019, till that period.

3.29. In support of the case of the Petitioner and in order to understand the true scope and purpose of present petition, the Petitioner would like to refer relevant provisions of the Electricity Act 2003 (Act) and Regulations framed thereunder by the Commission, as under:

- **Electricity Act 2003:**

Section 2 (41)

"local authority" means any Nagar Panchayat, Municipal Council, municipal corporation, panchayat constituted at the village, intermediate and district levels, body or port commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with, the control or management of any area or local fund;"

Section 42 (1)

"42. (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act."

Section 43

"43. (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission."
…….
(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."

Section 50

The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity; measures for preventing tampering, distress or damage to electrical plant, or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.

Section 57. (Consumer Protection: Standards of performance of licensee):

(1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.

(2) If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission:

Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.

(3) The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination.

- **GERC (Electricity Supply Code and Related Matters) Regulations, 2015:**

Procedures to Settle Disputes

1.14 In the event of dispute regarding any provisions in the Supply Code between any User and the Distribution Licensee, the matter shall be referred to Gujarat Electricity Regulatory Commission and its decision shall be final.

Licensee's obligation to extend the distribution system and consumer's share in the cost

4.3 *The licensee is responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. The cost of extension of distribution mains and extension/ up-*

gradation of the system up to the point of supply for meeting demand of new consumers and the cost of extension of service connection from the distribution mains to the point of supply shall be levied as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005 and amendments thereof.

4.32 *In case of application for HT/EHT supply the licensee shall forward the application to the Transmission Licensee within three days of its receipt for its further processing in terms of provisions in the Grid Code. The Transmission Licensee within 7 working days of receipt of the application from distribution licensee, shall intimate the distribution licensee regarding feasibility or otherwise of the application. Comments of the Transmission Licensee shall be communicated to the applicant within three days thereafter.*

In case the application is found feasible and subject to compliance as provided in Clause 4.29 above, the Distribution Licensee shall issue a demand note in writing, under acknowledgement, within the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

Provided that the time taken by applicant in securing the compliance as provided in Clause 4.29 above and time taken by Transmission Licensee in giving feasibility report shall not be included in the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

4.33 *The demand note shall contain following details:*

(1) Details of the works (including service line) to be undertaken for providing electricity supply;

Provided that where the estimates are issued on the basis of per kW of demanded load, the estimate need not contain details of works to be undertaken.

(2) Charges for the above mentioned works to be paid by the applicant in accordance with GERC (Licensees Power to Recover Expenditure incurred in providing supply and Other Miscellaneous Charges) Regulations 2005 and amendments thereof.

Provided that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises *extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall procure the materials. The material should conform to relevant BIS specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.*

Provided further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

Provided further that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable.

(3) Amount of security deposit as specified in the GERC (Security Deposit) Regulations, 2005 and amendments thereof.

***4.38** The licensee shall not be held responsible for delay, if any, in extending supply if the same is on account of problems relating to right of way, acquisition of land, or delay in consumer's obligation over which licensee has no reasonable control.*

***4.42** On completion of the work, Licensee shall inform to the applicant for availing the power supply and if the applicant fails to avail of the power within the period of sixty days from such intimation, he shall be liable to pay the demand charges and minimum monthly charges as applicable. The Distribution Licensee may, in special circumstances, extend the above period of sixty days.*

- **GERC (Standards of Performance of Distribution Licensees) Regulations, 2023**

Exemptions

***15.2** Adherence to specific standards of performance may be relaxed during Force Majeure conditions such as war, mutiny, civil commotion, riot, flood, cyclone, storm, lightening, earthquake, grid failure, and strike/curfew, lockout, fire affecting the licensee's installations and activities and also under wind or rainy conditions where safety of electrical equipment and personnel is not possible.*

Commission may, under specific circumstances relax provisions of Regulations in general or any specific Regulations for the period specified in its order.

The licensees shall strictly abide by the standards, benchmarks and timelines as specified in these Regulations. This shall however be subject to technical feasibility of the same. In cases where the licensee seeks extension of the timelines due to technical constraints or on any other grounds, due approval has to be taken from the Commission.

3.30. It is submitted that as per the provisions of the Section 42 (1) Electricity Act 2003, it is the duty of Distribution Licensee to maintain efficient, coordinated and economical distribution system in his area of supply. Further, as per Section 43 (1), it is obligation on part of distribution licensee to provide supply of electricity upon demand made by the occupier of the premises within the period of one month and in case where extension of distribution mains / substation is required, the distribution licensee shall have to supply the electricity within such period as specified by the Commission. Moreover, as per Section 43 (2), it shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises. The Section 43 (3) provides for consequences for failure of distribution licensee to supply electricity within the time frame specified in Section 43 (1).

3.31. In the present case, the Petitioner has been entrusted the work of transmission line and bays for release of 5000 KVA demand, therefore it may be appreciated that the Petitioner is acting on behalf of GETCO/MGVCL. Accordingly, MGVCL/GETCO may not be absolved from its responsibility of making available the electric plant or electric lines for providing electricity simply on the ground that the responsibility of the same is entrusted to the Petitioner.

3.32. In the background of facts and circumstances of the case as stated hereinabove, there is requirement for additional time for completion of 66 kV line and bays work. The Petitioner has requested the Commission to grant additional time under provisions of GERC Supply Code for completing the 66 kV line work considering the following facts:

(a) Even though the request for consideration of specific types of cable configuration was made to GETCO well in advance before issuance of estimate, GETCO had ignored such request and issued estimate without considering the scope of work requested by the Petitioner. This has led to revision in estimate at later stage to incorporate the requirement of the Petitioner resulting into loss of crucial time. This has involved loss of more than three months after signing of agreement. Thus, reason for revising the estimate and time consumed for the same is not attributable to the Petitioner.

(b) The Petitioner had paid the original estimate on 13.07.2019 and had also signed power supply agreement on 05.08.2019 pending the resolution of issue and without insisting for revision of estimate with modified scope of work under the bonafide belief that the time limit of 180 days would be adjusted by MGVCL / GETCO itself due to time taken by GETCO / MGVCL for revision in the estimate as it was error on their part in providing the estimate and non-adherence of the timeline would have resulted in cancellation of the application. However, it was when MGVCL had informed vide letter dated 31.12.2019 to the Petitioner that as per the provision of Supply Code and Standard of Performance Regulations, it is not possible for MGVCL to entertain the request for extension/adjustment of time.

(c) After signing of Power Supply Agreement on 05.08.2019, the matter of allowing cable configuration as per the requirement of the Petitioner was pending for decision with GETCO / MGVCL till 14.11.2019 when the revised scope of work was communicated to the Petitioner along with revised estimate. Therefore, it was not possible for the Petitioner to proceed further for procurement of cable and material and execution of physical work on site during pendency period from 05.08.2019 to 14.11.2019.

(d) For sake of clarity, it is to state that the Petitioner does not have any claim / grievances against MGVCL / GETCO in regard to time taken by MGVCL / GETCO for procedural requirement. However, in the given facts and circumstances of case, when the delay in communication of revised scope of work was not attributable the Petitioner, the Petitioner is entitled to the additional time period, at least time period involved in procedural requirement at MGVCL / GETCO end as during pendency of the decision, the Petitioner could not commence the line erection activities.

(e) The activities in relation to route approval by GETCO and subsequent gazette notification of 60 days' public notice in local newspapers by GETCO could be undertaken only after making payment of additional / revised estimate on 27.11.2019 involving revised scope of work. Therefore, in any case it was not possible to commence physical work on site by the Petitioner before expiry of 60 days public notice which is to be issued by GETCO only after plan approval.

(f) In case of 66 KV line work, large numbers of approvals/consents required from various external authorities /agencies such as Gujarat Gas, R&B, Irrigation Dept for canal crossing and protected forest department after route approval. Further, procurement of RoW consents and resolution of RoW issues is much time-consuming activities over which the Petitioner do not have reasonable control. Considering this fact, even otherwise also, it is not possible to complete the line work within period of 180 days let alone 70 days' time period which is practically available to the petitioner in the present case i.e. from 27.11.2019 to 05.02.2020 to undertake all the activates like procurement of the material, get various approvals/ RoW consents etc. and complete the execution of work within short time period. It may be appreciated that the Petitioner shall require reasonable time to undertake various time-consuming activities over which the Petitioner does not have reasonable control.

3.33. It is submitted that the even though the Petitioner has acted swiftly and diligently to commence and complete the works of erection of 66 KV underground cable line, there is requirement of additional time for reasons not attributable to the Petitioner.

3.34. As per the provisions of Clause 4.37 of Supply Code 2015, the concerned distribution licensee is (i) entitled for extension of time for completion of line/ substation work, (ii) shall not be held responsible for delay in completion of work in specific cases over which the licensee has no reasonable control. Therefore, it is unjustified, unreasonable and illogical to content that only distribution licensee is eligible for additional time and not to be held responsible for the delay for reasons in nature of beyond reasonable control but when the applicant undertakes the same work on behalf of licensee and faces the difficulties which also beyond the reasonable control of the applicant, the applicant is not entitled for any relief. Contrary to this, the applicant is liable to pay demand charges and monthly minimum charges on deemed release basis.

3.35. In the present case, though the responsibility of creation of supply mains is vested with the Licensees, the Petitioner has been entrusted the responsibility of creation of 66 KV transmission line of 3 KM and bays, from far-off Limbasi Sub-station, which is not expertise domain of the Petitioner. On other hand, the Respondents are not acknowledging the real reasons for the delay and leading to requirement of additional time period up to May 2020.

3.36. It needs to be considered that it is the responsibility of the licensee (MGVCL/GETCO) to make available the required electrical network for providing power supply. However, in the present case, the Petitioner has been mandatorily entrusted to undertake the work of 66 KV line and bays under OPTION-III, on the behalf of licensee. The Petitioner has shown its bonafide by acting on advice / intimation of MGVCL by paying the original estimate and also signing the Power Supply Agreement pending the request for revision in the scope of work. Non-consideration of the request of the Petitioner while issuing original estimate and consequent delay in communication of revised scope of work had led to delay in execution of work and a reason for such delay is not attributable to the Petitioner.

3.37. It is further submitted that (i) the Petitioner is executing the line works under the Section 164 permission of GETCO, (ii) all the Row proceedings and approvals also in name of GETCO, (iii) MGVCL / GETCO has already recovered supervision charges from the Petitioner for supervision of work, (iv) the physical execution of work is carried out under supervision of GETCO and (v) the ownership of line assets is also with the GETCO. Given the facts, the Petitioner may be allowed for the relief otherwise available to MGVCL/GETCO under the Supply Code namely extension of time period for completion of line works.

3.38. The Petitioner will be suffering heavily due to delay in power supply after making huge investment for the plant. Over and above to this agony, MGVCL, without appreciating the ground reality, has expressed clear intention to proceed for Notice to the Petitioner after completion of 180 days on 05.02.2020, requiring payment of demand charges and monthly minimum charges of 5000 KVA on deemed release basis.

3.39. The objectives of Regulations/Act in specifying time limit for providing power supply is for the benefit of consumers so that distribution licensee may not take unreasonable time to make available power supply. Thus, said provisions are to be interpreted in the interest of the consumers only. In the present case, the said Standard of Performance is acting counterproductive against the Petitioner which cannot be the objective of Act/ Regulations.

3.40. The Petitioner has submitted that it has taken due diligence for completion of transmission line and bays and the reasons for delay in completion are not attributable to the Petitioner but due to reasons which is beyond reasonable control of the Petitioner. It is submitted that the time period involved for revision of scope of work and estimate need to be excluded from the performance of obligations of the Petitioner and affected party is entitled for the additional time for this count i.e. time period up to May 2020.

3.41. The Petitioner has already deployed manpower at site and spared the resources for execution of the work under the supervision of GETCO. It is submitted that as per the estimate of the Petitioner, the balance work would be completed in all respect by end of May 2020.

3.42. It is submitted that as per the provisions of the Supply Code, the Commission has jurisdiction and authority vested with inherent powers/power to relax for granting extension of time limit.

3.43. In this regard, the Petitioner has referred to the relevant regulations of GERC Supply Code, as under:

Power of Relaxation and Power to Remove Difficulties:

> *9.21. The Commission may, in public interest and for reasons to be recorded in writing, relax any of the provisions of this Code.*
>
> *9.22. If any difficulty arises in giving effect to any of the provisions of this Code or there is a dispute regarding interpretation of any provision, the matter may be expeditiously referred to the Commission. The Commission shall pass necessary orders after consulting the parties concerned, provided that the Commission may refuse to entertain the reference filed beyond 3 months' delay without sufficient cause.*

Savings of Inherent Power of the Commission

> *9.23 Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Gujarat Electricity Regulatory Commission to make such Orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission.*
>
> *9.24 Nothing in this Code shall bar the Gujarat Electricity Regulatory Commission from adopting in conformity with the provisions of the Act a procedure, which is at variance with any of the provisions of this Code, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.*
>
> *9.25 Nothing in this Code shall, expressly or impliedly, bar the Gujarat Electricity Regulatory Commission dealing with any matter or exercising any power under the Act for which no codes have been framed, and the Commission may deal with such matters, powers and functions in a matter it thinks fit.*

3.44. It is submitted that in terms of provisions of supply code 9.21-9.22, the Commission has power to relax and power to remove difficulties. Similarly, as per Supply Code

9.23, the Commission has inherent power to pass such orders as may be necessary for end of justice to meet. Further, as per Code 9.24, nothing shall bar the Commission from adopting a procedure which is at variance with any of the provisions of Supply code, if deems necessary. Moreover, as per the code 9.25, there shall be no bar for dealing with any matter or exercising any power under the Act by the Commission, for which no Codes have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

3.45. The Petitioner has submitted that as per the above provisions of GERC Supply Code, the Commission has power to relax and power to exercise its regulatory jurisdiction to grant time limit extension and grant consequent relief thereto as sought in the present Petition. Since the issue involved in the matter is relating to extension of time for completion of 66 KV line works under the provisions of Supply Code and therefore the Commission has jurisdiction to decide issue considering the merit of the case.

3.46. In the circumstance enumerated here in the present Petition and taking into account that the requirement of additional time period was not attributable to the Petitioner, the Petitioner requests the Commission to invoke its regulatory jurisdiction/power to relax and extend the time limit for completion of work for period for which work was delayed due to reasons beyond reasonable control of the Petitioner. Accordingly, the Petitioner requests the Commission to allow extension in time for completion of line work up to the end of May 2020. In case, time limit is not extended by the Commission, the Petitioner would face irreparable financial losses and injury due to levy of demand charges by MGVCL for demand of 5000 KVA on deemed release basis as MGVCL has already shown its intention to proceed for issuance of two months' notice after expiry of 180 days, which is expiring on 05.02.2020. On other hand, the Petitioner is already suffering due to delay in getting power supply even after making huge investment for the project.

3.47. Without prejudice to the above, as an alternate submission, the Petitioner has submitted that the action of MGVCL to impose condition of Standard of Performance on the Petitioner is without any merit and not justified. It is submitted that the title of the Regulations itself suggests that Standard of Performance Regulations is only for Distribution Licensee. The objective of regulations is to protect the interest of consumers to make available consumer related services by Distribution Licensees in a timely manner. The same cannot be applied at the detriment to the consumer.

3.48. It is further submitted that the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 provides that the time limit of 180 days is to be considered from the date of completion of Demand notice / formalities by prospective consumers. The relevant portion of clause 9.3 (3) od Standard of Performance is reproduced as under:

3	***Loads above 2500 kVA for GEB and TPSL and load above 4000 kVA for TPAL***	
	Issue of feasibility clearance	*Within 15 days of receipt of application.*
	Issue of Demand notice	*Within 30 days of receipt of application.*
	Release of connection	*Within 180 days after completion of Demand notice/ formalities by prospective consumers.*

3.49. It is submitted that the revised estimate was issued by MGVCL on 14.11.2019 involving different scope of work/line material. Therefore, the completion date of demand notice/formalities need to be considered as 14.11.2019, as there was no scope for the Petitioner to commence the work before this date. Even though prior request was made to GETCO as early on 21.05.2019, the original estimate dated 20.06.2019 was not in accordance with scope of work requested. This has necessitated further representation and correspondence with MGVCL/GETCO and revision of estimate. The revised estimate involved different type of line material and was served upon the Petitioner on 14.11.2019, more than 3 months after execution of power supply agreement with MGVCL. During the pendency of MGVCL/GETCO's decision on the issue of revision in estimate, the Petitioner could not commence the line work. Therefore, the time limit of 180 days needs to be reckoned only from the date of revised estimate as time elapsed prior to the date of revision in estimate is not attributable to the Petitioner. Accordingly, the

Petitioner is eligible for time limit of 180 days reckoned from 14.11.2019 as per the provisions of Supply Code and Standard of Performance Regulations.

3.50. Subsequently, the Petitioner has filed an I.A. No. 1 of 2020 requesting the Commission for early hearing.

4. The Respondent No. 1, MGVCL, vide affidavit dated 19.03.2020, submitted its reply as under:

4.1. It is submitted that MGVCL has already issued the Notice vide letter no. MGVCL/RA&C/EHT/Concord/Notice/95 dated 04.02.2020 under the Clause 4.33 for completion of work by the Petitioner within 60 days and intimated that in case of failure to do so, the liability to pay demand charges would arise.

4.2. It is submitted that the Petitioner sought to avail new connection having demand of 5000 KVA for which 66 KV Line has to be laid by GETCO. However, under Option-III, the Petitioner agreed for the laying of the line and the agreement was executed with GETCO for the same. The agreement was executed on 05.08.2019 between the Petitioner and MGVCL as per provision at Clause 4.98 to 4.100 of Supply Code, 2015.

4.3. The Supply Code as well as Licensee power to recover expenditure incurred in providing supply and other miscellaneous charges Regulations recognize the option of the Applicant getting the work done itself.

a. Electricity Supply Code

"4.33…….

……….

Provided that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall procure the materials. The material should conform to relevant BIS *specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.*

Provided further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

Provided further that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable."

b. Licensee power to recover Expenditure incurred in providing supply and other Miscellaneous charges Regulations:

"7. Manner of Accounting and Adjustments
....
(ix) If the work is to be done by the developer or the applicant, Licensee shall charge 15% of the estimate as supervision charges to be deposited before work begins. In other cases, Licensee shall commence the work after the applicant has deposited the full amount of the estimate."

4.4. Therefore, the Option-III is a valid and legal mechanism under the Regulations framed by the Commission.

4.5. It is submitted that no letter or communication was ever received from the Petitioner by MGVCL of any protest or objection with regard to the Option-III or any request for any other Option. The Petitioner was well aware of the Regulations and their implications.

4.6. The Petitioner had agreed on Option-III and all parties had proceeded on the said basis. Therefore, having accepted the Option-III and acting under the said Option, it is not open to the Petitioner to now raise any contention to the contrary. The

Petitioner is raising this issue now only because of its own delays. Such contention is clearly an afterthought to avoid the liability as provided in the Regulations.

4.7. It submitted that on 07.08.2019, MGVCL intimated to GETCO about the execution of the agreement on 05.08.2019 and requested for follow up to get the line erection work completed as prescribed in the SoP norms. In the same letter, MGVCL had marked a copy to Petitioner with the information that the work should be completed within 180 days failing which 60 days' notice will be issued to complete work and on completion of work, the Petitioner would be liable to pay charges. Even at this stage, the Petitioner had not raised no objection about Option-III despite being intimated of the timelines and the consequences. Thus, the Petitioner had accepted the Option-III.

4.8. On 08.08.2019, GETCO wrote to Petitioner informing them of the requirement under Option-III to fix up erection agency and the arrangement of material from an approved vendor list and that GETCO would arrange for a KICKOFF meeting and asked Petitioner to inform GETCO for arranging such meeting.

4.9. The Kick off meeting with GETCO was held on 03.09.2019 wherein also Petitioner was informed of the work to be done by the Petitioner within 180 days. Even at this stage nor at any time until filing of the Petition, the Petitioner raised any issue about Option-III. However, the Minutes of Kick off Meeting held with GETCO are not available with MGVCL.

4.10. On 04.09.2019, the Petitioner requested for consideration of Aluminium Corrugated Sheath instead of 66KV, 630 Sq. mm Poly AL. XLPE U/G Power cable mentioned in Estimate. The said revision was at the instance of the Petitioner. The Petitioner instead of immediately seeking a revision, if needed waited until 04.09.2019 to seek the revision. The period taken in revision of estimates at the instance of Petitioner cannot be said to be delays not attributable to it.

4.11. It is submitted that Regulation 4.33(2) of the Supply Code, 2015 deals with the case of the applicant for connection choosing to get the work done on its own:

4.12. It is further submitted that the Supply Code requires the applicant to get the work done within the time frame specified in the Standard of Performance of Distribution Licensee Regulations. The release of bulk power connections under Regulation 9.3 provides that for loads above 2500 kVA - the release of connection is within 180 days after completion of Demand Notice / formalities (Execution of necessary formal agreement) by prospective consumers:

"9.3 Bulk Power connections are to be released, in time bound manner as detailed below:

Sl. No	***ITEM/ACTITIVITY***	***TIME LIMIT (Within)***
1	***Loads up to 100 kVA /100 kW***	
	Issue of Demand Notice	*Within 10 days of receipt of application.*
	Release of connection	*Within 20 days after compliance of formalities/ demand notice, if no augmentation is required otherwise 60 days.*
2	***Loads above 100 kVA/100 kW and up to 4000 kVA for TPAL, loads above 100 kVA and upto 2500 kVA for TPSL and GEB***	
	Issue of feasibility clearance	*Within 7 days of receipt of application.*
	Issue of Demand notice	*Within 15 days of receipt of application.*
	Release of connection	*Within 45 days after compliance of Demand Notice/formalities by prospective consumers.*
3	***Loads above 2500 kVA for GEB and TPSL and load above 4000 kVA for TPAL***	
	Issue of feasibility clearance	*Within 15 days of receipt of application.*
	Issue of Demand notice	*Within 30 days of receipt of application.*
	Release of connection	*Within 180 days after completion of Demand notice/ formalities by prospective consumers.*

"

4.13. Accordingly, the Petitioner was required to complete the work by 180 days from 05.08.2019 which comes to 03.02.2020. However, the Petitioner failed to do so.

4.14. MGVCL vide Letter dated 04.02.2020 issued a Notice under Regulation 4.33 of Supply Code 2015 to complete the work and avail power supply within 60 days. If the work is not completed on expiry of 60 days' notice period, as per the Regulations, Minimum Billing as per Contract Demand of 5000 KVA would have to be commenced.

4.15. It is submitted that the issue of whether there is any power to grant extension under the Regulations to a consumer/applicant has to be considered by the Commission. Though there is a provision in Supply Code for extension of time to the licensee, there is no such provision for Consumer/Applicants. Even assuming but not admitting that the extension of time can be granted, the same can be only by the Hon'ble Commission and not the distribution licensee. Further the extension can only be granted if the Petitioner has proved that the delay was beyond its control/due to force majeure events.

4.16. It is submitted that the requirement of payment of minimum billing of enhanced contract demand is necessary beyond a certain period as the Distribution Company is obliged to make power arrangements to be ready to supply power. Such burden should not be passed on to other consumer of the distribution companies. Therefore, such payment of minimum billing is provided for in the Supply Code 2015.

4.17. With regard to Petitioner's submission that it is the first experience of Petitioner, it is submitted that same is not relevant for the present Petition.

4.18. It is denied that there was any compulsion on the Petitioner to accept only Option-III. The meeting referred to is with GETCO and the discussions therein are not within the knowledge of MGVCL. The Option-III of the applicant doing the work themselves is recognized under the Regulations of the Commission and there is no bar for the applicant carrying out the work themselves. Therefore, the fact that Option-III was offered to Petitioner was not illegal or otherwise incorrect. If the Petitioner had an issue, it should have immediately objected or communicated its request for other options to GETCO. However, this was not done. The Petitioner had not objected to the same and had voluntarily agreed to the said Option. The Petitioner has not placed any request for the work to be carried out by GETCO. The Petitioner having accepted the same cannot now claim that it could not have challenged the action of GETCO/MGVCL. If the Petitioner had asked for other options, the estimate for the same would have been provided by GETCO/MGVCL. The attempt of Petitioner to claim that it had no other choice is not acceptable and is not borne out by any correspondence on record. There was no bar for the Petitioner to seek any other option, and it could have at least written to MGVCL/GETCO on the same. If such option is sought by a consumer, MGVCL/GETCO are obliged to act on it. Without even an attempt for such option, the Petitioner cannot claim that it had no other choice.

The Petitioner is now claiming practical difficulties as a reason not to challenge the action of GETCO. Firstly, as stated above, there was no communication or even attempt by Petitioner to seek another option. It is specifically stated that at no time MGVCL was informed of any such reservation of the Petitioner in doing the work itself or wanting to exercise another Option. Secondly, once the Petitioner has accepted and proceeded with Option-III and chosen not to challenge the Option-III, there cannot be any challenge or otherwise any reliance at this stage. The Petitioner having accepted to carry out the work, it has also accepted all the consequential obligations.

4.19. It is submitted that the issue of underground cable type relates to GETCO. However, it is submitted that the Petitioner had received the estimate on 20.06.2019 with poly sheath cable but the Petitioner did not write to GETCO or MGVCL seeking the revision. The one-month period is not so short that the Petitioner cannot write to GETCO/MGVCL for a revision. In any case, the Petitioner could have written for the revision, so that the process of revision, if any, could be commenced and revised estimate could be issued prior to payment of original estimate. There is no justification by the Petitioner as to why it did not seek the revision. The fact of payment of estimate within a month is irrelevant and payment could have been made even pending the request for revisions. Any difference could have been adjusted subsequently. Further, even after payment of estimate, no such request was made by the Petitioner.

4.20. It is submitted that since MGVCL had no intimation of any reservation of the Petitioner, it proceeded on the basis of ensuring prompt connection to the consumer. MGVCL never received any letter or communication from the Petitioner on any issue, whether on exercise of Option-III or on revision in estimate by GETCO or any request for extension of time. The Petitioner thus willingly and knowingly executed the Power Supply Agreement with MGVCL without any protest or objection. It is submitted that as per the Regulations, the Petitioner had 180 days for completion of the erection of Line works.

4.21. The Letter dated 07.08.2019 by MGVCL had also specifically intimated to the Petitioner about the requirement of completion of work within 180 days and consequences of delay. It is stated that the issue of underground cable was never raised with MGVCL. The Petitioner was well aware of the timelines of 180 days; however, chose not to take any immediate steps. The contention of the Petitioner that it was focusing on meeting timelines and requirements is not accepted. There is no reason why the request for revision could not be made.

4.22. It is submitted that the discussions in the meeting with GETCO is not within the knowledge of MGVCL; however, the Minutes of Meeting does not reflect the issue of underground cables. However, even assuming but not admitting that there was a mistake as alleged by the Petitioner, there was no reason or justification for the Petitioner to wait until the kick off meeting to raise the issue. The Petitioner should have immediately raised the issue on the issuance of the estimate in June 2019.

4.23. It is reiterated that the Petitioner should have made its request earlier. Had the Petitioner done so, GETCO would have decided on the request much earlier and there would have been no delay as claimed by the Petitioner. It is denied that the delay was not attributable to Petitioner or reason for request was not on account of Petitioner. If the Petitioner could not commence work without the revision, it was even more reason for the Petitioner to seek such revision even before signing of the Agreement and before commencement of the 180 days. There was no justification for the Petitioner not to have taken timely steps.

Having delayed the request for revision, it is not open for the Petitioner to now claim that the delay was not attributable to it. The Petitioner had not sought any extension of time. Further, there cannot be extension of time for delays by the Petitioner itself. The Petitioner cannot expect immediate response to its request and the request was processed by GETCO/MGVCL. The intimation of 180 days from 05.08.2019 is as per the Regulations and which had already informed to the Petitioner earlier. The payment was made by Petitioner on 27.11.2019 in response to the estimate received on 14.11.2019.

It is further denied that no work could have been undertaken by the Petitioner. The work involved line as well as associated bays at sub- station which could have been done.

It is also denied that more than 3 months was taken by GETCO/MGVCL for revising estimate. In fact, it was the Petitioner who had taken nearly three months to even make the request. Further, the Petitioner is attempting to claim even the period taken by it to make the payment. It is denied that MGVCL could have granted any extension. Without prejudice to the above contention that the delay was attributable to the Petitioner, it is submitted that MGVCL cannot grant extension. If at all there is a provision for grant of extension, the same is to be done by the Commission. MGVCL also wrote to Petitioner on 04.02.2020.

4.24. It is reiterated that the Petitioner has not completed work within 180 days of the Agreement. It is submitted that the Petitioner is seeking extension of time even exceeding the time taken by MGVCL/GETCO to give revised estimate. Therefore, clearly the Petitioner was delayed for other reasons. The approval of drawing etc. is part of the 180-day period granted and therefore there can be no claim in this regard.

4.25. It is submitted that there is no specific provision in the Regulation for extension of time for consumer/Applicants. However, even assuming that the extension can be granted, this is not a fit case for extension. The contentions of the Petitioner are denied.

4.26. It is submitted that the Regulations of the Commission recognize that the work can be carried out by an Applicant themselves. In this case, the Petitioner had agreed to Option-III i.e. to carry out the work themselves. The Petitioner cannot now claim that the MGVCL/GETCO should have carried out the work or is continuing to be obligated for the completion of work other than supervision by GETCO. The contentions of the Petitioner are without any basis or merit.

The Supply Code recognizes the work being carried out by Applicant and further for consequences if the work is not completed within 180 days. MGVCL is acting in accordance with Regulations.

4.27. It is submitted that firstly the Petitioner has to justify its case for extension of time, both under Regulations and by way of facts. There is no justification by Petitioner as to why it did not immediately raise an issue with regard to underground cables when the estimate was issued and instead paid the estimate, executed the agreement and waited until after kick off meeting with GETCO, to seek a revision. The issue was not pending from 05.08.2019 to 14.11.2019. There could have been no resolution of the issue until the issue is raised by the Petitioner. The Petitioner itself delayed in raising the issue. It seems that the Petitioner was deliberately delaying seeking the revision in the hope that it would get time in excess of 180 days provided in the Regulation. This is not acceptable. Further, there is no reason for why the bay work could not be completed.

The issuance of public notice, approvals, ROW consents etc. are part of 180 days and there cannot be any additional claim in this regard. Further, the Petitioner has not provided any details in this regard.

4.28. It is denied that the Petitioner acted swiftly or diligently. The Petitioner should have raised the issue of revision of work immediately in June 2019 but chose not to.

4.29. It is further submitted that even assuming but not admitting that any extension can be given to consumer/applicant, the Applicant/consumer is required to demonstrate that the delay was not attributable to it. The Petitioner has not satisfied the same.

4.30. It is submitted that the Option-III, i.e. Applicant carrying out work itself, is recognized under the Regulations and which option was accepted and agreed to by the Petitioner without any objection. The issues of length of line or that Petitioner did not have expert domain cannot now be raised. Even assuming but not admitting the alleged reason for delay, there is no justification for extension claimed until May 2020.

4.31. It is denied that the option III was mandatorily entrusted to the Petitioner. The Petitioner never requested for any other option. MGVCL had not ever obligated the Petitioner to accept only Option-III. The Petitioner had signed the Agreement willingly with Option-III and cannot now raise any issue.

Further the Petitioner chose not to request for any revision prior to signing of the Agreement and not until after the kick off meeting. It is denied that the delay is not attributable to the Petitioner.

4.32. The permissions/supervision is of GETCO and not MGVCL. The present case is not a fit case for such extension, even if they can be granted.

4.33. It is submitted that MGVCL is ready to commence supply and in absence of consumer taking supply, there is a loss to MGVCL which is passed on to other consumers. MGVCL is ready to supply electricity and therefore MGVCL has to be compensated for the same. In any case, MGVCL does not have powers to grant any extension.

4.34. It is denied that the purpose of timelines is only to benefit the consumers. If this was so, there would be no provision under Supply Code for payment of minimum charges to distribution licensees when the Applicant delays in completion of line. The distribution licensees make arrangement of power in order to supply to applicant and in case the applicant does not take the power, the distribution licensees still incurs the costs associated with such arrangements. This cost has to be compensated and that is why Regulations provides for billing by the distribution licensees in case of delays by Applicants. There are timelines even when the Applicant does not do the work. This is to ensure seriousness of Applicants and to compensate for the cost of arrangement of power made by the distribution licensee and to prevent such costs being borne by other consumers of distribution licensees.

4.35. It is denied that the Petitioner has taken due diligence. The Petitioner has claimed delay due to period taken for revision in estimate but has not provided any reason why it did not seek the said revision immediately on receipt of estimate in June 2019 and in fact executed the Power Supply Agreement with MGVCL on the basis of the then existing estimate. Even if the time period is considered, the extension is not till May 2020.

4.36. It is submitted that the present case is not a fit case for exercise of power to relax or remove difficulties. Further, it is submitted that the powers referred in 9.23 to 9.24 are procedural in nature and do not affect the substantive rights. Moreover, Regulation 9.25 is for situation where no code is framed which is not the case here. In any case, the inherent powers cannot be exercised contrary to the Regulations.

4.37. It is denied that the delay was not attributable to the Petitioner. It is denied that even with consideration of the claim of the Petitioner as to the reason of delay, the extension can be granted until May 2020. The alleged financial loss claimed by the Petitioner is in view of the provisions in Regulations and therefore cannot be considered.

4.38. It is submitted that the Supply Code notified by the Commission specifically incorporates the timelines provided for distribution licensees to apply to Applicant who do the work itself. It is well settled principle that the Regulations are binding. The contention of the Petitioner is therefore baseless and without merit. The objective of timelines has to apply even to applicants who do the work themselves as the distribution licensees have to be ready to supply power at a particular date and in case the Applicant does not take power, it still has to compensate the distribution licensee.

4.39. It is submitted that the 180 days' timeline in case of Applicant under Option-III would commence from the date of agreement. The estimate had already been issued in June 2019 and agreement executed on 05.08.2019. After such date, it is up to Applicant to ensure that the work is completed. There is no other formality to be done by MGVCL. Even GETCO only has to supervise and any approvals etc are given only when the Applicant approaches GETCO. The revision was sought by the Applicant after the execution of agreement and the revision being given cannot be considered as the commencement date. As submitted hereinabove, if the original estimate was not as per the request, the Petitioner should have written to GETCO/MGVC.L immediately for correction/revision. It is denied that the revision took three months. It was the Petitioner who had made the request after nearly three months of original estimate. If the Petitioner had made the request in June itself, the revision would have also be done in a timely manner. The Petitioner chose to pay the estimate, sign the agreement, find a vendor and hold kick off meeting without raising any issue on revision of work.

It is submitted that in any case, the period of 180 days cannot commence from 14.11.2019. There could not have been any consideration of revision until after the Petitioner requested the same on 04.09.2019.

4.40. It is submitted that the Petitioner is not entitled to the reliefs as claimed or otherwise.

4.41. In view of the above, the present Petition filed by the Petitioner is without merits and deserves to be dismissed with costs.

5. The Petitioner, vide affidavit dated 09.06.2020, filed its rejoinder in reply to the submission of Respondent No. 1, as under:

5.1. It is submitted that the reply filed by the Respondent No. 1 is highly technical in nature, without appreciating the issues involved in the matter and without addressing the specific and categorical issues raised by the Petitioner in the Petition leading to delay in completion of 66 KV line works (66 KV J. K. Cement - GETCO Limbasi substation).

5.2. The Petitioner has submitted that it is not making any allegation against Respondent No. 1 or Respondent No. 2. In the fact and circumstances of the case, the Petitioner is only seeking relief from the Commission in terms of extension of time for completion of 66 KV line works for the reasons not attributable to the Petitioner and consequently non levy of demand charges and other minimum charges from the Respondent No. 1 on deemed release basis.

5.3. With regard to the contention of the Respondent No. 1 that the Petitioner had accepted Option-III to carry out 66 KV works at its own and that the Petitioner at relevant time did not objected for Option-III, it is submitted that it is known fact that where extension of 66 KV line works is involved, GETCO is offering only Option-III to the applicant wherein 66 KV line works is to be done by applicant. As such, Option-I (GETCO carry out the line works) is offered to the Government applicant only. Therefore, the statement made by MGVCL that the Petitioner has accepted Option-III at its own is highly technical in nature. Further, there is no documents on record which shows that the Petitioner had demanded Option-III or the Petitioner had rejected Option-I.

5.4. It is also highly technical on the part of MGVCL to state that the Petitioner at the relevant time, did not object for Option-III. In this context, it is submitted that the availability of power supply in timely manner for any industrial set up, specifically new industrial set up, is one of the prime requirements. Therefore, the Petitioner and for that any applicant, is only interested to avail power supply in a timely manner. For that reason, it is not practicable for the Petitioner / Applicant to challenge each and every action of the licensee which will delay the process apart from diversion of resources and consequently delay in commissioning of the project itself after investing huge amount of money. However, the fact remains that the Petitioner is acting on behalf of licensee for construction of 66 KV line.

5.5. Regarding contention of MGVCL that there was no delay on part of GETCO/MGVCL to revise the estimate incorporating different cable configuration, instead it was delay on part of the Petitioner for seeking revision in the estimate, it is submitted that while making above submission, MGVCL has conveniently ignored the facts available on record. Further, MGVCL has deliberately ignored the fact that at the initial stage of application itself and before issuance of estimate by GETCO/MGVCL, the Petitioner during the meeting with GETCO on 18.05.2019 and also vide letter dated 21.05.2019 had specifically requested 630 sq. GETCO to allow underground power cable type - 630 sq. mm XLPE with Aluminum corrugated sheath instead of poly sheathed XLPE cable. However, GETCO had not considered the request and issued estimate without considering the scope of work requested by the Petitioner. This has led to revision in estimate at later stage to incorporate the requirement of the Petitioner resulting into loss of crucial time. This has involved loss of more than three months after signing of agreement. Thus, reason for revising the estimate and time consumed for the same is not attributable to the Petitioner.

5.6. It is submitted that MGVCL has also misconstrued that the request made by the Petitioner on 04.09.2019 to GETCO seeking for revision in cable configuration, as if it is new request. The request made by the Petitioner on 04.09.2019 was not a new request but it was in context to the earlier request that too pursuant to the understanding given by GETCO during the meeting on 03.09.2019.

5.7. It is submitted that even assuming but not admitting that the request for revision in estimate is to be considered as 04.09.2019, there is no explanation from the Respondents for issuing revised estimate to the Petitioner only on 14.11.2019 i.e. time period of 67 days. Even MGVCL has consumed 20 days' time for simply forwarding the revised estimate received from GETCO on 25.10.2019, to the Petitioner. It is not expected that Respondents have liberty to take its own time and at the same time act in a mechanical manner irrespective whether the delay is attributable to the applicant or not.

5.8. Regarding attempt MGVCL in its reply to distance itself from the issue involved in the matter on the ground that under the Option-III, the Petitioner is responsible for completion of 66 kV line work within the period of 180 days and MGVCL/GETCO has nothing to do with any kind of delay faced by the applicant, it is submitted that by such contention, MGVCL is making deliberate attempt to ignore the fact that (i) MGVCL/GETCO has duly recovered supervision charges from the Petitioner for the work of erection of 66 KV line, (ii) even though line is constructed by the Petitioner at its own cost, the ownership of asset remain with GETCO, (iii) line-route, material, erection work etc is carried out under direct supervision of GETCO officials and in knowledge of ground reality, (iv) the construction work is carried out under the Section 164 approval of GETCO, (v) the application for RoW clearance / road crossing clearance etc. is also made by GETCO.

5.9. Thus, it is not open for MGVCL / GETCO that on one hand they will entrust the responsibility of erection of line works to the Petitioner, duly recover supervision charges in name of supervision of work, claim the ownership of the line but shy away from appreciating the issue involved in the matter leading to delay.

5.10. It is wrong on the part of the MGVCL to state that the Petitioner has not demonstrated and substantiated the reasons for delay or otherwise.

5.11. It is the contention of the Respondent that the Supply Code recognizes time limit extension only for licensees and when the consumer undertakes the line work, it is not entitled for time limit extension. In this context, it is submitted that the objective of Regulations / Act in specifying time limit is for the benefit of consumer so that licensee may not take unreasonable time to make power supply available. Thus, the said provisions are to be interpreted in the interest of consumer only. Even otherwise it is not justified to state that only licensees are entitled for extension in time, but consumer is not entitled for extension in time even though the reason for delay is not attributable to the consumer and similar delay otherwise also would have been faced by the licensees.

5.12. The Petitioner has submitted that in its reply, MGVCL has fairly agreed that the Commission has the jurisdiction as per the provisions of the Supply Code for granting extension of time in completion of 66 KV line works, and consequent relief as sought in the Petition. However, even after agreed for the jurisdiction of the Commission over the Petition, during the pendency of petition seeking for extension of time and consequent relief, MGVCL has wrongly proceeded with issuance of Two Months' Notice on 04.02.2020, calling upon the petitioner to avail power supply within the notice period of 60 days, failing which MGVCL shall commence billing on deemed release basis.

In this context, it is submitted that the purpose of the present Petition is seeking for extension of time limit and to get consequent relief for excluding such extended time period from the performance obligations of the Petitioner and not making the Petitioner liable for payment of demand charges on deemed release basis on the ground that the delay is not attributable to the Petitioner. If the time limit extension is granted by the Commission in the present Petition, as consequent relief, MGVCL shall be entitled for issuance of the Two Months' Notice only after expiry of such extended time period or the Two Months' Notice will be operative only after expiry of such extended period.

Therefore, in the facts and circumstances of case, more specifically when the Respondent has agreed to the jurisdiction of the Commission to decide the present Petition, the Commission may direct MGVCL not to take any further and coercive steps against the Petitioner in terms of Two Month Notice dated 04.02.2020 including levy of demand charges on deemed release basis till the Petition is finally decided by the Commission

5.13. It is submitted that as a matter of practice GETCO is only offering Option-III to the applicant when 66 KV line work is involved for new connection/ additional load. As such Option-I (GETCO will carry out the line works) is offered to Government applicant only. MGVCL is also having knowledge of the same. It is to make clear that the Petitioner is not challenging action of / making any claim against MGVCL / GETCO with regard to Option-III offered to the Petitioner. What the Petitioner is seeking, is to put on record the correct facts of the case before the Commission.

5.14. It is submitted that while alleging that the Petitioner has not taken timely actions for seeking revision in the estimate, MGVCL has conveniently ignored the facts available on record that at the initial stage of application itself, before issuance of estimate by GETCO/MGVCL, the Petitioner during the meeting with GETCO on 18.05.2019 and also vide letter dated 21.05.2019 had specifically requested GETCO to allow specific cable configuration. However, GETCO had issued estimate without considering the scope of work requested by the Petitioner. This has led to revision in estimate at later stage to incorporate the requirement of the Petitioner resulting into loss of crucial time. Thus, the request made by the Petitioner on 04.09.2019 was not a new request but it was in context to the request made earlier and pursuant to the understanding given by GETCO during the meeting on 03.09.2019.

It is submitted that even assuming but without admitting that 04.09.2019 is to be considered as that the date of request for revision in estimate, the revised estimate was issued on 14.11.2019. Therefore, contention of MGVCL that MGVCL/GETCO could have issued revised estimate within 30 days period, prior to making payment of existing estimates, is baseless and without any merit.

5.15. It is submitted that there was no delay on part of the Petitioner for seeking revision in estimate. It is stated that it is also duty of MGVCL to act in close co-ordination with GETCO. In any event, the Petitioner has raised the issue in a timely manner with GETCO and the delay due to revision in estimate is not attributable to the Petitioner.

5.16. It is further submitted that under Clause 4.37 of Supply Code, concerned Distribution Licensee is entitled for extension of time. Therefore, the Petitioner by way of present Petition has invoked jurisdiction of the Commission and the Commission has inherent power under provisions of Supply Code to grant time limit extension as prayed for in the Petition for the reasons of delay not attributable to the Petitioner.

Even during pendency of the petition, the MGVCL has proceeded to issue Two Months' Notice on 04.02.2020. The Petitioner has requested the Commission to restrain MGVCL from taking any further and coercive steps against the Petitioner on the Two Month Notice dated 04.02.2020 till the Petition is finally decided by the Commission.

5.17. It is submitted that though the work is carried out by the Petitioner under Option-III, MGVCL cannot be absolved from its prime responsibility to make available the requisite line. In any case, the Petitioner has now filed Petition for extension of time limit under provisions of Supply Code.

5.18. The Petitioner has submitted that the request for specific configuration was made on 21.05.2019 even before issuance of estimate on 20.06.2019.

It is submitted that even assuming but not admitting that the request for revision in estimate is to be considered as 04.09.2019, the revised estimate was issued only on 14.11.2019. It is to state that the Petitioner does not have any claim / grievances against MGVCL/GETCO in regard to time taken by MGVCL/GETCO for procedural requirement. However, in the given facts and circumstances of case, when the delay in communication of revised scope of work was not attributable the Petitioner, the Petitioner is entitled to the additional time period, at least time period involved in procedural requirement at MGVCL/GETCO end as during pendency of the decision, the Petitioner could not commence the line erection activities. This time period need to be excluded from the performance of obligations of the Petitioner and affected party is entitled for the additional time for this count as per the provisions of Supply Code i.e. time period up to May 2020.

5.19. Given the facts, the Petitioner is executing the 66 KV line works on behalf of MGVCL/GETCO, the Petitioner may be allowed the relief otherwise available to

MGVCL / GETCO under the Supply Code namely extension of time period for completion of line works due to delay not attributable to the Petitioner.

5.20. The content of reply at para-29 is wrong and denied. It is reiterated that the delay for completion of 66 KV line works is not attributable to the Petitioner and therefore the time period involved for revision of scope of work and estimate need to be excluded from the performance of obligations of the Petitioner and affected party is entitled for the additional time for this count i.e. time period up to May 2020.

In case of delay by Distribution Licensee, there is no recovery of minimum charges on deemed release basis. The Petitioner is seeking for extension of time and consequent relief for the reasons of delay not attributable to the Petitioner.

5.21. It is submitted that the Supply Code and Standard of Performance Regulations provides for extension of time for delay in nature uncontrollable factor faced by Distribution Licensee, specifically Regulation 4.37 of Supply Code and Regulation 15.2 of Standard of Performance Regulations. The relief as available under Regulation 4.37 of Supply Code to Distribution Licensee is not available to the applicant / consumer when the consumer has carried out the line work even when the delay is not attributable to the applicant. However, Regulation 9.23 - 9.25 specifically saves inherent power of the Commission to grant any relief to do end justice.

5.22. It is wrong and denied that the Petitioner has not substantiated the claim for extension of time. It is submitted that the Petitioner has given proper documentary evidence and reasons for delay which is not attributable to the Petitioner.

5.23. It is submitted that the timeline specified in Supply Code and SoP Regulations is for the benefits of the consumers and to protect the interest of the consumers and cannot be interpreted in a manner which work counter-productive of the consumers. The Petitioner has given proper documentary evidence, reasons and justifications for granting extension of time limit by the Commission under provision of Supply Code.

5.24. It is submitted that the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 provides that the time limit of 180 days is to be considered from the date of completion of Demand notice/formalities by prospective consumers.

In the present case, the revised estimate was issued by MGVCL on 14.11.2019 involving different scope of work/line material. Therefore, the completion date of demand notice/formalities need to be considered 14.11.2019, as there was no scope for the Petitioner to commence the work before this date. Even though prior request was made to GETCO as early on 21.05.2019, the original estimate dated 20.06.2019 was not in accordance with scope of work requested. This has necessitated further representation and correspondence with MGVCL/GETCO and revision of estimate. During the pendency of MGVCL/GETCO's decision on the issue of revision in estimate, the Petitioner could not commence the line work. Therefore, the time limit of 180 days needs to be reckoned only from the date of revised estimate as time elapsed prior to the date of revision in estimate is not attributable to the Petitioner. Accordingly, the Petitioner is eligible for time limit of 180 days reckoned from 14.11.2019 as per the provisions of Supply Code and Standard of Performance Regulations.

5.25. For the reasons stated in the Petition, the Commission is requested to decide the Petition and allow the prayer made by the Petitioner

6. The Respondent No. 2, GETCO, vide affidavits dated 11.06.2020 and 17.06.2020, submitted its reply as under:

6.1. It is submitted that though the relief does not directly relate to GETCO, GETCO is filing this reply to place the facts on record.

6.2. It is submitted that the Petitioner sought new power Contract Demand of 5000 KVA which required the construction of 3 KM of 66 kV Underground cable line from the nearest GETCO 66 kV Limbasi sub-station and associated bay work.

6.3. It is submitted that the Option-III i.e. Applicant to do the work is a valid and legal mechanism under the Regulations framed by the Commission. Both the Electricity Supply Code as well as Licensee's power to recover expenditure incurred in providing supply and other miscellaneous charges Regulations recognize the option of the Applicant getting the work done by itself. In this regard the Respondent No. 1 has referred to Regulation 4.33 of the Supply Code and Regulation 7 of the Licensee's power to recover expenditure incurred in providing supply and other miscellaneous charges Regulations.

6.4. It is submitted that the Petitioner did not ever dispute or raise objection or protest about carrying out the work under Option-III. It is denied that GETCO had ever stated that the Option I-A is only for Government Applicants and all private applicants are to be mandatorily under Option-III. The attempt of Petitioner to portray that it was compelled to do so despite it being the duty of the GETCO/MGVCL is mischievous. Though the estimate was given under Option III, if the Petitioner or for that matter any applicant (whether Government or private) approaches GETCO for revising the application to another option the same can be revised and GETCO has never denied the same. However, Petitioner had never sought any other option. The Petitioner has itself not even stated that it sought any other option or otherwise expressed any reservations of carrying out the work in Option-III at the relevant time. If the Petitioner had expressed its desire for another option, GETCO would have done so.

6.5. In fact, at no time until the filing of the Petition to the date of filing the Petition on 03.02.2020, the Petitioner had ever mentioned that they have any objection against the estimate served under Option-III.

6.6. Further, the Petitioner executed the agreement dated 05.08.2019 on the basis of Option-III. Thus, Petitioner agreed on Option-III and all parties had proceeded on the said basis.

6.7. It is submitted that in the Letter dated 04.06.2019 by GETCO, the General Terms and Conditions for Deposit Works were incorporated. Clause 10 of the said Terms and Conditions, provided for certain additional requirements to be complied by the Applicant in case of undertaking of work under Option-III. This included that before commencement of work, name of vendor for supply of various items and works contract/agency has to be approved from GETCO Corporate Office. Further, the draft agreement to be signed with GETCO also provided that the material so procured should be approved by GETCO Corporate Office. Thus, the Petitioner was aware that it has to get various approvals of drawings, vendor approval, etc. prior to commencement of work. The Petitioner cannot now claim any delays due to the said procedural requirements.

6.8. On receipt of the Letter dated 07.08.2019 from MGVCL stating that the Petitioner had made the payment and executed the agreement, GETCO had on 08.08.2019 written to Petitioner.

6.9. It is submitted that at no time did the Petitioner wrote to GETCO or otherwise intimate to GETCO that the estimate given on 20.06.2019 was erroneous in so far as underground cable is concerned or that the same is to be revised. No such request was received until 04.09.2019. GETCO processed the request and conveyed the same on 25.10.2019 to MGVCL.

6.10. It is submitted that GETCO has no powers to grant extension. The consequences of delay by Petitioner are related to MGVCL and not GETCO.

6.11. It is denied that there was any compulsion on the Petitioner to accept only Option-III. It is denied that GETCO made any such statement in the meeting. It is stated that at no time, did Petitioner ever raised any issue or objections or protest the Option-

III. The Petitioner has not placed on record any evidence or even assertion that it sought the Option 1 and was denied the same. In fact, there was no such request.

The Option-III of the Applicant doing the work themselves is recognized under the Regulations of the Commission and there is no bar in the Applicant carrying out the work themselves. Therefore, the fact that Option-III was offered to Petitioner was not illegal or otherwise incorrect. If the Petitioner had any objections and conveyed the same, GETCO would not have denied other options. However, the Petitioner had not raised any issue or objection and had voluntarily agreed to the said Option-III. On the said basis, the estimate was issued under Option-III. Even then, the Petitioner did not request for the work to be carried out by GETCO/MGVCL, and the Petitioner willingly signed the agreement.

The Petitioner having accepted the same cannot now claim that it could not have challenged the action of GETCO. If the Petitioner had asked for other options, the estimate for the same would have been provided by GETCO. The attempt of Petitioner to claim that it had no other choice is not acceptable. There was no bar for the Petitioner to seek any other option, and it could have at least made the request to GETCO. In absence of any such request or attempt, the Petitioner cannot claim that it had no other choice.

Further there are no practical difficulties. The Applicant could have stated in the meeting about not wanting Option-III or written to GETCO seeking change in option after issuance of estimate.

6.12. It is submitted that GETCO had given the estimate based on the scope of work as considered appropriate by GETCO and based on general standards followed by GETCO. GETCO field office did not receive any request for revision until 04.09.2019.

6.13. It is submitted that the Petitioner was aware of the requirements and should have requested for any revision immediately and not waited until September 2019. If the Petitioner had acted promptly, the revision could have been considered before and there would not been any claim of delay. The revision was at instance of Petitioner and that too raised belatedly.

6.14. It is submitted that extension of timelines does not relate to GETCO. GETCO cannot grant any extension under Supply Code, nor does it make any claim from Petitioner. However, it is reiterated that the request to revise the estimate was received only on 04.09.2019 even though the estimate was given on 04.06.2019.

6.15. It is submitted that the Petitioner was well aware of the requirements which had been specified even in the estimate dated 04.06.2019 and even otherwise, the Petitioner cannot claim ignorance of the law and procedure for completion of work.

6.16. It is submitted that the reliance on Sections 42 and 43 for distribution system/transmission system and the Regulations is not correct. The Regulations of the Commission recognize that the work can be carried out by an Applicant themselves. The Petitioner had accepted the Option-III and proceeded on the said basis. Having accepted and agreed to carry out the work, the Petitioner cannot pass on the blame or responsibility to GETCO.

6.17. It is submitted that the Supply Code recognizes the issues of extension of time for licensees. The applicability of extension, if any, to Petitioner is not related to GETCO.

6.18. It is submitted that the Regulations recognize the work to be carried out by the Applicant and the Applicant had accepted to do the work under Option-III. The contentions of the Petitioner that it had no expertise and about distance etc. is not correct. It is reiterated that the Petitioner accepted to do the work under Option-III and having accepted the option, it is not open for Petitioner to raise any issue based on the same. If the Petitioner did not have expertise, it should have raised the issue at the outset.

6.19. It is submitted that though the issue of extension of time relates to MGVCL, it is submitted on behalf of GETCO that the completion of formalities cannot be taken as 14.11.2019 as the revision was at the instance of Petitioner who had made the request only subsequent to estimate being given and agreement being executed.

6.20. It is submitted that though the Petitioner has sought to claim that the Petition is for extension of time, the same is only to seek non levy of minimum demand charges which is also the prayer in the Petition. By clever drafting, the intent and ultimate relief of the Petition cannot be changed.

6.21. It is submitted that under Section 42 of Electricity Act, 2003, a specialised forum is provided for redressal of grievances of the consumers:

> *"(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.*
>
> *(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.*
>
> *(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.*
>
> *(8) The provisions of sub-sections (5),(6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections."*

6.22. It is submitted that Consumer Grievance Redressal Forum (CGRF) is a specialised forum for dealing with grievances of consumers and the Petitioner is a consumer who is seeking relief against distribution company. When there is a specialised forum provided for redressal of grievances of consumers, no other forum has jurisdiction.

a. Reliance Energy Limited v. Maharashtra Electricity Regulatory Commission in Appeal No. 30 of 2005 and batch dated 29.03.2006

"17. It is clear that entire initiation or inquiry or issue raised and the direction issued relates to wrong billing or over billing or adopting a wrong method of billing or wrong basis or billing excess or for a longer period than permissible on the alleged defect in meters or test or replacement thereof, are nothing but billing dispute between the licensee on one side and the consumer(s) on the other side. The contention. of the Respondents that the dispute relates to tariff or that it relates to implementation of tariff notified is a clear misconception. The entire dispute which were taken up by MERC is a dispute between consumer and Licensee with respect to billing, be it a wrong billing or excess billing or adopting wrong basis or procedure, illegal billing and it has nothing to do with tariff or tariff notification or enforcement thereof.

....

21. The relation between a consumer and a distribution licensee is governed by Part VI - Distribution of Electricity Section 42 (5) to (8) provides with respect to forum for redressal of grievance and the appellate forum as well. When a forum has been constituted for redressal of grievances of consumers by the mandate of Section 42, no other forum or authority has jurisdiction. The MERC, being a regulatory, the highest State level authority under The 2003 Act as well rule making authority has to exercise such functions as provided in the legislative enactment and it shall not usurp the jurisdiction of the consumer redressal forum or that of the Ombudsman. The special provision excludes the general is also well accepted legal position.

22. The Regulatory Commission, being a quasi judicial authority could exercise jurisdiction, only when the subject matter of adjudication falls within its competence and the order that may be passed is within its authority and not otherwise. On facts and in the light of the statutory provision conferring jurisdiction on the redressal forum and thereafter an appeal to Ombudsman, it follows that the State Regulatory Commission has no jurisdiction or authority to decide the dispute raised by Respondents 1 & 2, who are consumers or the Consumer Association. Apart from this, certain of the directions issued are not even applied and are in excess of jurisdiction. The Commission has to act within the four corners of The Electricity Act 2003 and the State Act in so far it is saved by Sec 185 of Electricity Act 2003. It is clear from the discussions the State Regulator has no jurisdiction to enter upon, inquire or on any part of the dispute on hand or adjudicate the same.

23. It is also to be pointed out, assuming for purposes of argument that Rules framed under The Electricity Act, 1910 is still applicable, even then the MERC is not the authority or successor to exercise the powers of adjudication. The MERC, which has framed the supply code should have confined itself to such exercise of powers as prescribed under Sections 50, 55, 57, 58, 59 and 60, in Part-VI of the Act. The provisions of Part-VII- Tariff in no way supports the *contentions advanced by Respondents, as any direction in tariff order/notification has to be confined to the said Part. Section 26(6) of The Electricity Act, 1910 has no application to the case on hand as the Indian Electricity Act, 1910 stands repealed and Section 185 of The 2003 Act has not saved Section 26(6) so also the limitation of six months prescribed there under. Two years limitation has been prescribed under Section 56(2) of 2003 Act. Mr. M.G. Ramachandran, learned counsel appearing for MERC very anxiously and strenuously contended that MERC has the authority and jurisdiction under Section 126; 127; 128; 129; and 130 etc., of the Act to issue the directions. We are unable to sustain the said contention advanced, as the grievances in respect of which MERC has assumed jurisdiction, relate to billing and being a billing dispute, its attempt to invoke those provisions cannot be sustained in law. The special provision in Section 42(5), (6) to (8) govern this and will exclude the applicability of all other provisions in 2003 Act.*

24. Mr. M.G. Ramachandran further submitted that directions relate to innumerable number of consumers exceeding several lakhs of consumers and therefore, the MERC is justified in invoking the powers under Sections 129 and 130 of The Act. We are unable to sustain the said persuasive contention advanced. Be a single or it innumerable, with respect to grievance or complaint regarding Billing or Billing dispute, it is the competent authority under the Act, which has to exercise the powers. There cannot be a special provision or direction merely because consumers are too many. It is not open to the Commission to usurp jurisdiction by pointing out that the disputes are innumerable. That apart, it is impossible for MERC to examine the case of millions of customers which grievances are to be addressed by the forums specially constituted.

25. The reliance placed by Mr. M.G. Ramachandran on various pronouncements of the Supreme Court and various High Court, are of no avail nor the ratio laid down there apply to the case on hand and it is not necessary to refer to those pronouncements in detail. Mr. M.G. Ramachandran, learned counsel for MERC, vehemently and in his indomitable style pointed that the directions issued fall within the regulatory powers of MERC and therefore, it is not liable to be interfered. In this respect, the learned counsel relied upon three pronouncements of the Supreme Court., where their "Lordships examined the scope and purport of the expression "Regulate". Those decisions also do not advance the case of Respondent nor it is a ratio decidendi. Those pronouncements cannot be relied upon to exclude the jurisdiction of the authority constituted under Section 42 of the Act, which is a new forum constituted by the Legislature in the 2003 Act. However, laudable the object with which the Commission had taken upon itself and issued direction, in its anxiety, when it is a question of usurpation of jurisdiction, and exclusion of *jurisdiction, we are well founded in interfering. The directions, once it is held to be without jurisdiction being a nullity, it will not also serve the cause of consumers at whose instance and for whose cause the MERC had taken up and issued directions.*

26. While recording and appreciating the able assistance of Mr. M.G. Ramachandran, learned counsel appearing for MERC, we are not persuaded to sustain various contentions advanced with an anxiety to assert and secure the Jurisdiction of MERC.

27. The consumers have a definite forum to remedy the Billing dispute under Section 42(5) and further representation thereof under Section 42(6). Further Section 42(8) also saved the rights of consumer to approach any other forum such as the forums constituted under the Consumer Protection Act, 1986 or other courts as may be available. In the circumstance, while making it clear that is for the consumers to workout the remedies as may be open to them in Law, we hasten to add that we not only declined to examine the merits of the case and counter case of both. parties as the issues or controversies are left open to be agitated before competent forum."

b. Chhattisgarh State Electricity Board v. Raghuvir Ferro Alloys Ltd., [2006] APTEL 134 - Appeal No. 125, 126 and 127 of 2006 dated 28.11.2006

"8. At this point, it will be pertinent to advert to Part VI of the Act, 2003, which governs relationship between a consumer and the licensee. Section 42(5) to (8) provides forum "for redressal of grievance" and the "appellate forum" as well. Factually, a forum for redressal of grievance of consumers as mandated by Section 42 has since been set up in the State of Chhattisgarh. In view of this no other authority has the jurisdiction for redressal of consumer grievance. In this context, the decision of this Appellate Tribunal decided in Appeal No. 30 of 2005, Appeal No. 164 of 2005 and Appeal No. 25 of 2006 on 29th March, 2006 is rightly relied upon by the learned Counsel for appellant. In the said judgment, it has been laid thus-

…….

9. The above judgment squarely applies to the facts of the present appeals.

10. In view of the above judgment on the jurisdictional issue and adverting to the averments made by the rival sides, we decide that the Commission has no jurisdiction or authority to adjudicate on the consumer dispute, viz., alleged excessive demand "of supply arranging charges" by the appellant Board. Therefore, in the result, we allow the three appeals and set aside the order dated 23rd May, 2006 passed by CSERC while giving liberty to each one of the *consumer to work out their remedies before the competent forums. We make it clear that we have not gone into merits of various contentions advanced by either side in other respect, and, therefore, our decision on the jurisdictional issue should not prejudice any further course of action that may be pursued by the 1st Respondent in these three appeals."*

6.23. It is submitted that in a similar case as in present case, M/s RSPL had approached the said Forum and further the Ombudsman. The decision of the Ombudsman was in favour of the Distribution Company. The Petitioner cannot by clever drafting obscure the intent of the Petition which is to avoid payment of minimum demand charges, and which falls within the purview of billing dispute.

6.24. It is submitted that the Hon'ble High Court in the case of Surya Roshini v. Gujarat Electricity Regulatory Commission dated 07.01.2020 in Special Civil Application No. 16029 of 2019 has considered the prima facie view relying on case of KP Energy Pvt Ltd v. Gujarat Energy Transmission Corporation Ltd Petition No. 1206 of 2012. This is only a prima facie view and this does not preclude the Commission from considering the issue in detail. It is submitted that the said case of KP Energy Pvt Ltd v. Gujarat Energy Transmission Corporation Ltd Petition No. 1206 of 2012 is completely different as it relates to a wind generator and a transmission licensee. The CGRF is only for consumers of distribution companies and clearly the case of KP Energy as a generating company could not be considered by CGRF. There can be no dispute that disputes between a generating company and licensee is within the jurisdiction of the Commission. However, there is no such provision under Section 86 for disputes involving consumers of the distribution licensee.

6.25. The Order in KP Energy was issued on the basis of the estimate issued read with the Commission Order No. 1 of 2010 Determination of the tariff for Procurement of Power by Distribution Licensees from Wind Energy Generators and other commercial issues. In the said order at Para 6.4 - Security Deposit, the matter of Bank Guarantee and time extension are mentioned. The Order No 1 of 2010 states as under:

"6.4 Security Deposit

The objective of the order is to promote development of renewable energy in the state. A procedure of giving permission for the proposed wind projects, based on the load flow studies has been followed by the GETCO. Thus, the proposed evacuation system from the pooling station of wind projects forms part of the overall GETCO System. While timely completion of power evacuation system of such wind projects is essential, timely execution of WEG project is also equally important. Non-completion of WEG projects leads to idling of transmission resources. Thus, to assure GETCO about seriousness of wind power projects, the project Developer shall be required to furnish a Bank Guarantee of Rs. 5 lakhs/MW to GETCO.

The Bank guarantee shall be forfeited if the project is not commissioned within a specified time period as follows:

	Prescribed Period for Commissioning of the project
1 to 100	***1** (one) Year from the date of allotment of transmission capacity*
101 to 200	*One and a half years from the date of allotment of transmission capacity*
201 to 400	*Two years from the date of allotment of transmission capacity*
401 to 600	*Three years from the date of allotment of transmission capacity*

Suggestions of the Objectors

GETCO suggested that date of allotment of the transmission capacity shall be considered from the date of issue of estimate for the wind farm site to the developer. M/s Kenersys India Pvt Ltd. and M/s. Azalea Enterprise Pvt Ltd. have suggested that a period of 3 years be given to the developer before any view is taken with regard to non-utilization of allotment. The security deposit of Rs. 5 lakhs per MW and that too for completion instead of starting of activities is not justified. M/s Acciona Wind Energy Pvt Ltd. has suggested that a minimum period of 4 years should be allowed irrespective of the capacity of the proposed project. Indian Wind Energy Association has suggested that the provisions of security deposit should not be made.

Commission's Ruling

As clarified above, the duty has been cast upon GETCO to create necessary infrastructure of transmission system for evacuation of power generated by WEG. If, GETCO fails to create the same, the power generated from wind energy is not *utilized. Similarly, if the project developer fails to complete his project and evacuation system*

upto GETCO inter-connection point within the stipulated time frame, the infrastructure created by the GETCO will remain unutilized and the burden of the network charges is borne by other consumers. Hence, the Commission does not agree to any change in the provisions regarding security deposit and prescribed time period.

So far as the allocation of transmission capacity is concerned, the date of estimate given by GETCO and receipt of the same by the project developer may be considered as starting date for this clause. It creates the right of the project developer on the proposed transmission system. With the above observation, the Commission decides that date of receipt of estimate from GETCO by the project developer shall be the starting date for the period of commissioning of WEG as well as power evacuation arrangement as stipulated in this clause."

6.26. It is submitted that in case of KP Energy, the extension of time was not granted to a consumer who had elected to construct the transmission line nor was it granted under Supply Code. The extension of time was granted to a wind generator who had to construct the line for evacuation of power from its generating station as per the wind tariff order No. 1 of 2010. It is submitted that the timelines considered for extension were provided in the Order. However, in the present case, the timelines are provided in the Regulation and the same are binding on all.

6.27. It is submitted that the Regulation 4.37 regarding extension of time refers to the Licensee and do not refer to the consumers as such.

"4.37 The overall timeline for releasing new electricity connection, from the date of receipt of application, shall be as per GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof:

Provided that the licensee may approach the Commission for extension of time specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, in specific cases where extension of Distribution mains requires more time, along with details. In such cases, the licensee shall inform the consumer about the likely time of completion of works."

Similarly, Regulation 4.38 of Supply Code also refers only to licensee.

"4.38 The licensee shall not be held responsible for delay, if any, in extending supply if the same is on account of problems relating to right of way, acquisition of land, or delay in consumer's obligation over which licensee has no reasonable control."

When the Regulation refers only to licensees, no reliance can be placed on the same by a non-licensee. When a Regulation provides for extension for one entity but not for others, the others are deemed to be have been excluded.

6.28. It is well settled principle that the Regulations are binding. In this regard, the Constitutional Bench of the Hon'ble Supreme Court in PTC India Limited v. Central Electricity Regulatory Commission (2010) 4 SCC 603 has held as under:

"40..... Making of a regulation in that regard is not a pre- condition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central Commission in an appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures a Central Commission takes under Section 79(1)(j) has to be in conformity with Section 178. .... A regulation under Section 178 is in the nature of a subordinate Legislation. Such subordinate Legislation can even override the existing contracts including Power Purchase Agreements which have got to be aligned with the regulations under Section 178 and which could not have been done across the board by an Order of the Central Commission under Section 79(1)(j)."

It is submitted that in Haryana Power Generation Corporation Limited -v- Haryana Electricity Regulatory Commission, in decision dated 01.03.2012 in Appeal No. 131 of 2011, the Hon'ble Tribunal has held as under:

"5. Bare reading of section 61 would make it clear that the State Commissions have been mandated to frame Regulations for fixing tariff under Section 62 of the Act and while doing so i.e. while framing such Regulations, State Commissions are required to be guided by the principles laid down in by the Central Commission, National Electricity Policy, Tariff Policy etc. It also provide that while framing the Regulations, the State Commissions shall ensure that generation, transmission and distribution are conducted on commercial principles; factors which would encourage competition and safe guard consumer's interest. Once the State

Commission has framed and notified the requisite Regulations after meeting the requirement of prior publication under Section 181(3), it is bound by such Regulations while fixing Tariff under Section 62 of the Act and the Central Commission's Regulations have no relevance in such cases. However, the State Commission may follow the Central Commission's Regulations on certain aspects which had not been addressed in the State Commission's own Regulations. The Haryana Electricity Regulatory Commission has framed Terms and Conditions for determination of tariff for generation in the year 2008 and the State Commission is required to fix tariff as per these Regulations. However, as per Regulation 33 the State Commission has power to relax any of the provisions of these Regulations after recording the reasons for such relaxation."

6.29. The reliance on inherent powers of the Commission is also misplaced. It is well settled principle that the Inherent Power Cannot override express provisions of law. At the outset it is submitted that the inherent powers cannot be exercised contrary to the Regulations. It is well settled principle that the inherent power cannot override express provisions of law.

a. <u>Arjun Singh -v- Mohindra Kumar, (1964) 5 SCR 946 : AIR 1964 SC 993</u>

"20. On this submission, which we might mention has been urged for first time in this court, the first question that arises is whether the Court has the inherent jurisdiction which learned counsel contends that it has. For the purpose of the discussion of the question in the context of the relevant provisions of the Code, it is unnecessary to embark on any detailed or exhaustive examination of the circumstances and situations in which it could be predicated that a Court has the inherent jurisdiction which is saved by Section 151 of the Civil Procedure Code. It is sufficient if we proceed on the accepted and admitted limitations to the existence of such a jurisdiction ***<u>. It is common ground that the inherent power of the Court cannot override the express provisions of the law. In other words if there are specific provisions of the Code dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the Court cannot be invoked in order to cut across the powers conferred by the Code. The prohibition contained in the Code, need not be express but may be implied or be implicit from the very nature of the provisions that it makes for covering the contingencies to which it relates.</u>*** *We shall confine our attention to the topic on hand, namely applications by defendants to set aside*

exparte orders passed against them and reopen the proceedings which had been conducted in their absence......"

b. Gram Panchayat v. Lokesh Devi, 1998 SCC OnLine P&H 1520: (1999) 4 RCR (Civil) 313 (2) : PLR (1999) 122 P&H 741

"3. It is a settled principle of law that in the administration of justice, Civil Courts, as a necessary corollary to its very existence, must be deemed to possess inherent powers and jurisdiction. This is more so where the power is exercised by the Court to achieve the ends of justice or to undo the wrongs during the pendency of proceedings before the Court. The inherent powers also do not confer on the Court any additional jurisdiction to amplify the powers also do not confer on the Court any additional jurisdiction to amplify the powers specified in the Code. These are the powers which are in addition to complementary powers expressly conferred upon the Court under the provisions of the Code. It is also an equally settled principle of the law that if express provisions are provided for directing a particular act in a particular manner, inherent powers cannot be used to frustrate such limitations of the Court. The jurisdiction vested in the Court under the provisions of Section 151 of the Code of Civil Procedure and a jurisdiction ex debito justitial are certainly not ousted merely on the existence of another remedy (see (1997) 2 SCC 387: AIR 1997 SC 1348. AIR 1966 SC 1899, AIR 1987 Bombay 182, AIR 1944 Lahore 165 and 1946 Punjab Law Reporter 111)."

c. Ram Prakash Agarwal and Anr v. Gopikrishan and Ors (2013) 11 SCC 296

"13. Section 151 CPC is not a substantive provision that confers the right to get any relief of any kind. It is a mere procedural provision which enables a party to have the proceedings of a pending suit conducted in a manner that is consistent with justice and equity. The court can do justice between the parties before it. similarly, inherent powers cannot be used to re-open settled matters. ***The inherent powers of the Court must, to that extent, be regarded as abrogated by the legislature. A provision barring the exercise of inherent power need not be express, it may even be implied.*** *Inherent power cannot be used to restrain the execution of a decree at the instance of one who was not a party to suit. Such power is absolutely essential for securing the ends of justice, and to overcome the failure of justice. The court under Section 151 CPC may adopt any procedure to do justice, unless the same is expressly prohibited."*

d. Gujarat Urja Vikas Nigam Limited v. Solar Semi Conductor Private Limited and Others (2017) 16 SCC 498.

> *"37. The Commission being a creature of statute cannot assume to itself any powers which are not otherwise conferred on it. In other words, under the guise of exercising its inherent power, as we have already noticed above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Act."*

e. Power Grid Corporation of India Ltd Corporate Office -v- Green Infra Renewable Energy Limited, 2017 SCC OnLine CERC 261

> *"84......From the above two judgments, it emerges that the inherent powers can be exercised in order to address the procedural infirmities in the CPC in order to achieve the ends of justice and abuse of the process.* ***In the present case there are no procedural infirmities in the Conduct of Business Regulations which prevents the Commission to address the issue of connectivity to the applicants who have been selected as successful bidders in SECI conducted bids. The difficulties have arisen in the absence of substantive provisions in the Connectivity Regulations to address the issue of connectivity in case of wind power generators/developers keeping in view the peculiarity of wind energy sector. In our view, inherent power of the Commission cannot be invoked under Regulation 111 of the Conduct of Business Regulations to grant relief to the Petitioner."***

6.30. It is submitted that the above judgments clarify that a provision barring exercise of inherent power need not be express but also may be implied. The Central Commission has also held that the difficulties arising in absence of substantive provisions cannot be addresses under inherent powers which are for procedural infirmities. When the legislature i.e. Electricity Act, 2003 has granted jurisdiction to the CGRF, the inherent powers of the Commission can be exercised to usurp the jurisdiction. If the jurisdiction is not otherwise provided to the Commission, the same cannot be exercised by way of inherent powers. In any case cannot affect substantive rights of parties. In this regard, the Hon'ble Supreme Court in Vinod Seth v. Devinder Bajaj and Another (2010) 8 SCC 1 has held as under:

"27. We will next examine whether the power to make such an order can be traced to Section 151 of the Code, which reads:

> *"151. Saving of inherent powers of court - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court"*

28. As the provisions of the Code are not exhaustive, section 151 is intended to apply where the Code does not cover any particular procedural aspect, and interests of justice require the exercise of power to cover a particular situation. Section 151 is not a provision of law conferring power to grant any kind of substantive relief. It is a procedural provision saving the inherent power of the court to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the court. It cannot be invoked with reference to a matter which is covered by a specific provision in the Code. It cannot be exercised in conflict with the general scheme and intent of the Code. It cannot be used either to create or recognize rights, or to create liabilities and obligations not contemplated by any law.

29. Considering the scope of Section 151, in PadamSen v. State of Uttar Pradesh, this Court observed (AIR p.219, paras 8-9),:

> *"8. ....The inherent powers of the court are in addition to the powers specifically conferred on the court by the Code. They are complementary to those powers and therefore it must be held that the court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature....*
>
> *9. ...The inherent powers saved by Section 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the courts for passing such orders which would affect such rights of a party."*

6.31. It is further submitted that the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited v. Solar Semi Conductor Private Limited and Others (2017) 16 SCC 498, concurring judgment has relied on the judgments of Hon'ble Supreme Court. The Concurring judgment reads:

"58. By a reading of Regulation 80, it is clear that inherent powers of the State Commission are saved to make such orders as may be necessary:- (i) to secure the ends of justice; and (ii) to prevent abuse of process of the Commission. The inherent powers being very wide and incapable of definition, its limits should be carefully guarded. Inherent powers preserved under Regulation 80 (which is akin to Section 151 of the Code) are with respect to the procedure to be followed by the Commission in deciding the cause before it. The inherent powers under Section 151 CPC are procedural in nature and cannot affect the substantive right of the parties. The inherent powers are not substantive provision that confers the right upon the party to get any substantive relief. These inherent powers are not over substantive rights which a litigant possesses.

59. The inherent power is not a provision of law to grant any substantive relief. But it is only a procedural provision to make orders to secure the ends of justice and to prevent abuse of process of the Court. It cannot be used to create or recognize substantive rights of the parties. In Vinod Seth v. Devinder Bajaj and Another (2010) 8 SCC 1, it was held as under:-
.... .
Same view was reiterated in Ram Prakash Agarwal and Another v. Gopi Krishan (dead through LRs.) and Others (2013) 11 SCC 296,"

6.32. It is submitted that there is a difference between exercise of powers and jurisdiction of the court. When the court does not have jurisdiction in a particular subject matter or issue, then it cannot exercise any power including inherent power in the matter. If the interpretation of the Petitioner on inherent power is accepted, then the Commission would be deemed to have jurisdiction over all matters by virtue of exercise of inherent powers and there would be no need for any other forum and more specifically the forum of CGRF. In any case, Regulation 9.23 to 9.24 are procedural in nature and do not affect the substantive rights. Regulation 9.25 is for situation where no code is framed which is not the case here as the Supply Code specifically recognizes certain timelines to apply to consumers and provides for billing thereafter.

6.33. It is further submitted that when the Regulations provide for extension for the licensee but do not provide for such extension for non licensees, then this is a deliberate decision not to provide such extension. The non licensees cannot then under power to relax seek to act contrary to the regulations.

7. The Petitioner vide affidavit dated 01.07.2020 submitted its reply pursuant to Commission's Daily Order dated 24.06.2020 and in response to the Respondent No. 2, GETCO's, reply dated 17.06.2020, as under:

7.1. Regarding submission on interpretation and implication of Hon'ble High Court's Order dated 07.01.2020 in similar case of Surya Roshni Ltd., GETCO has submitted that the Order dated 07.01.2020 of Hon'ble High Court of Gujarat, in substance, is only relying on Commission's Order dated 14.06.2012 in case of KP Energy Ltd vs GETCO and since the issue involved in that case was different being dispute between generator and licensee, the Commission was having jurisdiction.

7.1.1. The above submission of GETCO that Hon'ble High Court in its Order dated 07.01.2020 has only considered the implication of the Commission's Order dated 14.06.2012 (case of KP Energy Ltd) and not considered the implication of CGRF Regulations, is misplaced, baseless and without any merit. On the contrary, plain reading of order dated 07.01.2020 makes it amply clear that while passing the order, Hon'ble High Court has considered the implications of CGRF Regulations as well as Commission's Order dated 14.06.2012 and relegated the matter to the Commission.

7.1.2. For considering true interpretation and implication, it is relevant to consider the background of the case of Surya Roshni before Hon'ble High Court and the case of KP Energy Ltd v/s GETCO before the Commission as referred in the Order dated 07.01.2020 by Hon'ble High Court:

a. The Surya Roshni had approached the Commission in the year 2019 for extension of time limit for completion of 66 KV line works under Option-III due to reasons for delay not attributable to them.

b. In response, the Commission vide letter dated 27.02.2019 gave reply to Surya Roshni to approach CGRF of PGVCL under CGRF Regulations for redressal of grievances. stating that the dispute pertains to billing dispute between consumer and Distribution Licensees.

c. The letter dated 27.02.2019 of the Commission relegating the Petitioner to seek remedies from CGRF of PGVCL was under challenge before Hon'ble High Court in SCA No: 16029 of 2019.

7.1.3. Therefore, when the Commission's communication dated 27.02.2019 directing the Petitioner to approach CGRF of PGVCL was under challenge, it is incorrect to state that Hon'ble High Court has not considered the implication of CGRF Regulations and passed order dated 07.01.2020 by relying only on the Commission's Order in KP Energy case. In fact, it is clear that Hon'ble High Court has considered the implication of CGRF Regulations and relegated the matter back to the Commission by applying principles laid down in the Commission's Order in KP Energy case.

7.1.4. Therefore, it is also relevant to understand scope and purpose of the issues involved in KP Energy case. The submission of GETCO that in case of KP Energy, there was dispute between KP Energy being generating company and GETCO being Licensee and therefore the Commission was having jurisdiction under Section 86 of the Electricity Act 2003. However, there is no such provision under Section 86 of the Act for dispute involving consumer of Distribution Licensee. It is submitted that the said contentions of GETCO is misleading and without any merit.

7.1.5. It is submitted that the relevant part of the Order is read as under:

Cause Title of the Petition read as under:

In the Matter of:
Extension of time for erection of 66 KV transmission network for evacuation of 25 MW Wind Farm Generation from Wind Farm of M/s. K.P. Energy Private Limited as communication dated 6th April, 2011. per

Para 2.4

The petitioner submitted that he has taken all the necessary steps diligently to complete the work within the stipulated period. However, he is unable to complete the same due to situation beyond his control. He has requested the respondent vide letter dated 21st March, 2012 to extend the time limit for completion of works upto

30.06.2012 due to the above reasons and not to encash the Bank Guarantee submitted by the petitioner.

Para 2.7 [4]

[4] Shri D.J.Shah, on behalf of the respondent, submitted that…….

Based on the above submission, <u>he submitted that the respondent has no objection to grant of extension of time limit from 5.4.2012 to 30.6.2012 for completion of the transmission network by the petitioner.</u>

Para 6.2

According to clause 6.4 of the Commission's Order No.1 of 2010 dated 30.1.2010, the transmission network associated with wind farms having installed capacity upto 100 MW, is required to be completed within a period of one year.

Further, with the objective to ensure seriousness of the project developers, provision has been made regarding furnishing of bank guarantee of Rs.5 lakh per MW, which can be forfeited in case of failure of the project developer to complete the works within the stipulated period.

Para 6.4

In view of the facts stated above, we observe that the difficulties in completion of the transmission network for evacuation of power from 25 MW wind farm of the petitioner to GETCO 66 KV Kadamgiri substation is due to reasons beyond the control of the petitioner and the same is genuine. Hence, we grant extension of time limit from 5.4.2012 to 30.6.2012 to enable him to complete the above work. We also decide that the Bank Guarantee which was submitted by the petitioner shall not be encashed by the respondent till 30.6.2012……..

(Underline supplied)

7.1.6. Thus, from the Order dated 14.6.2012, it is transpired that in KP Energy case:

(a) there was no dispute between generating company and licensee,

(b) the petition was also not under Section 86

(c) in the GERC Order No. 1 of 2010 dated 30.01.2010, there was clear provision to complete the transmission line within a period of 1 year but there was no provision of any nature for extension of time limit beyond 1 year.

(d) nowhere in the order, it is mentioned that the Commission has adjudicated dispute between generating company and transmission licensee for extension of the time limit for completion of transmission line.

(e) from the order, it is clear that in absence of any explicit provision in the Order dated 30.01.2010, in the given facts and circumstances of the case, the Commission had extended time limit in favour of applicant by exercising its general regulatory powers.

7.1.7. Thus, it is amply clear that in the Order dated 07.01.2020, Hon'ble High Court has considered two aspects, namely, (a) the case of KP Energy is similar to the case of Surya Roshni qua in case of Surya Roshni also, the line work was undertaken by the applicant on behalf of GETCO and similar to KP Energy case, Surya Roshni was also experiencing delay for the reasons not attributable to it, (b) Hon'ble High Court has also considered the facts that Surya Roshni has no dispute against Distribution licensee having jurisdiction of CGRF.

7.1.8. Therefore, Hon'ble High Court had applied the same principle that when the Commission had granted time limit extension to KP Energy by exercising regulatory jurisdiction with an intension to give justice to the applicant even though there was no explicit provision in the Order dated 30.01.2010 the same principle need to be applied to the case of Surya Roshni also qua "to give justice and not to punish without default" and rightly relegated the matter to the Commission since there was no dispute between Surya Roshni and Distribution Licensee - PGVCL involving jurisdiction of CGRF.

7.1.9. It is submitted that in any case, the Order dated 07.01.2020 of Hon'ble High Court is binding to the Commission unless the order is reviewed / clarified by Hon'ble High Court in the Review Petition filed by the affected party.

7.2. Regarding the submission on role and conduct of GETCO, it is submitted that the contention of GETCO on the issue of jurisdiction of the Commission is belated and nothing but after-thought with an intention to delay the entire process.

7.2.1. It is therefore necessary to take into account the stand taken by GETCO up till 17.06.2020. It is also relevant to consider the stand of MGVCL being Distribution Licensee and stand taken by GETCO contrary to the stand of MGVCL. For this, following list of events are important to refer.

Date	Event
03-02-2020	Petition filed before the Commission.
19-03-2020	Reply filed by MGVCL on the Petition. MGVCL being Distribution Licensee, did not raise any issue related to jurisdiction. On the contrary, agreed for the jurisdiction of the Commission mentioning that only the Commission can grant time limit extension.
	No reply filed by GETCO on the Petition and did not raise any issue related to jurisdiction, though the Commission directed parties to file their response on the Petition.
09-06-2020	Petitioner filed rejoinder to the reply of MGVCL
16-06-2020	Hearing held by the Commission in the matter, wherein GETCO raised the issue of jurisdiction and admissibility of Petition before the Commission.
24-06-2020	The Commission issued Daily Order in relation to hearing held on 16.06.2020.
17-06-2020	GETCO filed its additional submission raising the issue of jurisdiction and admissibility of petition in Petition No. 1816 of 2019 and 1826 of 2019.

7.2.2. It is submitted that the advocate appearing for MGVCL and GETCO is also common. Therefore, it is strange that on one hand MGVCL is supporting the jurisdiction of the Commission while the same advocate on behalf of GETCO opposing the jurisdiction of the Commission. Considering this peculiar situation more specifically GETCO is taking stand contrary to its earlier stand in Petition No. 1816 of 2019 and 1826 of 2019 qua agreeing for the jurisdiction during previous stage and sit for almost six months after opportunity granted by the Commission, GETCO may not be allowed to change its stand at this belated stage and therefore the Commission may please to just ignore the additional submission filed by GETCO.

7.2.3. It is submitted that it is relevant to appreciate that, (i) GETCO has duly recovered supervision charges from the Petitioner for the work of erection of transmission line, (ii) even though line is constructed by the Petitioner at its own cost, the ownership of asset remain with GETCO, (iii) line- route, material, erection work etc is carried out under direct supervision of GETCO officials and in knowledge of ground reality, (iv) the construction work is carried out under the Section 68 (1) approval of GETCO, (v) the application for Row clearance / road crossing clearance / approval etc is also made and dealt by GETCO.

7.2.4. Considering the above facts, it is submitted that the role of GETCO in the present matter is to assist the Commission more particularly to analyze and verify the claim of delay raised by the Petitioner and to place on record factual aspects before the Commission as done in case of KP Energy Case. The contention of GETCO that the issue involved in present matter is billing dispute, is the issue between MGVCL and the Petitioner and therefore, it is not proper for GETCO to raise such issues.

7.3. In regard to contention of Respondent GETCO that the issue of the present matter is billing dispute and only CGRF has jurisdiction to deal with the issue, it is submitted that before dealing with the above contentions, it is imperative to refer relevant provisions of the Act, 2003 and the provisions of CGRF Regulations.

Section: 42 (5) and (6)

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

The relevant provisions of GERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019 is read as under:

1.5 Definitions:

d) "Complaint" means any complaint made by a Complainant, either in writing, including e-mail and facsimile modes, or verbally over phone if such numbers are specified by a Licensee for lodging complaints, or by visiting personally to such offices of the Licensee which are designated by the Licensee for registering the complaints, to a Licensee, which may, without limitation, include complaints relating to:

i. any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by the Licensee in pursuance of a licence and/or any contract or agreement or under the Electricity Supply Code or in relation to Standards of Performance of Licensees, as specified by the Commission;

ii. any unfair trade practice or restrictive trade practice which has been adopted by the Licensee in providing Electricity Service; or

iii. Electricity Services which are being offered for use to the public in contravention of the provisions of any applicable law including safety code, rules and regulations, as prescribed by the competent authorities under the relevant laws or established through prudent industry practices, and as a result whereof the life and safety of the human beings, livestock or property is put at risk and endangered.

e) "Electricity Service" includes supply, billing, metering and maintenance of electrical energy to the Consumer and all attendant sub-services and also any other service which a Licensee is required to provide pursuant to his licence or under any applicable law.

………..

h) "Grievance" shall mean a grievance of the Consumer arising out of the failure of the Licensee to register or redress a Complaint, and shall include any dispute between the Consumer and the Licensee with regard to any Complaint or with regard to any action taken by the Licensee in relation to or pursuant to a Complaint

7.3.1. It is submitted that as per the above provisions the Act and CGRF Regulations, there are two ingredients which are to be fulfilled for CGRF having jurisdiction under GERC (CGRF) Regulations, 2019, namely, (i) there has to complaint against concerned Distribution Licensee, and (ii) the nature of complaint shall be as defined in the definition of the complaint in the CGRF Regulations.

7.3.2. Now, it is imperative to refer to the facts and issues involved in the present matter. In the present case, the work of erection of transmission line is undertaken by the Petitioner under Option-III on behalf of Respondent GETCO. The Petitioner has been experiencing / has experienced delay, reasons for which are not attributable to the Petitioner / Distribution Licensee MGVCL. As per the provisions of Supply Code, the Petitioner has to complete the work as per the SoP timeline failing which the Distribution licensee can commence billing on deemed release basis after issuance of 60 days' notice. Further, under the provisions of Supply Code and SoP Regulations, only the Commission has authority to grant extension of time.

7.3.3. As per the case of the Petitioner, there is no complaint against Respondent MGVCL considering the facts that (i) reasons for delay is not attributable to any fault / lacuna on part of the Distribution Licensee, (ii) under the provisions of Supply Code and SoP Regulations, when Respondent MGVCL do not have any power / authority to grant extension of time, there cannot be any complaint/ claim against Respondent MGVCL seeking redressal of complaint before CGRF. In the present case, there is no dispute with MGVCL let alone billing dispute and therefore CGRF cannot have jurisdiction.

7.3.4. Further, it is submitted that there are no any explicit / implicit provisions in the CGRF Regulations which can authorize the forum to grant extension of time. In its submission, GETCO has also failed to point out that under which clause of CGRF Regulations, the forum has jurisdiction to grant extension of time.

7.3.5. It is further submitted that in absence of time limit extension order of the Commission, MGVCL is entitled to commence billing on deemed release basis and there cannot be any complaint against this action before CGRF being action of MGVCL is in accordance with the provisions of Supply Code. Therefore, issue involved in the present petition cannot be considered as billing dispute.

7.3.6. Under the circumstances, what expected from MGVCL is assistance to the Commission in deciding the claim of the Petitioner with regard to delay in completion of line works. However, after analyzing the matter, if the Commission comes to the conclusion that there is genuine difficulty in completion of line and delay is not attributable to the Petitioner (as in case of KP Energy) in that case, the Petitioner is entitled to consequent relief.

7.3.7. It is the contention of GETCO that the Commission cannot exercise the regulatory power to grant time limit extension to the applicant under the provisions of Supply Code and SoP Regulations. If these contentions are accepted, in that case, it is not understood as to how CGRF can grant extension of time because CGRF has limited jurisdiction within the purview of CGRF Regulations only.

7.3.8. It is further submitted that when there is no complaint against MGVCL and when there is no claim of compensation against MGVCL for violation of SoP timeline, the issue involve in the present Petition cannot be entertained by CGRF.

7.3.9. In the present case, the applicant is constructing the transmission line on behalf of GETCO and therefore the present case does not involve the consumer - Distribution Licensee relationship having jurisdiction of CGRF.

7.3.10. Further, as per the provisions of the Electricity Act, 2003 and CGRF Regulations, the CGRF is having jurisdiction to entertain complaint against the concerned Distribution Licensee and not complaint against transmission licensee. Therefore, under Option-III, in case the delay in construction of transmission line is attributable to GETCO, the complaint of the same will not fall within the jurisdiction of CGRF and in that case, the issues of the applicant will be remained unresolved for want of jurisdiction, this could not be the intention.

7.3.11. It is also the contention of the Respondent that the present Petition is filed only after issuance of 60 days' notice by MGVCL for commencement of billing on deemed release basis and therefore it is billing dispute. This contention is factually incorrect and misleading. In fact, envisaging the delay as enumerated in the Petition, the

Petitioner has filed petition on 03.02.2020 i.e. before issuance of 60 days' notice dated 04.02.2020 by Respondent MGVCL. As per this contention, if a person has filed petition before issuance of 60 days' notice for commencement of billing on deemed release basis, CGRF would not have jurisdiction since billing issue is not involved. In Petitioner's case, the Petition is filed before the Commission even before issuance of 60 days' notice for commencement of billing on deemed release basis. Thus, if above contention of the Respondent is accepted in that case, the issue involved in Petitioner's case, would not be considered as billing dispute and therefore the Commission would have jurisdiction.

Whereas in other case if petition is filed after issuance of 60 days' notice, this would be considered as billing dispute and therefore CGRF would have jurisdiction though the nature of issues involved in both the case are same. This would lead to unknown result as the jurisdiction issue cannot be decided based on timing of filing of petition.

7.3.12. It is also submission of GETCO that in similar case of M/s. RSPL, CGRF and Ombudsman has given decision in favour of PGVCL. The Petitioner, without going to the merit of the case, would like to submit that in a specific case if CGRF / Ombudsman has exercise jurisdiction, this is not binding to the Commission and the same cannot become precedent to be followed by the Commission.

7.3.13. In view of above submission, under the circumstances even when there is no dispute with MGVCL, if the issue involved in the present Petition is to be considered as billing dispute with MGVCL in that case there cannot be any complaint against MGVCL before CGRF as delay in completion of line is not attributable to MGVCL or the Petitioner. In substance, the Petitioner would be penalized for no fault which is against principle of natural justice and cannot be the intension of any statute.

7.4. In regard to contention of Respondent GETCO that under the provisions of Supply Code and SoP Regulations, the applicant is not allowed to approach the Commission and the Commission cannot exercise the regulatory power to grant time limit extension, it is submitted that it is relevant to refer proviso to Clause 4.33 (2) of the

Supply Code which states that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005. Therefore, it is relevant to consider as to why Supply Code provides for applicability of SoP timeline to the consumer which is otherwise applicable to Distribution Licensee. The answer is straight and simple namely, when applicant is undertaking the erection of line work by its own, the same of SoP otherwise applicable to licensee is to be followed by applicant also. Meaning thereby, the applicant is acting in the shoe of licensee and therefore has to follow the SoP timeline.

7.4.1. It is submitted that since the applicant has to follow SoP timeline, which is otherwise applicable to licensee, it is imperative to refer to SoP Regulations, 2005 which provides that timeline stipulated in the Regulations is not sacrosanct and subject to relaxation / extension by the Commission due to time taken by local authority and other factors affecting the performance of Distribution licensee. Therefore, contention of the Petitioner is that in case the SoP timeline for completion of line is made applicable to the applicant, the other relaxation / extension in time otherwise available to licensee is also available to the applicant also. If not, in that case it is tantamount to asking the applicant to perform the impossible task. It is further submitted that take an example that the applicant of new connection has acted swiftly and taken timely actions for completion of line. However, there is delay in completion of line due to reasons beyond reasonable control of applicant such as stay order of competent court on Right of Way on the line route or there is abnormal delay in getting clearance / approval of Local Authority or there is abnormal delay from Respondent GETCO in giving line route / material permission etc, the applicant could not complete the line work within SoP time line. Therefore, in such a case, when delay is not attributable to the applicant and same delay would have otherwise been experienced by the licensee, if time limit extension is not granted, the applicant would be punished with no fault. This cannot be intension of the statute. The provisions of Supply Code are harmoniously to be read with SoP Regulations for meaningful interpretation. Otherwise, this would lead to a situation that when licensee is carrying out the line work, they are entitled for relief / extension of time from the Commission but when the applicant is carrying out the same work and experiencing difficulties in nature of beyond reasonable control, he will not be entitled for the relief. This could not be the intention.

7.4.2. It is submitted that nowhere in the SoP Regulation is stated that the applicant is barred from approaching the Commission for seeking relief otherwise available to Distribution Licensee.

7.4.3. It is further submitted that the reliance placed by Respondent GETCO on the provisions of Clause 4.37 of Supply Code to state that only licensee is entitled for extension in timeline and not the consumer. It is submitted that in Clause 4.37, nowhere it is mentioned that only licensee can approach the Commission for time limit extension and consumer cannot approach for extension of time. Therefore, the contention of Respondent GETCO that in no case time limit extension is to be granted to the applicant is tantamount to denial of justice to the applicant and punishment with no fault. Accordingly, the said contention of Respondent GETCO is without any merit and against the principle of natural justice. This will also become a tool to abstract money from the consumers on deemed release basis by delaying approval / process by Respondent GETCO in case Supply Code is to be interpreted to mean that in no case the applicant is entitled for time limit extension for whatsoever reasons.

7.4.4. It is submitted that on the principle of natural justice and as per the provisions of Supply Code and read with SoP Regulations, the Commission can grant time limit extension by exercising regulatory powers available under the provisions of Supply Code and SoP Regulations which is also the intention of Hon'ble High Court in the order dated 07.01.2020 in case of Surya Roshni. It is submitted that the Commission should play its role and exercise regulatory powers to protect the interest of applicant and give justice.

7.4.5. It is also imperative to consider the plea made by the Petitioner in the Petition namely, to excuse the delay not attributable to the Petitioner. It is in the interest of justice that the applicant should not be punished for not his fault. Therefore, it is expected that Respondent MGVCL / GETCO should also play constructive role in the matter by placing on record the factual aspects of the case for deciding the claim of delay by the Commission.

7.4.6. It is submitted that apart from powers available under the SoP Regulations, the Commission has authority and jurisdiction to grant extension of time limit to the Petitioner for completion of work for the delay not attributable to the Petitioner.

7.4.7. It is submitted that under the provisions of Regulations 9.21 and 9.22, the Commission has power to relax and power to remove difficulty. It is submitted that since there is no explicit provision in the Supply Code allowing consumer to approach before the Commission for extension of time limit, the consumer interest is badly affected in case of delay not attributable to consumer. Therefore, in the interest of public / general consumer who are undertaking extension of line works under Option-III and experiencing delay not attributing to such consumer, the Commission may exercise its regulatory power and grant relaxation to the effect that in case of delay not attributable to the applicant for erection of line work, such applicants are entitled to extension of time limit, in the best interest of justice.

7.4.8. It is also submitted that under the Clause 9.23 of Supply Code, the Commission has inherent powers to pass orders as may be necessary for end justice to meet or prevent abuse of process of Commission. In case the Commission does not exercise its jurisdiction and not grant time limit extension, it will cause to injustice to the consumer if delay is not attributable to consumer and issues will remain unresolved since issue involved in the present matter is not related to dispute with distribution licensee and therefore CGRF has no jurisdiction over this. This is a substantial provision, and the Commission should exercise the same in interest of justice.

7.4.9. It is submitted that as per Code 9.24, the Commission can adopt procedure which is at variance with any provision of Supply Code in a special circumstance. Further, as per the Code 9.25, there shall be no bar for the Commission for dealing the matter or exercising any power under the Act for which no code has been framed. In the present case, there is no explicit provision in Supply Code allowing consumer for extension of time even though delay is not attributable to consumer. Under special circumstances, the Commission has jurisdiction and authority to deal with issue raised in the Petition and decide the prayer made thereto.

7.4.10. It is submitted that as per the above provisions of GERC Supply Code and as held by Hon'ble High Court in Order dated 07.01.2020, the Commission has regulatory jurisdiction to grant time limit extension and grant consequent relief thereto. The Petitioner would also like to submit that since the issue involved in the matter is relating to extension of time for completion of line works under the provisions of Supply Code and non-levy of demand charges on deemed release basis is only a consequent relief, such matter could not be raised before CGRF and the Commission is the authority to decide the time limit extension considering the merit of the case and consequent relief thereto.

7.5. In regard to various judgments referred to by GETCO in support of contention that only CGRF has jurisdiction to deal with issue involve in the present Petition, it is submitted that the judgment of Hon'ble APTEL referred by GETCO is on the issue of involving billing dispute between consumer and Distribution Licensee, whereas the issue involved in present case is distinct and different. The Petition is for extension of time limit for completion of line work for delay not attributable to the Petitioner. Since the delay is not attributable to MGVCL and there is no dispute/ claim against MGVCL, the judgment is of no help to decide the issue of jurisdiction.

7.5.1. Further, regarding the judgment relied on by GETCO to contend that Regulations are binding in nature, it is submitted that the reliance on these judgments by GETCO is misplaced and irrelevant. The Petition is filed within four corners of the Regulations of the Commission and therefore issue binding of regulations does not arise.

7.5.2. Regarding the judgements relied on by GETCO on the issue of exercise of inherent power of the Commission, it is submitted that these judgments of Hon'ble Supreme Court relied by GETCO, is supporting the case of the Petitioner. In the judgments of

Arjunsingh v/s Mohindra Kumar, Gram Panchayat v/s Lokesh Devi and Ram Prakash Agrawal v/s Gopikrishan are in relation to decision of Hon'ble Supreme Court that (a) the inherent powers of court cannot be override express provisions of law, (b) A provision barring the exercise the inherent power need not be express, it may be even implied. It is submitted that in the Supply Code there is no explicit/implicit provision which bar the consumer for seeking extension of timeline, therefore, the issue of inherent powers overriding the express provision of Supply Code does not arise. Further, GETCO has failed to indicate as to how even by implication it can be construed that consumer is not allowed for extension of time. This contention is nothing but asking the applicant to perform impossible task and punish the applicant with no fault. On the contrary, provisions of Supply Code read with SoP Regulations allows for time limit extension for reasons for delay are beyond reasonable control. Since no explicit provision is there in Supply Code, the Commission can exercise inherent powers under the Supply Code.

7.5.3. It is submitted that the judgments of Supreme Court in case of GUVNL V/s. Solar Semiconductor, PGCIL v/s. Green Infra Renewable Energy Ltd. and Vinod Seth v/s Devinder Bajaj & Oths are in relation to inherent powers exercised under the Conduct of Business Regulations / Civil Procedure Code to grant substantive relief. The reliance on these judgments is also misplaced and not relevant. The present case is distinct and different. The exercise of inherent powers in the present case is not under the Conduct of Business Regulations but under the main regulations namely Supply Code and SoP Regulations itself. Therefore, issue of exercise of inherent powers to grant substantial relief under the Conduct of Business Regulations / CPC which is procedural in nature, do not arise.

7.6. It is submitted that no regulations in Supply Code or in SoP provides that extension of time limit cannot be granted to non-licensees. In case the Commission does not exercise its inherent powers, the Petitioner would be deprived of the justice and will be punished with no fault. Under the circumstances, this is a fit and proper case for exercise of inherent powers and regulatory jurisdiction by the Commission in the best interest of justice.

8. The Respondents MGVCL and GETCO, vide affidavit dated 31.05.2023 and 09.06.2023, respectively, filed their submissions as below. The submissions already made by both the Respondents are not repeated here for the sake of brevity.

8.1. It is submitted that the preliminary question to be considered in this Petition is as to whether the issue is within the jurisdiction of the Consumer Grievance Redressal Forum under Section 42(5) to 42(8) of the Electricity Act, 2003 being a dispute between a consumer against the distribution licensee or whether there is any specific power under the Supply Code for the Commission to entertain and consider the issue of extension. Unless otherwise specifically recognized under the Supply Code, by virtue of being dispute of a consumer, the issue is within the jurisdiction of Consumer Grievance Redressal Forum (CGRF).

8.2. It is submitted that the present Petition is filed by a consumer of the distribution licensee seeking non levy of the minimum demand charges by the distribution licensee. Though the Petitioner has sought to claim that the Petition is for extension of time, the same is only to seek non levy of minimum demand charges which is also the prayer in the Petition. By clever drafting, the intent and ultimate relief of the Petition cannot be changed. Under the Supply Code, the consumer has to approach the CGRF for any grievance of action or inaction of the distribution company:

> *"4.86 If the consumer feels aggrieved by the licensee's action or omission, the consumer may file his representation to the concerned Consumer Grievances Redressal Forum for redressal of his grievance."*

8.3. It is submitted that as per the decisions of the Hon'ble Courts, such disputes are to be agitated before the CGRF with further representation to Ombudsman and cannot be maintained by way of a Petition before the Commission. In this regard Section 86(1)(f) of the Electricity Act, 2003 restricts the adjudicatory jurisdiction of the Commission to disputes between licensees and generating companies or between two licensees and not disputes raised by a consumer on matters of invoices, billing etc.

8.4. In this regard, the Commission has notified the GERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019. It is submitted that the Ombudsman has dealt with similar issues, as raised in the present Petition, in Case No. 72 of 2019 vide Order dated 27.11.2019 in M/s. RSPL Limited -v- Executive Engineer, Paschim Gujarat Vij Company Limited, which was a representation made by the concerned consumer under Section 42(6) of the Electricity Act, 2003 in regard to the decision made by CGRF. The decision of the Ombudsman was in favour of the Distribution Company.

8.5. Further, it is submitted that under Section 86 of the Electricity Act, 2003, a State Commission can only adjudicate disputes between a licensee and a generating company. The Commission can exercise both adjudicatory and regulatory functions under Section 86. The present Petition is adversarial in nature, which falls under Section 86(1)(f), which does not cover the case of the Petitioner. In this regard, the Respondent has relied on the following decisions:

a. Maharashtra Electricity Regulatory Commission -v- Reliance Energy Limited, (2007) 8 SCC 381

b. BSES Rajdhani Power Limited -v- Delhi Electricity Regulatory Commission in Appeal No. 181 of 2008 decided on 30.03.2009

c. Rashmikaban Navinbhai Patel & Others -v- Uttar Gujarat Vij Company Limited in SCA No. 18138 of 2016 dated 11.07.2022

d. Chhattisgarh State Electricity Board -v- Raghuvir Ferro Alloys Ltd., [2006] APTEL 134 Appeal No. 125, 126 and 127 of 2006 dated 28.11.2006

8.6. Regarding the current status of the Petitioner, it is submitted that the Respondent MGVCL has already issued the Notice dated 04.02.2020 under the Clause 4.33 for completion of work and availing of power supply by the Petitioner within 60 days and intimated that in case of failure to do so, the liability to pay demand charges would arise. Since the Petitioner had failed to complete the work within 60 days, MGVCL has raised the bills for the months commencing from 04.04.2020. It is submitted that the billing is as per the Tariff Orders of the Commission as applicable to the consumer category of the Petitioner. The Petitioner has paid the bills. The Petitioner has completed the work, and the actual supply has commenced with effect from 05.03.2021.

8.7. Regarding the contentions / allegations on the Option-III, it is submitted that the Petitioner sought to avail new connection having demand of 5000 KV for which 66 kV has to be laid down. The Petitioner agreed for laying down of the line. The Petitioner entered into an agreement with GETCO on the basis of Option-III i.e. the Petitioner was to construct the line and further entered into agreement with MGVCL.

8.7.1. It is submitted that Option III, i.e. Applicant to do the work, is a valid and legal mechanism under the Regulations framed by the Commission. The Electricity Supply Code as well as Licensee power to recover expenditure incurred in providing supply and other Miscellaneous charges Regulations recognise the option of the Applicant getting the work done itself.

8.7.2. It is submitted that the Petitioner had not made any objection to the issuance of the estimate under Option-III which was communicated vide letter dated 20.06.2019 to the Petitioner which had also attached the letter dated 04.06.2019. In fact, the Petitioner proceeded to deposit the amount on 10.07.2019 and further entered into agreement under Option-III with GETCO. Therefore, there cannot be any dispute on the fact that the Petitioner had agreed to Option-III and all parties had proceeded on the said basis

8.7.3. Therefore, having accepted the Option-III and acting under the said Option, it is not open to the Petitioner to now raise any contention to the contrary. The Petitioner is raising this issue now only because of its own delays. Such contention is clearly an afterthought to avoid the liability as provided in the Regulations.

8.7.4. It is submitted that the Petitioner has sought to claim that it was compelled to accept Option-III. Though the meeting referred to is with GETCO and the discussions therein are not within the knowledge of MGVCL, it is stated that at no time, did Petitioner ever write or otherwise communicate to MGVCL of any issue or objections or protest on Option-III. Further, GETCO has in its reply dated 17.06.2020 denied the allegations of the Petitioner and the contention that GETCO had stated that private applicants are mandatorily to apply under Option-III. GETCO has also stated that the Petitioner had never disputed or objected or protested about Option-III. Even MGVCL in its reply had denied such allegations. The Petitioner in the Rejoinder has now clarified that it is not raising any allegations against MGVCL or GETCO. Therefore, the allegations made in the Petition may be ignored.

8.7.5. It is submitted that despite denial by the MGVCL and GETCO, the Petitioner has not produced any evidence or supporting document. The Petitioner has, on the other hand, only made a statement that it is known that only Option-III was offered. However once again, no document or evidence was produced. The Petitioner has not placed on record any evidence or even assertion that it sought the Option-1 and was denied the same. The Option-III of the applicant doing the work themselves is recognized under the Regulations of this Hon'ble Commission and there is no bar for the applicant carrying out the work themselves. Therefore, the fact that Option-III was offered to Petitioner was not illegal or otherwise incorrect. If the Petitioner had an issue, it should have immediately objected or communicated its request for other options. However, this was not done.

8.7.6. The Petitioner having accepted the same cannot now claim that it could not have challenged the action of GETCO/MGVCL. If the Petitioner had asked for other options, the estimate for the same would have been provided by GETCO/MGVCL. The attempt of Petitioner to claim that it had no other choice is not acceptable and is not borne out by any correspondence on record. There was no bar for the Petitioner to seek any other option and it could have at least written to MGVCL/GETCO on the same. If such option is sought by a consumer, MGVCL/GETCO are obliged to act on it. Without even an attempt for such option, the Petitioner cannot claim that it had no other choice.

8.7.7. The Respondent MGVCL submitted that it is well settled principle that a party cannot approbate and reprobate. In this regard, the Respondent MGVCL relies on the following decisions:

a. State of Rajasthan v. Union of India, (2018) 12 SCC 83

> *"3. After hearing the arguments of the learned counsel for the parties, we find substance in the aforesaid submission of the defendants. Even if we presume that the suit was maintainable, at the same time the plaintiff also had remedy of filing the statutory appeals, etc. by agitating the matter under the Finance Act. It chose to avail the remedy under the Finance Act. The doctrine of election would, therefore, become applicable in a case like this. After choosing one particular remedy the plaintiff cannot avail the other remedy as well, in respect of the same relief founded on same cause of action."*

b. Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435

> *"11. In R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683: AIR 1993 SC 352] this Court observed as under: (SCC pp. 687- 88, para 10)*
>
> > *"10. Law does not permit a person to both approbate and reprobate. <u>This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'</u>."*
>
> *12. The doctrine of election is based on the rule of estoppel-the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. <u>By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had</u>. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily. [Vide Babu Ram v. Indra Pal Singh [(1998) 6 SCC 358], P.R. Deshpande v. Maruti Balaram Haibatti [(1998) 6 SCC 507] and Mumbai International Airport (P) Ltd. v. Golden Chariot Airport [(2010) 10 SCC 422 : (2010) 4 SCC (Civ) 195].]"*

8.8. Regarding the issue of consequences of delay by the Applicant, it is submitted that the issue has to be considered in terms of Supply Code and Standard of Performance Regulations, which are binding Regulations.

8.8.1. In this regard, the Respondent has relied on Regulations 4.33 (2) and 9.3 of the Supply Code, 2015.

8.8.2. It is submitted that the Petitioner was required to complete the work by 180 days from 05.08.2019 which comes to 04.02.2020. However, the Petitioner failed to do so.

8.8.3. Further, it is submitted that the Agreement dated 05.08.2019 entered into between the Petitioner and MGVCL recognised the liability of the Petitioner to pay minimum charges for its contract demand on the basis of deemed commencement of supply. Clause 2 read as under:

"2. DATE OF COMMENCEMENT OF THE AGREEMENT

(a) Under the conditions of this contract, the consumer shall take electrical energy/power supply from the Distribution Licensee within a period of sixty days from the date of issue of intimation by the authorised Officer of the Distribution Licensee that supply of electrical energy is available, consumer shall not have right to cancel its application once such intimation letter is issued by the Distribution licensee.

(b) The provisions of this agreement shall be deemed to have come into force from the date of commencement of supply of energy or the date of expiry of sixty days' notice above referred to, whichever is earlier;

(c) In case the consumer is unable to receive supply of electrical energy before expiry of sixty days period from the date of issue of intimation by the authorised officer of the Distribution Licensee, it shall be considered as the power supply deemed to have been commenced from the date immediately following the date of expiry of sixty days period and the consumer shall be liable to pay the MINIMUM CHARGES as may be decided by GERC and applicable from time to time"

8.8.4. It is submitted that MGVCL had proceeded on the basis of ensuring prompt connection to the consumer and had made necessary arrangements. MGVCL vide Letter dated 04.02.2020 issued a Notice under Regulation 4.33 of Supply Code 2015 to complete the work and avail power supply within 60 days.

8.8.5. The Respondent MGVCL was ready to commence supply and in absence of consumer taking supply, there is loss to MGVCL which is passed on to other consumers. The Respondent is ready to supply electricity and therefore it has to be compensated for the same.

8.8.6. The Respondent GETCO submitted that even assuming but not admitting that there is any consideration of extension of time, it is up to the Petitioner to demonstrate the delay.

8.8.7. It is submitted that during the kick off meeting it was discussed regarding revision in the cable configuration. Further, Petitioner has accepted the estimate and paid the same as per original estimate. However, it is to clarify here that, there was no revision in the scope of the estimate but only change in cable configuration. There was no any alteration of line length.

8.8.8. It is submitted that GTECO had processed all approvals / requests expeditiously and in reasonable time and there was no delay by the Petitioner.

8.8.9. It is submitted that at no time did the Petitioner write to GETCO or otherwise intimate to GETCO that the estimate given on 20.06.2019 was erroneous in so far as underground cable is concerned or that the same is to be revised. The alleged communications referred prior to the estimate cannot be considered. The estimate was issued, paid and agreement executed, and the Petitioner cannot now raise an issue on scope of work in the said estimate.

8.8.10. It is submitted that the Petitioner has requested for revision of cable configuration to GETCO filed office on 21.05.2019. At this stage estimate was already approved by GETCO competent authority and conveyed on 04.06.2019. Petitioner has paid this estimate and subsequently request in 04.09.2019 to GETCO corporate office for revision in cable configuration.

8.8.11. It may also be noted that no request for revision was received until 04.09.2019. On receipt of the request, GETCO processed the request and conveyed the same on 25.10.2019 to MGVCL. The completion of formalities cannot be taken as 14.11.2019 as the revision was at the instance of Petitioner who had made the request only subsequent to estimate being given and agreement being executed. There could have been no resolution of the issue until the issue is raised by the Petitioner and the Petitioner itself delayed in raising the issue.

8.8.12. The revision request was received only on 04.09.2019 i.e. three months after GETCO had issued the estimate on 04.06.2019. The Petitioner instead of immediately seeking a revision, if needed, waited until 04.09.2019 to seek the revision. If the Petitioner had acted promptly, the revision could have been considered before and there would not been any claim of delay. The revision was at instance of Petitioner and that too raised belatedly.

8.8.13. There is no justification by the Petitioner as to why it did not seek the revision. The fact of payment of estimate within a month is irrelevant, firstly because one month is not such a short time and secondly, payment could have been made even pending the request for revisions. Any difference could have been adjusted subsequently. Further even after payment of estimate, no such request was made by the Petitioner. Thus, there was delay by the Petitioner itself.

8.9. Regarding contentions on grant of additional time, the Respondents MGVCL submitted that there is a time frame provided for completion of work by the Petitioner i.e. 180 days, and the consequences of the delays are also provided in the Supply Code. Admittedly, the Petitioner has failed to complete the work within time period as per the Regulations. Therefore, the Respondent MGVCL was entitled to take the appropriate steps.

8.9.1. It is submitted that the Petitioner has sought additional time in the present petition. The issue of whether there is any power to grant extension / additional time under the Regulations to a consumer / applicant has to be considered by the Commission.

Though, there is a provision in Supply Code for extension of time to the licensee, there is no such provision for Consumer / Applicants.

8.9.2. Any waiver of the demand charges to be paid by one consumer by the Respondent MGVCL would affect the other consumers. MGVCL being a distribution licensee is entitled to its aggregate revenue requirement and therefore any shortfall due to waiver of charges for one consumer would have to be compensated by higher charges on remaining consumers.

8.9.3. It is submitted that the distribution licensees make arrangement of power in order to supply to applicant and in case the applicant does not take the power, the distribution licensees still incur the costs associated with such arrangements. This cost has to be compensated and that is why Regulations provide for billing by the distribution licensees in case of delays by Applicants. There are timelines even when the Applicant does not do the work. This is to ensure seriousness of Applicants and to compensate for the cost of arrangement of power made by the distribution licensee and to prevent such costs being borne by other consumers of distribution licensees.

8.9.4. The requirement to pay monthly charges is recognized in the Supply Code and is provided to compensate the distribution licensee who is otherwise ready to supply power to the consumer.

8.9.5. The Respondent MGVCL submitted that even assuming but not admitting that the extension of time can be granted, the same can be only by the Commission and not the distribution licensee. The Respondent MGVCL / GETCO has no power or right to grant any extension of time. Further, the extension can only be granted if the Petitioner has proved that the delay was beyond its control/due to force majeure events.

8.10. Regarding reliance on Regulation 4.37 and 4.38 of the Supply Code it is submitted that the Regulation 4.37 regarding extension of time refers to the Licensee and do not refer to the consumers as such. Similarly, Regulation 4.38 of Supply Code also refers only to licensee.

8.10.1. When the Regulation refers only to licensees, no reliance can be placed on the same by a non-licensee. When the Regulations provide for extension for the licensee but do not provide for such extension for non licensees, then this is a deliberate decision not to provide such extension. The others are deemed to have been excluded. The non licensees cannot then under power to relax seek to act contrary to the regulations.

8.11. Regarding the issue of alleged delay claimed by the Petitioner, the Respondents submitted that the Petitioner has to justify its case for extension of time, both under Regulations and by way of facts. Even assuming but not admitting that there can be extension of time for Applicants, even on merits the Petitioner has to demonstrate the reasons for delay and substantiate the same with supporting documentation and evidence.

8.11.1. It is submitted that the Petitioner had not acted in a timely manner and the delays are not attributable to GETCO and in any case not by MGVCL. The Petitioner has raised contentions on the issue of underground cable type which relates to GETCO and has been dealt in GETCO reply. The issue of underground cable was never raised with MGVCL.GETCO has attached a list of dates with its reply which explain the factual aspects and demonstrate that there was no delay by GETCO. MGVCL craves reference to the same.

8.11.2. It is submitted that the Petitioner had requested for consideration of Aluminum Corrugated Sheath instead of 66 KV, 630 Sq. mm Poly AL. XLPE U/G Power cable mentioned in Estimate vide letter dated 04.09.2019. The said revision was at the instance of the Petitioner. The Petitioner had received the estimate on 20.06.2019 with poly sheath cable but the Petitioner did not write to GETCO or MGVCL seeking the revision. There is no justification by the Petitioner as to why it did not seek the revision. The fact of payment of estimate within a month is irrelevant, firstly because one month is not such a short time and secondly, payment could have been made even pending the request for revisions. Any difference could have been adjusted subsequently. Further, even after payment of estimate, no such request was made by the Petitioner.

8.12. It is submitted that the Hon'ble High Court in the case of Surya Roshini v. GERC dated 07.01.2020 in SCA No. 16029 of 2019 has considered the prima facie view relying on case of KP Energy Pvt Ltd v. GETCO in Petition No. 1206 of 2012. This is only a prima facie view and this does not preclude the Commission from considering the issue in detail.

8.12.1. It is submitted that there is no discussion or analysis of the powers of CGRF and in fact there was a statement by the Petitioner that, *"in identical facts situated, GERC has exercised jurisdiction for extending period...."*. The Petitioner's case is not identical case to KP Energy. Further, if as claimed by the Petitioner the consideration by the Hon'ble High Court was that there was no dispute against the distribution licensee, then the same does not apply in the present case, when the Petitioner has made the Respondent MGVCL a party. In the present case, the issue is against the Distribution Company and not against Respondent GETCO.

8.13. Regarding contentions on inherent powers of the Commission raised by the Petitioner, the Respondent submitted that it is misconceived and erroneous. It is submitted that in the present case, there is a Supply Code and all parties and the Commission are bound by it.

8.13.1. The Respondent MGVCL submitted that it is well settled principle that the Regulations are binding. In this regard, the Constitutional Bench of the Hon'ble Supreme Court in PTC India Limited v. Central Electricity Regulatory Commission (2010) 4 SCC 603 has held as under:

> *"57..... Making of a regulation in that regard is not a pre- condition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central Commission in an appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures a Central Commission takes under Section 79(1)(j) has to be in conformity with Section 178. ....*

58. A regulation under Section 178 is in the nature of a subordinate Legislation. Such subordinate Legislation can even override the existing contracts including Power Purchase Agreements which have got to be aligned with the regulations under Section 178 and which could not have been done across the board by an Order of the Central Commission under Section 79(1)(j)."

8.13.2. Without prejudice to the above contentions and even assuming but not admitting that the Petitioner has justified the delay, it is submitted that any such extension of time could be considered only by the Commission and the Respondent MGVCL had no powers to grant any extension nor waive the demand charges. Therefore, the Respondent MGVCL was correct and valid in its actions and in raising the invoices. The Petitioner did not approach the Commission in a timely manner even though it was delayed from the beginning. In such circumstances, the refund of such charges would be inequitable and would require adjustment of past arrears as the Respondent MGVCL has to be assured of its aggregate revenue requirements. Therefore, whether this is a fit case for refund of charges also has to be considered.

9. The Petitioner vide affidavit dated 01.06.2023, filed its submission on the factual and legal aspects of the Petition including the issue of jurisdiction, as directed by the Commission vide Daily Order dated 15.04.2023.

9.1. It is submitted that as far as jurisdictional and legal issues are concerned, the Petitioner has already made elaborate submissions in the various affidavits filed before the Commission from time to time in compliance to daily orders passed by the Commission in the subject Petition. Same are not reiterated for sake of brevity.

9.2. Regarding the factual aspects, it submitted that the Petitioner has already placed on record the factual aspects and relevant documents as part of memo of present Petition for consideration of the Commission. Same are also not reiterated for sake of brevity.

9.3. The Petitioner has requested the Commission to take on record above submissions of the Petitioner and decide the Petition.

10. The Petitioner, vide affidavit dated 23.09.2025, filed its consolidated submissions in pursuance to the Daily Order dated 08.09.2025.

10.1. It is submitted that the Petitioner has already made elaborate submissions in the various affidavits filed before the Commission from time to time including submissions on the issue of jurisdiction and maintainability of the Petition.

10.2. The submission already covered above are not repeated for sake of brevity.

10.3. The Petitioner has made its submission on the issue of jurisdiction as well as on the merit of the case for grant of additional time for completion of 66 KV transmission line and bays as under.

10.4. The Petitioner has submitted important list of events and submitted its arguments in support of the merit of the case seeking time limit extension for the reasons beyond reasonable control of the Petitioner.

10.5. It is submitted that pursuant to the application for new connection of 5000 KVA on 11.01.2019, there were various communications, correspondence and meetings between the Petitioner and GETCO / MGVCL during the period from 11.01.2019 to date of issue of Estimate on 20.06.2019 in regard to submission of Tikka plan, Site Survey, Survey and drawing approval for Point of Supply etc.

10.6. The Petitioner requested the Commission to grant deemed extension of time in completion of 66 KV line and bays works up to 05.03.2021 i.e. date of physical release of connection by MGVCL.

10.7. On the issue of jurisdiction and maintainability of the Petition, the Petitioner has relied on its previous submissions and requested the Commission to consider the same while deciding the issue.

10.8. The Petitioner has requested the Commission to consider the submissions made by it and allow the present Petition and prayers made therein.

11. During the hearing of the matter, Ld. Advocate appearing on behalf of the Respondents argued that the preliminary issues including the issue of jurisdiction and powers of the Commission needs to be decided. The Commission needs to first decide whether the Commission can exercise its power to grant any extension because only if there is such power conferred on the Commission in law and/or the Clauses, then only the Commission can exercise the same and then only it has jurisdiction to exercise its powers, but if the statute/Clause itself does not have any such provisions which empowers the Commission to grant extension of time, then every grievance of the consumer including billing dispute or extension of time limit or any other issues of the consumers against the distribution licensee shall necessarily fall within the jurisdiction of the concerned CGRF of the distribution licensee and is required to be dealt by the concerned CGRF.

11.1. It is argued that the 60 days' notice issued by Respondent MGVCL under Clause 4.33 of Supply Code is in accordance with the provisions of Supply Code 2015 and therefore the said notice cannot be treated as arbitrary or *void ab-initio.*

11.2. It is submitted that the submissions made by Petitioner on inherent powers of the Commission relying on Clause No. 9.23 to 9.25 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 are misplaced and the Respondents do not agree with the interpretation of the judgments done by the Petitioner because it is well settled principle that the inherent power cannot override express provisions of law. It is submitted that the judgments referred by the Respondent have very clearly held that the provision has to be express but it has to be implied also. Thus, if there are specific provisions dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court, in this case the Commission or the jurisdiction that may be exercised in relation to a matter, the inherent powers cannot be invoked to cut across the powers conferred and the prohibition need not be express but may be implied or be implicit from the very nature of the provision. In this regard referring to para 20 of the judgment of Hon'ble Supreme Court in case of Arjun Singh V/s. Mohindra Kumar (AIR 1964 SC 993) which reads as under:

"……..

20. ……………………… It is common ground that the inherent power of the Court cannot override the express provisions of the law. In other words if there are specific provisions of the Code dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the Court cannot be invoked in order to cut across the powers conferred by the Code. The prohibition contained in the Code, need not be express but may be implied or be implicit from the very nature of the provisions that it makes for covering the contingencies to which it relates……………..
…..”

Thus, it is not only an express provision but even by necessary implication the Court cannot override provisions of law through inherent powers. It is submitted that, for example, if a provision is given to extend timelines for a licensee but the same provision does not refer to the consumer and there is no other provision for the consumers, then there is a necessary implication that the Court / Commission does not want to extend the power for a consumer. It cannot be interpreted that the provision needs to expressly exclude the consumer or use of word 'only' is required to mean it is only for licensee and in absence of word 'only' it automatically extends to consumers. It is submitted that assuming there is a provision in a Clause which provides that the Commission can exercise power if certain conditions are met, then the Commission can exercise powers only when those conditions are met. However, as per the submissions advanced by the Petitioner, they say that though the Petitioner has not satisfied those conditions as provided in the Clause, but since the Clause does use the word 'only' to say that only when such conditions are met then only the powers can be exercised and therefore, in absence of use of word 'only', the Commission may exercise its inherent powers and still provide the relief sought. In such a case, then what's the point of that Clause or need to have such Clause at all because if everything can be done on the basis of inherent powers then whether anything is provided in the Clauses or not, then there is no purpose of having such Clause. It is submitted that when a Clause says that the Commission can extend the power for a licensee but does not give that same right to a non-licensee what it means that by necessary implication that Clause is excluding Non-Licensee. It is submitted that as the Clause stands today irrespective of whether it is right or wrong or there is lacuna in the Clause is altogether a different issue. The fact of the matter is that the Clause which is prevailing as on date cannot be changed simply for any of such issues. It is for the Commission to amend the Clause as and when deemed appropriate to include similar provision for consumer by following the due process and procedure for amending the Clause, inviting public comments, holding public hearing etc. for the future. The Clauses prevailing as on date have no provision entitling granting time-limit extension to consumers.

11.3. It is submitted that Petitioner has not shown any provision within the Clause which says that the power to grant extension of time specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 to a licensee is coextensive for consumers then only the Commission can exercise its powers. But exercise of inherent power to read something into a Clause which is not provided in the Clauses is not correct. It is further submitted that when a Clause provides for one thing but excludes the other person then by necessary implications it means that it was intended to exclude that other person.

11.4. It is submitted that similarly in the judgment of Gram Panchayat v. Lokesh Devi it is held that:

> *"………. The inherent powers also do not confer on the Court any additional jurisdiction to amplify the powers specified in the Code. These are the powers which are in addition to complementary powers expressly conferred upon the Court under the provisions of the Code. It is also an equally settled principle of the law that if express provisions are provided for directing a particular act in a particular manner, inherent powers cannot be used to frustrate such limitations of the Court….."*

11.5. It is submitted that if the express provision clearly says that extension can be granted to a licensee by the Commission then inherent powers cannot be used to say that now Commission may grant extension to a 'Non-Licensee'. Since, there is express provision to grant extension only to a licensee and clearly chosen not to grant that power for 'Non-Licensee'. Similarly, in the judgment of Ram Prakash Agarwal and Anr vs. GopiKrishan and Ors it is very clearly held that:

> *"… A provision barring the exercise of inherent power need not be express, it may even be implied…"*

It is submitted that when a provision expressly says that it applies to 'licensee', it is implied that it does not apply to 'Non-Licensee'. Therefore, the reliance placed by Petitioner that Clause 4.37 impliedly empowers the Commission to grant the extension as prayed by the Petitioner as a consumer is incorrect because the said Clause clearly is with reference to the licensee and when 'consumer' is not mentioned in the said Clause, it is clear that the intention while drafting the same, 'consumer' was consciously excluded and therefore, the same cannot be read to co-extensively exist for consumers also. It is submitted that the present Clauses as they stand today only provide that the licensee can approach the Commission seeking extension of time i.e. extension can only be granted to the licensees.

11.6. It is submitted that inherent powers are exercised for correcting procedural infirmity but cannot be used for granting any substantive relief. Thus, in case there is any procedural infirmity, the same can be corrected by the Commission by exercising its inherent power. However, in the present case, the submission of the Petitioner is that though the Clauses don't have any substantive provision to address the issue for granting relief of extension of timelines to a consumer and despite that the Commission may exercise its inherent powers to grant the substantive relief as prayed by the Petitioner in the present matter. It is submitted that other judgments have also been relied by the Respondent on the aspect that inherent powers cannot be exercised to affect substantive rights of a party or to grant relief of substantive nature but are meant for correcting procedural infirmity only. Even, in the case of Gujarat Urja Vikas Nigam Limited v. Solar Semi Conductor Private Limited and Others, Hon'ble Supreme Court has relied on such judgments and given a concurring judgment, the relevant portion reads as under:

"……

58. By a reading of Clause 80, it is clear that inherent powers of the State Commission are saved to make such orders as may be necessary:- (i) to secure the ends of justice; and (ii) to prevent abuse of process of the Commission. The inherent powers being very wide and incapable of definition, its limits should be carefully guarded. Inherent powers preserved under Clause 80 (which is akin to Section 151 of the Code) are with respect to the procedure to be followed by the Commission in deciding the cause before it. The inherent powers under Section 151 CPC are procedural in nature and cannot affect the substantive right of the parties. The inherent powers are not substantive provision that confers the right upon the party *to get any substantive relief. These inherent powers are not over substantive rights which a litigant possesses.*

59. The inherent power is not a provision of law to grant any substantive relief. But it is only a procedural provision to make orders to secure the ends of justice and to prevent abuse of process of the Court. It cannot be used to create or recognize substantive rights of the parties. In Vinod Seth v. Devinder Bajaj and Another (2010) 8 SCC 1, it was held as under:-

.....

Same view was reiterated in Ram Prakash Agarwal and Another v. Gopi Krishan (dead through LRs.) and Others (2013) 11 SCC 296."

11.7. As regards the 'Power to Relax', referring to Clause 9.21 of the GERC Supply Code wherein the Commission may in public interest and for reasons to be recorded in writing, relax any provisions submitting that 'public interest' as referred in the aforesaid clause does not mean interest of one single consumer only. Public interest has a wider connotation and also involves public interest as regards to the distribution licensee as well as the general body of consumers at large. In the present case, the Petitioner has demanded additional load and the distribution licensee has made arrangements for such power supply, the Petitioner signed Agreement / contract with licensees for additional load and now if Petitioner is not consuming but saying not to raise demand charges then who is going to pay for such capacity. It is submitted that obviously the remaining consumers will be burdened for the same and therefore, this issues also need to be considered by the Commission in public interest. Moreover, the 'Powers to Relax' cannot be used when the Clause is very specific and the basic contention of the Petitioner is that the said Clause is wrong and therefore, the Commission may relax the same. It is not open for the Petitioner to say that the Clause is not correct because the Clause stands as it is as on date and if in the opinion of the Petitioner, the said Clause was not proper or wrong or 180 days is not sufficient, they ought to have challenged the said Clause or ought to come before the Commission seeking an amendment of the Clauses, which the Commission, if deemed appropriate may have suitably amended after following due process of law. Instead of following the aforesaid proper procedure, the Petitioner is relying on inherent powers or powers to relax. It is submitted that apart from the issue of interpretation, there is an issue of Clause 4.37, which applies to a licensee can be read to coextensively apply to a consumer, needs to be decided by the Commission. As regards Clause 9.22, it is submitted that the Petitioner has not addressed the issue that the Commission may refuse to entertain the reference filed beyond three months' delay without sufficient cause.

11.8. As regards the submissions made by the Petitioner relying on GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, It is submitted that Clause 9.3 of the said Clauses provides for the time limits and as per Clause 4.33 of GERC Supply Code the consumer has the option to carry out the works in which case the timeframe specified in GERC Standard of Performance Clauses will apply. It is submitted that in the present case the Petitioner opted to carry out the work of 220 kV transmission line on its own and therefore, the timelines as per Clause 9.3 of the SOP Clauses will apply. Moreover, there is a 'Note' below Clause 9.3 of SOP Clauses which reads as under:

> *"…….*
> *Note: The time mentioned in the schedule would be reckoned after presentation of completed application and compliance with formalities (including granting of space for installation of transformers, if required, and meters) is completed.*
>
> *The above time limit for release of connection after receipt of demand note amount will be subject to the condition that connection is technically feasible and will meet with safety requirements. This duration would exclude the time attributable to the consumer / local authority. Further, any such extended period should also be conveyed to the Commission for its record.*
> *……."*

11.9. As per above 'Note', the time duration attributable to the consumer or local authority to be excluded from the prescribed timelines. Since, in the present case the Petitioner is constructing the line on its own the duration attributable to the consumer does not arise and cannot be considered but only the delay in time attributable to local authority to be considered. Thus, any delay attributable to local authority is permissible and cannot be expanded to Right of Way issues or other issues. The Petitioner is required to demonstrate through documentary evidence duration attributable to local authority and which had to be informed to the Commission because the above note clearly says that the same should also be conveyed to the Commission. The Petitioner cannot come after two years before the Commission saying there were issues with local authority, if any, for laying of transmission line.

11.10. Therefore, for exercising Clause 9.22, which has very limited application and Petitioner is required to prove that the delay beyond 3 months is on account of local authority. The scope cannot be extended for any delay on account of other factors or reasons because the same is limited to local authority only. The Petitioner has to satisfy this limited aspect because there is no reasoning as regard to local authority

11.11. As regards the contention raised by the Petitioner and communication of Respondent No. 1 that as per Clause 4.37 if the powers have to be exercised for any extension of time, it has to be exercised by the Commission because Clause 4.37 says that the licensee may approach the Commission for extension of timelines. It is submitted that the Respondents in their replies have clearly said that the aforesaid Clauses do not refer to a consumer. It is submitted that the Respondents have never admitted that there is any power under the Clauses of the Commission to grant any time limit extension to a consumer and the Respondents have only stated that if there is any power under the Clauses then the same may be exercised by the Commission. It is further submitted that when the issue of jurisdiction arises in any matter the same can be raised at any time and has to be decided by the Court/Commission. Even, if the parties in dispute agree that the Commission has jurisdiction it does not mean that the Commission has jurisdiction. So irrespective of what is said or submitted by the Respondents, the jurisdiction issue has to be decided by the Commission and that the issue of jurisdiction can be raised at any time. It is submitted that if a court does not have jurisdiction irrespective of what parties say, jurisdiction cannot be given by parties to a court which otherwise does not have the jurisdiction to decide a particular matter. It is submitted that the issue of jurisdiction can be raised right from a lower court till even when the matter reaches the Hon'ble Supreme Court.

11.12. It is submitted that if the consumer feels aggrieved by the licensee's action or omission, the consumer may file his representation to the concerned Consumer Grievances Redressal Forum for redressal of his grievance in terms of Clause 4.86 of the GERC Supply Code.

11.13. It is further submitted that the Commission, given the legal provisions and case laws, first needs to decide as to whether the Clauses of the Commission provides any such power to the Commission for granting extension of any time limit as may be sought by the consumer or not? It is submitted that the Commission may consider the submissions made on behalf of the Respondents in the present Petition including on the issues of admissibility, jurisdiction and whether Commission can exercise its 'Power to relax' or 'Inherent power' to grant the relief prayed in the Petition.

11.14. It is further submitted that in case the Commission decides that it has the jurisdiction to decide the issues as raised in the present matter and has powers to grant any time limit extension, then the Commission may list the matter for further hearing on the merits based on individual facts involved in the case. It is submitted that if the Commission holds that it is having no jurisdiction then the parties may approach appropriate Forum and argue the matter on merits before the Forum.

12. We have considered the submissions and arguments advanced by the parties. The Petitioner is seeking extension of time limit for completing the work of 66 kV transmission line and bays for release of 5000 kVA EHT connection undertaken under Option III. We also note that the Respondents have questioned the admissibility of the present Petition on the issues of jurisdiction of this Commission to consider the present matter and as to whether the Commission has powers to decide the matter or the Petitioner needs to approach the CGRF since the issue involved is related to billing dispute. Per contra according to the Petitioner, this Commission has the jurisdiction to decide this matter since it involves interpretation of the provisions of the Electricity Act and the Clauses framed thereunder by the Commission. The Respondents have argued that as such there is no provision under the Clauses of this Commission which empowers the Commission to exercise jurisdiction and to grant the extension of time limit sought by the Petitioner. Therefore, the matter first needs to be decided on the issues of admissibility, jurisdiction and whether the statute or Clauses / rules framed thereunder by the Commission empowers the Commission to decide the relief sought.

12.1. Since the Petitioner and the Respondents have submitted that the Commission first needs to decide preliminary issues of admissibility, maintainability, jurisdiction and power of this Commission as to whether the present matter is admissible and maintainable before this Commission and that the Commission has jurisdiction to consider the matter for granting extension of any time limit sought by the consumer Petitioner. Accordingly, the Commission hereinafter proceeds to decide the preliminary issues of admissibility, maintainability, jurisdiction and powers of the Commission to admit this matter.

12.2. The present Petition is filed by the Petitioner seeking extension in time period for the completion of work of transmission/distribution network undertaken by it for receiving 5000 kVA EHT connection from Respondent No. 1 MGVCL. It is an admitted fact the Petitioner is a company incorporated under the provisions of Companies Act 1956. The Respondent No. 2, GETCO is the Transmission licensee and engaged in creating necessary transmission system and infrastructure in the State of Gujarat. The Respondent No. 1 MGVCL is engaged in distribution and supply of electricity within its licence area. It also an admitted fact that the Petitioner desires to avail 5000 kVA EHT connection from Respondent No. 1 MGVCL, which is permissible on utilisation of transmission network only, which is in the domain of Respondent No. 2 GETCO as part of transmission planning at intra state level. The work of construction of transmission line and associated activities may be carried out by the Transmission Licensee or in the alternative a person at its own cost who desires in utilising such network may construct on its own as per approved design, drawings, transmission route and network planning including materials and contractor(s) approved by the Respondent No. 2. In such case the person who desires to set up the transmission line requires to pay supervision charges etc. to Respondent No. 2 who is otherwise responsible for planning, construction and commissioning of the transmission network / lines, bays etc. and to maintain the same with consideration of continuous power supply to the consumers within the State.

12.3. We note that the Respondent No. 1, MGVCL is a Distribution Licensee in the State of Gujarat within the meaning of Section 2 (17) of the Electricity Act, 2003 and the Respondent No. 2, Gujarat Energy Transmission Corporation Limited is the transmission licensee in the State of Gujarat and also holding the status of 'State

Transmission Utility' (STU) under Section 39 of the Electricity Act 2003.

12.4. According to the submissions made by the Respondent No. 2, GETCO, in case of a consumer seeking supply of electricity from the concerned distribution licensee requiring erection and commissioning of transmission network, options are available to the person/consumer whereby either the transmission licensee may create the necessary transmission network or the person / consumer may carry out the necessary creation of transmission network by paying necessary charges to the distribution licensee and supervision charges to the Respondent No. 2 GETCO. In case of the transmission licensee undertaking the construction of such transmission network the responsibility i.e. material purchase, route survey, designing, drawing, selection of contractor etc. has to be carried out by the Respondent No. 2 GETCO, whereas under the other option where the person / consumer who desire to set up the transmission network on its own or by itself, the work associated for creation of such network i.e. purchase of material, engagement of agency approved by GETCO to carry out the work, route survey of transmission line, drawing approval from GETCO, RoW issues, designing, testing and commissioning of transmission line etc. has be carried out by such person and the Respondent No. 2 GETCO is not responsible for any such activity. The Respondent GETCO only provides support wherever necessary and supervision. In the present case as the Petitioner was desirous of 5000 kVA EHT power supply from Respondent No. 1 MGVCL being the distribution licensee which is feasible only through 66 KV transmission line.

12.5. It is admitted by the Petitioner that Option III was opted despite not having the expertise in laying of 66 kV transmission line for which the Respondent No. 2 has the experience and expertise.

12.6. Thus, it is an admitted fact that the Petitioner without any objection continue to carry out the aforesaid work through the agency engaged by it for the said work and there is delay in the time taken for completion of such work. We also note that the Petitioner and the Respondent No. 1 MGVCL have executed an agreement dated 05.08.2019 in this regard.

12.7. Since delay had occurred in erection / construction of the transmission network with associated works, the Respondent MGVCL issued 60 days' notice to the Petitioner, on 04.02.2020, purportedly under Clause 4.33 of the GERC (Electricity Supply code and Related Matters) Regulations, 2015 to complete the work of 66 KV Transmission Line and Bays and avail power supply within 60 days from the date of notice, failing which the Petitioner shall be liable to pay demand charges and minimum monthly charges as applicable, the Respondent MGVCL commenced billing on 5000 kVA contract demand to the Petitioner with effect from 04.04.2020.

12.8. Per contra, it is submitted by the Petitioner that difficulties in nature of non-approval of under-ground cable type by the Respondent GETCO was faced by the Petitioner in completion of 66 KV transmission line. The Petitioner had approached Respondents requesting to grant additional time for completion of work of transmission line and bays considering above stated difficulties.

12.9. Eventually, the present Petition has been preferred by the Petitioner before this Commission. As noted earlier the Petitioner has sought following prayers:

(a) *"In the facts and circumstances of the case, the Commission may please to take on record the present petition,*

(b) *In the facts and circumstances of the case, the Commission may please to grant the opportunity of being heard to the Petitioner,*

(c) *In the facts and circumstances of the case, the Commission may please to invoke its powers to relax / inherent power for allowing time period up to May 2020 for completion of line work, and*

(d) *Consequently, direct the Respondent No. 1 to restrain henceforth from issuance of Two Months' Notice to the Petitioner during the period for which the extension of time as may be granted by the Commission in the present Petition.*

(e) *The Commission may allow to amend / alter / modify the contents of the Petition as and when required in the given facts and circumstances of the case.*

(f) *Pass such further order or orders as the Commission may deem just and proper in the circumstances of the case."*

12.10. Since, the genesis of the issues that have arisen between the Petitioner and the Respondents is pursuant to new EHT connection sought by the Petitioner from the

Respondent No. 1 MGVCL being the distribution licensee, it is necessary to refer the definition of the 'distribution licensee' under Section 2(17) of the Electricity Act, 2003 which reads as under:

> *"distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;"*

As per above definition the distribution licensee needs to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply

12.11. The Petitioner has also referred to definition of "local authority" under Section 2(41) of the Electricity Act 2003 (Act) which reads as under:

> *"local authority" means any Nagar Panchayat, Municipal Council, municipal corporation, panchayat constituted at the village, intermediate and district levels, body or port commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with, the control or management of any area or local fund;"*

12.12. The Petitioner has relied on Section 42(1) which is reproduced below:

> ***Section 42 (1)***
>
> *"It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act."*

The aforesaid section provides that it is the duty of the distribution licensee to develop and maintain an efficient, coordinated economical distribution system in its area of supply. In the present case as referred above the Respondent MGVCL on receipt of an application from the Petitioner for 5000 kVA EHT connection referred the matter to the Respondent GETCO for the Technical Feasibility Report. Thereafter, pursuant to voluntary selection by the Petitioner to take up the work under Option III, the Respondent No. 1 MGVCL has furnished an estimate to the Petitioner along with copy of letter of GETCO stating that M/s Concord Biotech Limited shall undertake the work of power demand under Option III i.e. consumer will carry out the entire work and necessary expenses payable by the Petitioner which require to be recovered as per provisions of Section 43 read with Section 46 of the Electricity Act, 2003 which are reproduced below:

Section 43 (Duty to supply on request)

"43. (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission."

…….

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."

"Section 46 (Power to recover expenditure)

46. The State Commission may, by Clauses, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply."

Section 43 (1) provides that pursuant to an application by the owner or occupier of any premises, the licensee shall provide supply of electricity at the premises of the consumer within one month from the date of application given by owner or occupier of any premises. The first proviso provides that where supply requires extension of distribution mains or commissioning of new sub-station, the licensee shall supply the electricity to such premises immediately after extension or commissioning of the system or within such period as specified by the Commission.

As per Section 43 (2), it shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1).

Section 43 (3) provides that failure on part of the distribution licensee to supply electricity within the time period specified in Section 43(1), the distribution licensee is liable to pay penalty which may extent to one thousand rupees per each day of default. Thus it is the duty of the licensee to construct the necessary distribution system which may include transmission system and supply the power within one month from the date of an application made by the consumer. Thus the distribution licensee is mandated to supply electricity within specified period as provided in aforesaid Section. Moreover, the work related to distribution network creation is of the licensee.

Section 46 permits the distribution licensee to charge from a person requiring supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply as per the Clauses notified by the State Commission.

12.13. Section 50 the Electricity Act, 2003 empowers the Commission to specify Electricity Supply Code. The said Section reads as under:

"Section 50. (The Electricity Supply Code):

"The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity; measures for preventing tampering, distress or damage to electrical plant, or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters."

Aforesaid Section provides that the State Commission shall specify an Electricity Supply Code which provides for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment of electricity charges, restoration of supply of electricity; measures for preventing tampering, distress or damage to electrical plant, or electrical line or meter, entry of distribution licensee or any person acting on its behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.

12.14. Section 57 the Electricity Act, 2003 provides for 'Standard of Performance of licensee' which reads as under:

> ***"Section 57. (Consumer Protection: Standards of performance of licensee):***
>
> *(1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.*
>
> *(2) If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission:*
>
> *Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.*
>
> *(3) The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination."*

Aforesaid Section provides that the Commission after consultation with the licensees and persons likely to be affected, specify Standards of Performance of a licensee or a class of licensees and if a licensee fails to meet the standards specified under sub-section (1), it shall be liable to pay such compensation to the person affected as may be determined by the Commission without prejudice to any penalty which may be imposed or prosecution be initiated,

12.15. We also note that the parties have referred to relevant provisions of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 as amended and advanced extensive submissions /arguments thereon. It is therefore necessary to refer the same.

12.16. Since, this matter pertains to 'Consumer', Distribution Licensee' and 'Transmission Licensee', the definitions provided under the GERC Supply Code of the Commission are relevant which read as under:

Clause 2.3 (18) Consumer

'Consumer' refers to any person who is supplied with electricity for his/her own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be. A consumer is specified as a:

(i) 'Low Tension Consumer (LT Consumer)' if he obtains supply from the licensee at low or medium voltage;
(ii) 'High Tension Consumer (HT Consumer)' if he obtains supply from the licensee at High Voltage;
(iii) 'Extra High Tension Consumer (EHT Consumer)' if he obtains supply from the licensee at Extra High Voltage;

Clause 2.3 (26) Distribution Licensee

'Distribution Licensee' refers to a person granted a license under Section 14 of the Act authorising him to operate and maintain a distribution system for supplying electricity to the consumers of his area of supply.

Clause 2.3 (41) Licence

'Licence' refers to a licence granted under Section 14 of the Act;

Clause 2.3 (64) Transmission Licensee

'Transmission Licensee' refers to a person who has been granted a licence under Section 14 of the Act authorising him to establish or operate transmission lines;

12.17. From the aforesaid definitions it is clear the consumer is a person who is supplied electricity by a licensee or Government or any other person engaged in the business of supplying electricity to the public under the Act or any other law. The said definition also specifies different category of consumers viz. LT, HT and EHT. The definition of distribution licensee states that a person who has been granted license under Section 14 of the Act authorising to operate and maintain a distribution system for supplying electricity to the consumer of his area. Licence is defined as licence granted under Section 14 of the Act. Transmission Licensee is a person granted a licence under Section 14 of the Act to establish and operate transmission lines.

12.18. From the aforesaid definitions it is clear that the consumer, distribution licensee and transmission licensee are different and distinct from each other and their functions, duties, role, activities, are different and distinct. Therefore, the interpretation is very clear that where the word consumer, licence, distribution licensee or transmission licensee are referred in the Clauses, the same needs to be interpreted as per their respective definition in the Clause. It is not permissible to add, amended or alter the words where consumer, licence, distribution licensee or transmission licensee are used or read them as interchangeably. It is also not permissible to add any additional words which are not mentioned in the said Clause.

12.19. Clause 1.14 of the GERC Supply Code provides for Procedure to Settle Dispute which reads as under:

> *"1.14 In the event of dispute regarding any provisions in the Supply Code between any User and the Distribution Licensee, the matter shall be referred to Gujarat Electricity Regulatory Commission and its decision shall be final."*

12.20. Clause 4.3 of the GERC Supply Code provides for Licensee's obligation to extend the distribution system and consumer's share in the cost which reads as under:

> *"4.3 The licensee is responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. The cost of extension of distribution mains and extension/ up-gradation of the system up to the point of supply for meeting demand of new consumers and the cost of extension of service connection from the distribution mains to the point of supply shall be levied as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005 and amendments thereof."*

12.21. Clause 4.32 of the GERC Supply Code reads as under:

> *"4.32 In case of application for HT/EHT supply the licensee shall forward the application to the Transmission Licensee within three days of its receipt for its further processing in terms of provisions in the Grid Code. The Transmission Licensee within 5 working days of receipt of the application from distribution*

licensee, shall intimate the distribution licensee regarding feasibility or otherwise of the application. Comments of the Transmission Licensee shall be communicated to the applicant within three days thereafter.

In case the application is found feasible and subject to compliance as provided in Clause 4.29 above, the Distribution Licensee shall issue a demand note in writing, under acknowledgement, within the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

Provided that the time taken by applicant in securing the compliance as provided in Clause 4.29 above shall not be included in the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof."

12.22. We note that Clause 4.33 of the GERC Supply Code, 2015 deals with the case of the Petitioner opting to undertake the work of construction, erection, commissioning, testing etc. of the transmission system on its own. The relevant portion is extracted herein below:

"4.33 The demand note shall contain following details:

(1) Details of the works (including service line) to be undertaken for providing electricity supply;

Provided that where the estimates are issued on the basis of per kW of demanded load, the estimate need not contain details of works to be undertaken.

(2) Charges for the above mentioned works to be paid by the applicant in accordance with GERC (Licensees Power to Recover Expenditure incurred in providing supply and Other Miscellaneous Charges) Regulations 2005 and amendments thereof.

Provided that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall procure the materials. The material should conform to relevant BIS specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.

Provided further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

Provided further that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable.

(3) Amount of security deposit as specified in the GERC (Security Deposit) Regulations, 2005 and amendments thereof."

12.23. We also note that the Petitioner referring to Clause 4.37 and 4.38 of the GERC Supply Code has submitted that in the said provisions the word 'licensee' has been mentioned. The proviso in Clause 4.37 of the GERC Supply Code permits the licensee to approach the Commission for extension of time specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 in cases where extension of distribution mains requires more time. Even, as per Clause 4.38 of the GERC Supply Code, the licensee is not responsible for delay in extending supply of electricity if the same is on account of problems relating to right of way, acquisition of land, or delay in consumer's obligation over which licensee has no reasonable control. It is argued by the Petitioner that as per the provisions of the Electricity Act, 2003 and the Clauses framed by this Commission in this regard, it is the duty of the distribution licensee to lay down the distribution system / network for providing additional contract demand. Clause 4.37 of the GERC Supply Code permits the distribution licensee to approach this Commission for time extension in case of delay and Clause 4.38 stipulates regarding exclusion of delay arising on account of problems relating to right of way, acquisition of land etc. Since, in the present case, the Petitioner consumer has undertaken the responsibility of setting up transmission network for supply of electricity and has encountered with issues which are beyond the reasonable control of the Petitioner / Consumer. Hence, the 'consumer' also needs to be allowed to approach this Commission for extension of time limit on account of delay and exclusion of time period of delay arising on account of unforeseen reasons because even the consumer has by way of an agreement with the licensee agreed to lay down the network necessary for supply of electricity.

12.24. As per the provisions of Clause 4.37 and 4.38 of the GERC Supply Code 2015, the concerned distribution licensee is (i) entitled for extension of time for completion of line / substation work, (ii) shall not be held responsible for delay in completion of work, if the same is on account of reasons related to RoW, Approvals etc. over which the licensee has no reasonable control. However, such dispensation is not available under Clause 4.33 (2) of the GERC Supply Code when the work is undertaken by the Petitioner / Applicant consumer even in case of genuine difficulties.

12.25. The Petitioner has further submitted that the time period of 180 days provided in the GERC Standard of Performance Clauses can be relaxed by the Commission on basis of unforeseen reason. The provisions of Clause 4.37 for extension of time limit needs to be extended to the consumer also who have undertaken the obligation for completion of line / substation work on behalf of the licensee. It is also submitted that, it is unjustified, unreasonable and illogical to consider that only distribution licensee is eligible for extension of time and not to be held responsible for the delay for reasons in nature of 'beyond reasonable control'. However, when consumer like the Petitioner undertakes the same work and faces identical difficulties akin to those specified in Clause 4.38 of the GERC Supply Code which would otherwise been faced by the licensee in the event when same work was undertaken by it, but in such case the consumer is not entitled for any relief which is unfair and unreasonable.

12.26. The Petitioner has also persuaded the Commission to exercise 'Inherent Power' and 'Power to Relax' while submitting that the Commission has 'Inherent Power' and 'Power to Relax' as provided under Clause 9.21 to 9.25 of the GERC Supply Code which are reproduced below:

Power of Relaxation and Power to Remove Difficulties

9.21 The Commission may, in public interest and for reasons to be recorded in writing, relax any of the provisions of this Code.

9.22 If any difficulty arises in giving effect to any of the provisions of this Code or there is a dispute regarding interpretation of any provision, the matter may be expeditiously referred to the Commission. The Commission shall pass necessary orders after consulting the parties concerned, provided that the Commission may refuse to entertain the reference filed beyond 3 months' delay without sufficient cause.

Savings of Inherent Power of the Commission

9.23 Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Gujarat Electricity Regulatory Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission.

9.24 Nothing in this Code shall bar the Gujarat Electricity Regulatory Commission from adopting in conformity with the provisions of the Act a procedure, which is at variance with any of the provisions of this Code, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

9.25 Nothing in this Code shall, expressly or impliedly, bar the Gujarat Electricity Regulatory Commission dealing with any matter or exercising any power under the Act for which no Codes have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

12.27. Clause 9.21 says that where there is any public interest involved with regard to any provisions of the Supply Code, the Commission may by recording the reasons in writing relax the provisions of the Code. In the present case it is clear that the dispute is between a consumer seeking extension in time and the distribution licensee which has expressed its inability to grant the same. Thus, it does not qualify as a case of public at large where public interest is involved. Failure to carry out the work of distribution / transmission system required for catering additional contract demand opted by the consumer itself instead of assigning the same to the licensee(s) who had in the first instance agreed to carry out the same is not a case involving public interest. It is a case of failure of performing the work in timely manner accepted by the Petitioner / consumer and does not qualify as public interest. Further, power to relax provided in this Clause is also subject to verification of the provisions of the Electricity Act, 2003. It is also necessary to see as to whether it is a case of any discrepancy between the provisions of the Act and the Clauses in which case the provisions of the Act will prevail and therefore, the contention of the Petitioner that under Clause 9.21 the Commission has power to relax the provisions of Supply Code is available is not applicable in present case.

12.28. Clause 9.22 states that in case any difficulty arises in giving effect to any of the provisions of the Supply Code or there is a dispute regarding interpretation of any provision the matter may be referred to the Commission and the Commission has power to interpret any provisions of the Supply Code and pass necessary order after consulting the parties. Further, the Commission may refuse to entertain such reference filed beyond delay of 3 months without sufficient cause.

12.29. We also note that relying upon Clause 9.23, 9.24 and 9.25 the Petitioner has submitted that the Commission has inherent powers provided in said Clauses. On the other hand, the Respondents have objected and stated that the Commission has inherent powers only in consonance with the provisions of Act and Clauses framed thereunder. We note that the Inherent powers in aforesaid Clauses are permitted to be utilised only when there is no clarity on any provision of the Supply Code. The said Clauses also provide that when the Inherent power is desired to be utilised by the Commission, it requires to be seen that the process of such utilisation of power must be in consonance with the Electricity Act, 2003.

12.30. We also note that 'Removal of Difficulty Power' provided in the aforesaid Clauses need to be applied where there is ambiguity in the interpretation or no clarity on interpretation. It is also necessary to see that while exercising the power of Removal of Difficulty, the preliminary issue is that whether any difficulty has arisen in the case before the Commission. If any difficulty has arisen for interpretation of the provision of the Clause or not. As noted in this case, the difficulty has arisen between the parties with regard to the provisions of the GERC Supply Code with regard to grant of extension in time period for completion of the transmission network within the specified time by the consumer and whether the consumer is liable to pay the bills raised by the Respondent MGVCL for new EHT connection of

5000 kVA on deemed release basis.

12.31. The Petitioner has also submitted that there is no provision in the GERC Supply Code which provides for redressal of the difficulty faced and that in case of any problem as stated by the Petitioner occurs where to get the remedy for same. We note that as recorded in earlier paragraphs the disputes arose due to failure of the consumer i.e. the Petitioner to construct and lay down the transmission / distribution system from the sub-station of the Respondent No. 2 GETCO to the place of consumption / premises of the Petitioner.

12.32. It is noteworthy that the genesis of the issue which has arisen in the present case is the delay in completion and testing of the transmission / distribution network that the Petitioner consumer itself decided to carry out. However, the Petitioner was not able to complete the said work in the stipulated time period. As a consequence, thereof, the Respondent No. 1 MGVCL commenced raising monthly bills with 5000 kVA new EHT connection on deemed release basis. The Petitioner approached the authorities of the Respondent No. 1 MGVCL for extension of time limit for construction of transmission line on account of difficulties faced by the Petitioner. However, the Respondents did not extended the time limit in view of the stipulations provided in GERC Supply Code.

12.33. It is submitted by the Petitioner that the Clauses 4.37 and 4.38 of the GERC Supply Code provide for the licensee to approach this Commission for seeking extension in time and exclusion of the time period for Right of Way, land acquisition. However, when same work is undertaken by the consumer, the same relaxation ought to be available to such consumer like the Petitioner in present case. The Petitioner has also pressed upon the Commission to exercise the powers available under provisions of Clauses 9.21 to 9.25 of the GERC Supply Code. We also note that 'Removal of Difficulty' power available under Clause 9.22 is applicable in the case where any dispute regarding any provision of Clause has arisen.

12.34. In the present case in so far as allowing extension of time in completion of work has arisen between the parties. The submission of the Petitioner is that on one hand there is no clear cut provision in the GERC Supply Code akin to that available to a 'Licensee' under Clause 4.37 of approaching the Commission for extension of time specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, in specific cases where extension of Distribution mains requires more time as well as similar to Clause 4.38 whereby licensee shall not be held responsible for delay, if any, in extending supply if the same is on account of problems relating to right of way, acquisition of land, or delay in consumer's obligation over which licensee has no reasonable control whereas on the other hand there is no express bar for a consumer which has undertaken the work which otherwise was the responsibility of the licensee to undertake to approach this Commission for similar reliefs as provided to the licensee in Clauses 4.37 and 4.38 of the GERC Supply Code. Therefore, the Commission also needs to allow the consumer having opted to lay transmission network / distribution system on its own, reliefs as available to a licensee under Clauses 4.37 and 4.38 of the GERC Supply Code.

12.35. Above submissions of the Petitioner are opposed by the Respondents resulting in dispute between the parties. Therefore, the relevant Clauses of the Supply Code requires interpretation.

13. We note that in the present Petition, the Respondent is relying on various provisions of the Act, Regulations framed under it by the Commission, and order of the Commission in various petitions as well as the decision of the Hon'ble High Court of Gujarat in case of Surya Roshni Ltd. vs PGVCL and also the judgment/ orders of the Hon'ble APTEL and apex courts, contended that the subject matter of the present Petition does not fall under the jurisdiction of the Commission.

Per contra, the Petitioner submitted that the subject matter falls within the jurisdiction of the Commission. Further, it is not only having issue of consumer billing but also having an issue of interpretation of provisions of Regulations, contract between the parties and also prayed for allowing the consumer at equity with the licensee whenever they are carried out the work on behalf of the licensee.

13.1. As the Petitioner and the Respondents have referred various provisions of Regulations, and also referred the provisions of Act, it is necessary to refer the same.

Now, we deal with the various provisions of the Rules and Regulations one by one as stated below:

13.1.1. It is necessary to refer Regulations 1.14 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which is reproduced below:

> *"**Procedures to Settle Disputes***
>
> *1.14 In the event of dispute regarding any provisions in the Supply Code between any User and the Distribution Licensee, the matter shall be referred to Gujarat Electricity Regulatory Commission and its decision shall be final."*

The aforesaid provision provides that in the event of any dispute regarding any provision of Supply Code between any users and the distribution licensee, the matter shall be referred to the Commission and the Commission's decision shall be final. The aforesaid provision specifically recognizes that whenever any dispute between the user and licensee, the same can be referred to the Commission and the concerned decision shall be final.

Here, we note that the user is defined in the GERC (Electricity Supply Code and Related Matters) Regulations as under:

> "……
>
> *2 (67) 'User' refers to any person having electrical interface with, or using the distribution system of the distribution licensee to whom this Code is applicable."*

The aforesaid definition provides that user is a person having electrical interface with, or using the distribution system of the distribution licensee to whom this Code is applicable.

The person is defined in the Electricity Act, 2003 in Section 2 (49) of the Act read as under:

> *"*
>
> *2(49) "person" shall include any company or body corporate or association or body of individual, whether incorporate or not or artificial judicial person;"*

The aforesaid definition provides that person is inclusive definition consist of any company or body corporate or association or body of individual, whether incorporate or not or artificial judicial person. Thus, individual is also qualified as person under the provisions of Electricity Act, 2003.

The person defined in the Regulation 2 (51) of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 is as under:

"....
2(51) 'Person' refers to any individual or company or body corporate or association or body of individuals whether incorporated or not, or artificial juridical person;"

The aforesaid definition provides that Person refers to any individual or company or body corporate or association or body of individuals whether incorporated or not, or artificial juridical person. Thus, person consist of individual also.

13.1.2. It is also necessary to refer Regulation 4.3 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which is reproduced below:

"Licensee's obligation to extend the distribution system and consumer's share in the cost

4.3 The licensee is responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. The cost of extension of distribution mains and extension / up-gradation of the system up to the point of supply for meeting demand of new consumers and the cost of extension of service connection from the distribution mains to the point of supply shall be levied as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005 and amendments thereof."

The aforesaid provision provides that it is the responsibility of the licensee i.e. distribution licensee for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. The cost of extension of distribution mains and extension / up-gradation of the system up to the point of supply for meeting demand of new consumers and the cost of extension of service connection from the distribution mains to the point of supply shall be levied as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005 and amendments thereof.

The aforesaid provision mandated to the distribution licensee to carry out the work related to laying the distribution system for supply of electricity to the consumers by way of extension/ upgradation of distribution main up to point of supply to the consumer to meet his demand and recover the charges for it from such consumer as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005.

13.1.3. It is also necessary refer the Regulation 4.32 of the GERC Supply Code Regulation which reads as under:

Procedure for providing New Electricity Service Connection Application Form

……

"4.32 In case of application for HT/EHT supply the licensee shall forward the application to the Transmission Licensee within three days of its receipt for its further processing in terms of provisions in the Grid Code. The Transmission Licensee within 7 working days of receipt of the application from distribution licensee, shall intimate the distribution licensee regarding feasibility or otherwise of the application. Comments of the Transmission Licensee shall be communicated to the applicant within three days thereafter.

In case the application is found feasible and subject to compliance as provided in Clause 4.29 above, the Distribution Licensee shall issue a demand note in writing, under acknowledgement, within the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

Provided that the time taken by applicant in securing the compliance as provided in Clause 4.29 above and time taken by Transmission Licensee in giving feasibility report shall not be included in the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof."

The aforesaid provision provides that in case of application for HT/EHT supply the licensee shall forward the application to the Transmission Licensee within three days of its receipt for its further processing in terms of provisions in the Grid Code. The Transmission Licensee within 7 working days of receipt of the application from distribution licensee, shall intimate the distribution licensee regarding feasibility or otherwise of the application. Comments of the Transmission Licensee shall be communicated to the applicant within three days thereafter.

In case the application is found feasible and subject to compliance as provided in Clause 4.29 above, the Distribution Licensee shall issue a demand note in writing, under acknowledgement, within the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

The proviso in the said Regulation provides that the time taken by applicant in securing the compliance as provided in Clause 4.29 of GERC (Electricity Supply Code and Related Matters) Regulations, 2015 and time taken by Transmission Licensee in giving feasibility report shall not be included in the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

Thus, the aforesaid regulation provides for time limit for consideration of application received from the consumer by the distribution/ transmission licensee and carry out the activities in a stipulated time as stated in the said Regulation.

13.1.4. It is also necessary to refer Regulations 4.33 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

"…..

4.33 The demand note shall contain following details:

(1) Details of the works (including service line) to be undertaken for providing electricity supply;

Provided that where the estimates are issued on the basis of per kW of demanded load, the estimate need not contain details of works to be undertaken.

(2) Charges for the above mentioned works to be paid by the applicant in accordance with GERC (Licensees Power to Recover Expenditure incurred in providing supply and Other Miscellaneous Charges) Regulations 2005 and amendments thereof.

Provided that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall *procure the materials. The material should conform to relevant BIS specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.*

Provided further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

Provided further that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable.

(3) Amount of security deposit as specified in the GERC (Security Deposit) Regulations, 2005 and amendments thereof.

……."

The aforesaid provision provides that the licensee issue demand notes to the person/ consumer with regards to the works (including service line) to be undertaken for providing electricity supply.

The proviso to the said regulation provides that where the estimates are issued on the basis of per kW of demanded load, the estimate need not contain details of works to be undertaken

Clause (2) of the said regulation provides that Charges for the above mentioned works to be paid by the applicant in accordance with GERC (Licensees Power to Recover Expenditure incurred in providing supply and Other Miscellaneous Charges) Regulations 2005 and amendments thereof.

The first proviso to said regulation provide that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall procure the materials. The material should conform to relevant BIS specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.

The second proviso to said regulation state further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

The third proviso to said regulation state that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable.

The aforesaid provision provides from issuance of demand note by the distribution licensee to the consumer as and when such consumer carry out the work of laying down LT/EHT line on behalf of the respondent licensee i.e.. distribution licensee/ transmission licensee and recover the charges from the licensee.

Thus, the aforesaid provision recognizes that the consumers itself eligible to carry out the work of laying down distribution / transmission network for receiving the power supply from the licensee by way of new connection or extension of load. Further, it is also provided that failure to complete the work within the stipulated period by the consumer, the distribution licensee by way of issuance of notice prior to 60 days of completion of work specified in the letter / notice to the consumer the licensee start recovery of demand charges

13.1.5. It is also necessary to refer Regulations 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

"4.37 The overall timeline for releasing new electricity connection, from the date of receipt of application, shall be as per GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof:

Provided that the licensee may approach the Commission for extension of time specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, in specific cases where extension of Distribution mains requires more time, along with details. In such cases, the licensee shall inform the consumer about the likely time of completion of works."

The aforesaid provision provides that the timeline for release of new connection from the date of receipt of application shall be as per the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amended thereto.

The proviso made in the aforesaid clause provides that the licensee may approach to the Commission for extension of time specified in the Standard of Performance of Distribution Licensee Regulations, 2005 and amendments made in it from time to time in specific cases where extension/ distribution main requires more time along with the details. In such cases, the licensee shall inform the consumer about the likely time to completion of works. Thus, the aforesaid provision recognizes that the licensee may approach to the Commission whenever there is extension of distribution mains required to it.

13.1.6. It is also necessary to refer Regulations 4.38 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

"4.38 The licensee shall not be held responsible for delay, if any, in extending supply if the same is on account of problems relating to right of way, acquisition of land, or delay in consumer's obligation over which licensee has no reasonable control."

The aforesaid provisions provide that the licensee shall not be held responsible for delay, if any, in extending supply if the same is on account of problems relating to right of way, acquisition of land, or delay in consumer's obligation over which licensee has no reasonable control.

13.1.7. It is also necessary to refer Regulations 4.42 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

"4.42 On completion of the work, Licensee shall inform to the applicant for availing the power supply and if the applicant fails to avail of the power within the period of sixty days from such intimation, he shall be liable to pay the demand charges and minimum monthly charges as applicable. The Distribution Licensee may, in special circumstances, extend the above period of sixty days."

The aforesaid provision provides that on completion of the work, the licensee shall inform to the applicant for availing the power supply and if the applicant fails to avail of the power within the period of sixty days from such intimation, he shall be liable to pay the demand charges and minimum monthly charges as applicable. The distribution licensee may, as a special circumstances, extend the period of sixty days specified in the said regulation. Thus, the aforesaid regulation recognizes that the distribution licensees has power to extend the time limit of sixty days in case of non-completion of the work.

13.1.8. It is also necessary to refer Regulations 9.23 and 9.24 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

*"**Savings of Inherent Power of the Commission***

9.23 Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Gujarat Electricity Regulatory Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission."

The aforesaid regulation provides that nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Gujarat Electricity Regulatory Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission.

"9.24 Nothing in this Code shall, expressly or impliedly, bar the Gujarat Electricity Regulatory Commission dealing with any matter or exercising any power under the Act for which no Codes have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit."

The aforesaid regulation provides that nothing in this Code shall, expressly or impliedly, bar the Gujarat Electricity Regulatory Commission dealing with any matter or exercising any power under the Act for which no Codes have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

13.2. On combined reading of aforesaid regulations notified by the Commission, it is clear that the said regulations state the duties cast upon the licensee under the provisions of the Electricity Act, 2003 and these regulations that the licensees are mandated to provide the electricity supply to the consumers by carrying out various activities which needs to do by it. It provides while dealing with the consumer applications for electricity supply, extension of power supply, load, etc. the various activities which requires to be carried out by the licensee in specified time frame and also are eligible to recover the charges/ expenses if any, incurred by them while complying with the aforesaid provisions of the regulations. The aforesaid regulations are silent with regard to the activities for construction of distribution system, if any, required to carry out by the licensee, the same if any, done by the consumer on behalf of the licensee because the duties cast upon the licensee to lay down the distribution network in its license area with consideration of safety aspects as well as other aspects. Hence, whenever the licensee assigned its duties to the consumers by way of an option then in that case, the licensee is mandated to supervise the work also require to approve the necessary distribution system network with consideration of the technical parameters, materials, etc. In such situation, if the delay caused by the licensee while carrying out the aforesaid work and it affect the consumers in creation of distribution network, it cannot be ignored, and consumers are eligible to get relief with regard to delay if any occurred on account of licensee. Hence, we are of the view that the Petitioner, who is a consumer is eligible to approach the commission as and when there is dispute with regard to delay in laying down distribution network by the consumers for getting power supply or extension or variation in the existing load on contract demand supplied by the licensee the Commission has jurisdiction to deal with such issues and decide the same.

13.3. We note that the 'User' defined in the Electricity Supply Code which is subject matter in the present case as referred to above, the consumers who fall in the definition of person and User are eligible to approach the Commission in case of any grievance arising with regard to Supply Code either for interpretation of the regulations or dispute arose between consumer and licensee to the Commission. Hence, we decide that the prayer sought by the Petitioner in the present case for deciding fall within the jurisdiction of the Commission. Hence, the present Petition is maintainable.

13.4. The Petitioner has contended that the issue involved in the present Petition is billing issue is concerned, we note that there are other issues also. Further, the billing issue is also challenged by the Petitioner on a ground of the same of the said bill is not in accordance with the provisions of regulations notified by the Commission and it requires for the Commission to interpret and decide the same. On this ground also, the present Petition is admissible and maintainable.

14. Now we proceed with analyzing the reasons for delay in construction of network by the Petitioner required for release of new EHT connection by MGVCL.

14.1. As per Regulation 9.3 *(supra)* of the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 the timeline for release of bulk power connection for the average load of above 2500 kVA is within 180 days after completion of demand notice / formalities by the prospective consumer.

14.2. To understand and analyze the time period elapsed in releasing the new EHT connection of the Petitioner, a summary, based on the documents submitted by the Petitioner and the Respondents in the present Petition, have been prepared as under:

Sr. No.	**Particulars**	**Date**	**Time period elapsed**	**Within Scope of**
1.	Petitioner's letter to GETCO requesting to issue estimate considering HT cable XLPE Al. corrugated 630 Sq.mm cable instead of copper wound Al. conductor cable	21.05.2019	-	-
2.	Petitioner's e-Mails to GETCO to issue estimate considering XLPE Al	23.05.2019	-	-

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
	corrugate, cable instead of Cu wound Al conductor Cable			
3.	MGVCL's estimate to Petitioner for 5000 KVA - 3 KM 66 KV U/G Cable Line using Poly Al. XLPE U/G Power Cable	20.06.2019	-	-
4.	Estimate payment to MGVCL by the Petitioner	13.07.2019	-	Petitioner
5.	Agreement executed between Petitioner and MGVCL	05.08.2019	-	Petitioner
6.	GETCO wrote to Petitioner to select execution agency and material from GETCO approved vendor	08.08.2019	-	Respondent No. 2 - GETCO
7.	Petitioner's letter to GETCO intimating the finalization of electrical contractor	20.08.2019	15 days from Date of execution of Agreement between Petitioner and MGVCL	Petitioner
8.	Petitoner's Contractor letter to GETCO seeking approval of vendors for 66 kV, 1CX630 Sq.mm Al. Corrugated Cable	30.08.2019	25 days from Date of execution of Agreement between Petitioner and MGVCL	Petitioner
9.	Petitioner's letter to GETCO requesting for Change of HT Cable type from 630 Sq.mm Poly. Al. XLPE cable to 630 Sq.mm Corrugated XLPE Al. Cable	04.09.2019	30 days from Date of execution of Agreement between Petitioner and MGVCL	Petitioner
10.	GETCO's letter to MGVCL regarding Revised Estimate (due to change in cable)	25.10.2019	51 days from Petitioner's letter to GETCO requesting for Change of HT Cable type from 630 Sq.mm Poly. Al. XLPE cable to 630 Sq.mm Corrugated XLPE Al. Cable	Respondent No. 2 - GETCO

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
11.	MGVCL's letter to Petitioner giving Additional Estimate (due to change in cable)	14.11.2019	71 days from Petitioner's letter to GETCO requesting for Change of HT Cable type from 630 Sq.mm Poly. Al. XLPE cable to 630 Sq.mm Corrugated XLPE Al. Cable.	Respondent No. 1 - MGVCL & Respondent No. 2 - GETCO
12.	Petitioner's letter to MGVCL making payment of Revised estimate	27.11.2019	13 days from date of receipt of Revised estimate from MGVCL	Petitioner
13.	GETCO's letter to Petitioner's Contractor approving the vendors for procurement of 66 kV 1C X 630 Sq.mm Al. Corrugated Cable	20.12.2019	112 days from Petitioner's Contractor letter to GETCO for approval of vendors for 66 kV, 1CX630 Sq.mm Al. Corrugated Cable	Respondent No. 2 - GETCO
14.	Petitioner applied for plan approval to GETCO	16.01.2020	50 days from date of payment of Revised Estimate by the Petitioner to MGVCL	Petitioner
15.	Plan approved by GETCO	29.01.2020	13 days from date of receipt of application for plan approval from the Petitioner	Respondent No. 2 - GETCO
16.	Petitioner's Contractor requested GETCO for approval of 1C, 630 Sq.mm (3+1) 66 kV Al. Corrugated S/C UG Cable	17.02.2020	82 days from date of payment of Revised Estimate based on 66 kV 1C X 630 Sq.mm Al. Corrugated Cable	Petitioner
17.	Petitioner's Contractor letter to GETCO seeking approval of vendors for 66 kV, 1CX630 Sq.mm Al. Corrugated Cable	28.02.2020	93 days from date of payment of Revised Estimate based on 66 kV 1C X 630 Sq.mm Al. Corrugated Cable	Petitioner
18.	GETCO published Gazette notification in Gujarat Samachar Newspaper for line route	28.02.2020	93 days from date of payment of Revised Estimate based on 66 kV 1C X 630 Sq.mm Al. Corrugated Cable	Respondent No. 2 - GETCO

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
19.	GETCO's letter to Petitioner's Contractor giving approval of vendor CMI for procurement of 1C X 630 Sq.mm Al. Corrugated Cable	18.03.2020	19 days from Petitioner's Contractor letter to GETCO seeking approval of vendors for 66 kV, 1CX630 Sq.mm Al. Corrugated Cable	Respondent No. 2 - GETCO
20.	Petitioner's Contractor requested GETCO to issue standard drawings of 1C X 630 Sq.mm Al. Corrugated Cable	19.03.2020	113 days from date of payment of Revised Estimate based on 66 kV 1C X 630 Sq.mm Al. Corrugated Cable	Petitioner
21.	GETCO's letter to Petitioner providing drawings of 66 kV 630 Sq.mm XLPE power cable with Al. Corrugated Sheath to GETCO for its approval	30.03.2020	11 days from Petitioner's Contractor requested GETCO to issue standard drawings of 1C X 630 Sq.mm Al. Corrugated Cable	Respondent No. 2 - GETCO
22.	MGVCL started billing of demand charges on deemed release basis	May-2020	-	-
23.	Physically power released by MGVCL	05.03.2021	-	-

It is to be noted that the Petitioner has given certain dates along with description of event / correspondence taken place on that particular date in its Petition and various submissions. However, no document in this regard have been submitted by the Petitioner. In absence of any document to ascertain the validity of Petitioner's argument pertaining to such date and event, we are unable to take cognizance of such date, correspondence / events, if any, that may have occurred on that date for the purpose of present Petition.

14.3. Further, from the above details, it is clear that the Petitioner has intimated the Respondent GETCO about consideration of HT cable XLPE Al. Corrugated 630 Sq.mm instead of Cu. wound Al. Conductor. However, on verification of the estimate prepared by GETCO and intimated to MGVCL on 04.06.2019, it is observed that this estimate is prepared by GETCO considering 630 Sq.mm poly Al. XPLE U/G power cable. The said estimate of GETCO was paid by the Petitioner along with estimate of MGVCL on 13.07.2019 without raising any issue about consideration of cable type in the GETCO's estimate. From the record available in the Petition, it is observed by the Commission that GETCO on 20.12.2019 has granted approval of vendor for procurement of 66 kV, 1CX630 Sq.mm Al. Corrugated Cable in response to the Petitioner's Contractor letter no. HIPPL/LT/SP/CBL/GETCO-02/19 dated 30.08.2019.

14.3.1. It is a matter of fact that on representation by Petitioner vide letter dated 04.09.2019 for change in type of cable, GETCO issued a revised estimate on 25.10.2019. MGVCL, in turn, on 14.11.2019 issued the revised estimate on account of change in type of cable to the Petitioner. The same revised estimate was paid by the Petitioner on 27.11.2019. It is not clear why the Petitioner's Contractor again on 20.12.2019 sought approval of vendor for procurement of 66 kV, 1CX630 Sq.mm Al. Corrugated Cable and waited till 18.03.2020 when GETCO approved procurement of cable from CMI Ltd. because vendor for procurement of 66 kV, 1CX630 Sq.mm Al. Corrugated Cable was already approved by GETCO vide its letter dated 20.12.2019 as stated above.

14.3.2. Since the Petitioner on 23.05.2019 had upfront requested for consideration of XLPE Al. Corrugated cable for the purpose of their new connection, the estimate prepared by GETCO on 04.06.2019 considering other type of cable is a mistake committed on the part of GETCO. Further, in spite of the specific request made again by the Petitioner on 04.09.2019 about revising the type of cable, GETCO and MGVCL took 71 days to serve revised estimate to the Petitioner on 14.11.2019. the Petitioner thereafter within 13 days paid the revised estimate.

14.3.3. It is appropriate on the part of the Petitioner that post payment of revised estimate based on the revised type of cable, the Petitioner would start the process of procurement of cable. The contention of the Respondents that the Petitioner would have raised the issue prior to payment of initial estimate about the type of cable is not appropriate since the Petitioner had already intimated GETCO about the type of cable they are finding economically viable well before issuance of first estimate on 26.06.2019.

14.3.4. In view of the above, we decide that time limit of 180 days as per Regulation 9.3 of the GERC (SoP) Regulations, 2005 will commence from 27.11.2019 in case of the present Petitioner and not from the date of execution of agreement (i.e. 05.08.2019) between the Petitioner and Respondent MGVCL.

14.4. We note that the Petitioner has submitted the details of date on which correspondences occurred between the Petitioner and Respondent GETCO about approval of vendor for procurement of cable, approval of plans, publication of Gazette notification in the newspapers, providing standard drawings of cable, etc. as narrated in the above Table. As decided in the above paragraph the start date for the Petitioner to commence the execution of work of erection of transmission line is considered as 27.11.2019, the activities about seeking and granting approvals / drawings occurred within reasonable time period as shown in the above Table i.e. within the time period of 180 days. The Commission do not find any reason for labelling the time period consumed by Petitioner / Respondents for such activities as delay on part of either side.

14.5. As stated above, the Petitioner has in its last submission provided details of date on which permission was received from Gujarat Gas Limited, R&B, Irrigation and Forest Department without any documentary evidence thereof. In absence of any documents we are not in position to validate the time period that may have been consumed by such departments and cannot come to conclusion that whether such time period be attributable as delay due to Government Authorities.

14.6. We note that the present Petition is filed by the Petitioner for extension of time limit for completion of 66 KV transmission line for contract demand of 5000 kVA demanded by the Petitioner from Respondent MGVCL. It is undisputed that the work for additional load requirement met by the Petitioner needs creation of necessary transmission line which is a part of distribution system for supply to the Petitioner who is the consumer of Respondent No. 1. It is also a fact that as per the provision of Electricity Act, 2003 laying down the distribution system is assigned to licensee. In the present case, the licensee i.e. Respondents have assigned the said work to the Petitioner to carry out itself by giving an option as to whether the said work be carried out by licensees or Petitioner itself. The Petitioner has opted for creation of the said work by itself under Option III given by the Respondents. Thus, the network creation liability is with the Petitioner. However, the materials used for the work, drawings, route of the line etc. are with the approval of the Respondents. Moreover, the Respondent shall require to supervise the work and carry out future maintenance of the said system. Hence, the limited liability of the Respondent is with regard to technical aspect of the said line creation by the Petitioner under the supervision of the Respondents.

15. In view of the above, we decide that the time period of 180 days as per Cluse 9.3 of GERC (SoP) Regulations, 2005, in case of the Petitioner is to be considered from 27.11.2019. The Respondent MGVCL is directed to revisit the date of commencement of minimum billing in accordance with the GERC Supply Code to the Petitioner. The Respondent MGVCL is also directed to refund the excess recovery to the Petitioner without any interest thereon.

16. We order accordingly.

17. With this Order the present Petition along with the allied IA stands disposed of.

Sd/-	Sd/-
(S. R. Pandey)	**(Mehul M. Gandhi)**
MEMBER	MEMBER

Place: Gandhinagar
Date: 12/11/2025