



MEGHALAYA STATE ELECTRICITY REGULATORY COMMISSION SHILLONG
Front Block Left Wing, 1st Floor, New Administrative Building,
Lower Lachumiere, Shillong, Meghalaya 793001

Case No. 2 of 2026

In the Matter of:

Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 21 of the Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations, 2006 seeking review of the Order dated 09.02.2026 passed by the Commission in Case No. 05 of 2025

AND

In the Matter of:

Byrnihat Industries Association (BIA)

..... **Petitioner**

Versus

Meghalaya Power Distribution Corporation Limited (MePDCL)

..... **Respondent**

Coram

Shri. Chandan Kumar Mondol (Chairperson)

Date of Order: 18th June 2026

1. The instant Petition has been filed by Byrnihat Industries Association under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 21 of the MSERC (Conduct of Business) Regulations, 2006 seeking review of the Order dated 09.02.2026 passed by the Commission in Case No. 5 of 2025.
2. The Petitioner herein is an association of different industrial units in Meghalaya.
3. The Respondent is a distribution licensee for the State of Meghalaya.

FACTS OF THE CASE

1. The Commission in the matter of Suo Moto Proceedings in compliance to the Hon'ble APTEL Judgment dated 31st October 2025 in Appeal No. 218 of 2025, IA No. 887 of 2025, IA No. 1040 of 2025 and IA No. 1037 of 2025, has issued the Order dated 09.02.2026 for determination of the Open Access Charges. Extract of the Order is reproduced below:

“Table 13: Comparison of Open Access Charges of Ferro Alloy and other EHT Consumers category (Rs./kWh) who are having contract demand with MePDCL for FY 2025-26

	Ferro Alloys EHT		Other EHT	
	As per Earlier Order	Revised as per this Order	As per Earlier Order	Revised as per this Order
<i>Additional Surcharge payable to MePDCL</i>	1.38	2.27	1.21	2.27
<i>CSS payable to MePDCL</i>	1.02	Nil	2.03	2.03
<i>STU Charge payable to MePTCL</i>	0.76	Nil	0.76	Nil
<i>CTU Charge payable to MePDCL</i>	0.58	Nil	0.58	Nil
Total	3.74	2.27	4.58	4.30

.....”

2. In view of the above Order, the Petitioner's appeal is highlighted below:
- Para 8 of the Review Petition:** *The Petitioner submits that the Commission has erred by including proportionate wheeling component of Rs. 2.22 Cr and proportionate CTU charge of Rs. 1.29 Cr. while calculating additional surcharge. This error has resulted in double recovery.*
 - Incorrect Inclusion of Wheeling Component of Rs. 2.22 Cr.:**
The Petitioner has submitted the above issue vide Paras I (9,10,11,12,13,14,15) of the Review Petition as under:
 - The Commission has erred in including the “Proportionate Wheeling Component” amounting to Rs 2.22 Crore in Table 7 of the Order under Review while computing the Additional Surcharge, which constitutes an error apparent on the face of record and is liable to be reviewed.*
 - That in terms of Section 42(4) of the Electricity Act, 2003, scope of Additional Surcharge is limited to recovery of fixed costs arising from stranded power purchase obligations of the distribution licensee. Consequently, distribution wheeling costs are excluded from this surcharge as they do not stem from power purchase commitments.*
 - That the impugned inclusion is thus ultra vires the provisions of Section 42(4) and the applicable regulatory framework, including Regulation 25 of the MSERC (Terms and Conditions of Open Access) Regulations, 2012 and Clause 8.5.4 of the National Tariff Policy, 2016.*

- iv. *Petitioner further submitted that various members of the Petitioner Association are EHV consumers connected at 132 kV level and are directly interfaced with the transmission system without any use of the distribution network. This position has also been expressly acknowledged in the Order under Review, wherein it is stated that consumers connected at 132 kV level do not utilise the distribution system. In such circumstances, no distribution-related cost can be attributed to EHV consumers connected at 132 kV level, either for recovery through tariff or through Additional Surcharge. The inclusion of the wheeling component in the computation of Additional Surcharge therefore amounts to recovery of charges for a service not rendered, which is impermissible in law and contrary to the settled principle of cost causation and user pays, which governs tariff determination in the electricity sector.*
 - v. *That the impugned inclusion also results in double recovery of distribution costs. It is a matter of record that the distribution network costs already form part of the approved Aggregate Revenue Requirement and are recovered through the retail tariff, including both fixed and energy charges payable by consumers. By including the same cost again in the computation of Additional Surcharge, the Hon'ble Commission has effectively allowed double recovery of the same cost, leading to unjust enrichment of the distribution licensee. Such duplication of recovery is contrary to settled regulatory principles and is liable to be set aside.*
 - vi. *Further, the Order under Review suffers from internal inconsistency and arbitrariness. While computing CSS, this Hon'ble Commission has accepted the position that distribution wheeling charges are not applicable to EHV consumers on account of non-usage of the distribution system, yet the same distribution cost has been included while determining Additional Surcharge. This contradictory approach renders the Order under Review arbitrary and violative of the principles of equality and non-arbitrariness. Accordingly, the said order merits a reconsideration by this Hon'ble Commission.*
 - vii. *Petitioner also submitted that distribution network cost does not qualify as "stranded cost" within the meaning of Section 42(4) and Regulation 25. The distribution network continues to remain in use for other consumers and its cost is neither avoided nor rendered stranded on account of Open Access availed by EHV consumers. In the absence of any demonstrable nexus between Open Access and alleged stranded distribution cost, the inclusion of the proportionate wheeling component is wholly unjustified and legally unsustainable. **Accordingly, the inclusion of Rs 2.22 Crore towards wheeling component in Table 7 for computation of Additional Surcharge deserves to be reviewed and set aside for EHV state industrial consumers since they are not on distribution system.***
- c. **Wrong Inclusion of CTU charges of Rs. 1.29 Cr.**
The Petitioner has submitted the above issue vide Paras II (16,17,18,19,20,21,22) of the Review Petition as under:
- i. *The Hon'ble Commission has further erred in including Central Transmission Utility ("CTU") charges in the computation of Additional Surcharge, resulting in double recovery of inter-State transmission charges from the members of the Petitioner Association. It is submitted that the OA consumers are already liable to and do pay Inter-State Transmission System (ISTS) charges in accordance with the regulatory framework notified by the Ld. CERC, including the CERC*

(Sharing of Inter-State Transmission Charges and Losses) Regulations. The said charges are collected by Power Exchanges while purchasing power under open access. Therefore, any additional levy of CTU charges through the Additional Surcharge results in duplication of charges for the same transmission service, which is impermissible in law.

- ii. It is further submitted that the Hon'ble Commission lacks jurisdiction to levy or determine inter-State transmission charges, which fall exclusively within the domain of the Ld. CERC. The regulatory framework governing ISTS charges is comprehensive and leaves no scope for parallel or additional recovery by the State Commission. The inclusion of CTU charges in the Order under Review is therefore without jurisdiction and liable to be set aside on this ground alone.*
- iii. Without prejudice to the above, it is submitted that CTU charges already form part of the fixed cost of the distribution licensee and are included in the ARR approved by the Hon'ble Commission. These costs are recovered through the tariff charged to consumers. Inclusion of the same CTU charges again in the computation of Additional Surcharge results in double recovery of the same cost component, which is contrary to settled regulatory principles and leads to unjust enrichment of the distribution licensee.*
- iv. It is also submitted that the statutory requirement for levy of Additional Surcharge mandates a conclusive demonstration that the fixed cost has become stranded on account of Open Access. In the present case, no such analysis or evidence has been provided to demonstrate that the CTU capacity contracted by the distribution licensee has remained under-utilised or stranded due to OA consumers. In the absence of such a causal linkage, CTU charges cannot be treated as stranded cost attributable to Open Access and hence cannot be included in the Additional Surcharge.*
- v. The inclusion of CTU charges of Rs 1.29 Crore also reflects a misinterpretation of the concept of "fixed cost" under Section 42(4). Not all fixed costs are recoverable through Additional Surcharge; only those fixed costs which are demonstrably stranded due to Open Access can be considered. The Order under Review erroneously expands the scope of Additional Surcharge by including CTU charges without satisfying the statutory conditions.*
- vi. It is further submitted that the Hon'ble APTEL, while remanding the matter, had specifically directed this Hon'ble Commission to determine Additional Surcharge afresh after ascertaining the quantum of stranded fixed cost attributable to OA consumers. The impugned inclusion of CTU charges without such determination is in non-compliance with the binding directions of the Hon'ble APTEL and is liable to be reviewed on this ground as well.*
- vii. It is submitted that Additional Surcharge applicable due to stranded cost after deducting Wheeling component and CTU charges is Rs. 1.38/kWh.*

In view of the above, the Petitioner has made the following prayer

- (a) Take the filing of Review Petition on record;*
- (b) Allow the review petition and revise the Order under Review to the extent prayed herein;*
- (c) Recalculate Additional Surcharge after deducting the impact of wheeling charges and CTU charges; and*

(d) Pass any such other order/s and or direction/s, which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

PROCEEDINGS OF THE CASE

1. The Commission vide letter No. MSERC/BIA/Case-2/2026/13, dated 14th April 2026, had admitted the Petition and registered it as Case No. 2 of 2026. Furthermore, the Respondent has been directed to submit its replies to the Petition by 5th May 2026. The Respondent, viz. MePDCL, submitted its reply on 5th May 2026. Subsequently, the Commission held a hearing on 1st June 2026 through hybrid mode, wherein representatives of the both the Petitioner and Respondent attended the same.
2. In the hearing, the Commission has noted that an Appeal DFR No. 148 of 2026 & IA No. 927 of 2026 & IA No. 567 of 2026 & IA No. 928 of 2026 against the Order dated 24.03.2025 and Corrigendum Order dated 18.06.2025 in Case No. 9 of 2024 and read along with the final Order dated 09.02.2026 in Case No. 5 of 2025 has been filed by M/s Dalmia Cement (Bharat) Limited before the Hon'ble Appellate Tribunal for Electricity (APTEL) on 1st April 2026. The said Appeal has been admitted by the Hon'ble Tribunal on 13.05.2026 and the matter has been listed for further proceedings on 22.07.2026.
3. Accordingly, in view of Order 47 Rule 1 (sub-rule 1 and 2) of the Code of Civil Procedure (CPC), the Commission has observed that the present Review Petition is not maintainable.
4. The Learned Counsel appearing on behalf of the Petitioner informed that the Petitioner was not aware of the said Appeal filed before the Hon'ble Tribunal and further submits that no stayed Order has issued by the Hon'ble Tribunal. The Learned Counsel sought time for perusal of the Appeal filed by M/s Dalmia and may petition the Hon'ble Tribunal to implead the Petitioner as a Respondent to the said appeal. She further prayed that the Commission may grant time to the Petitioner and accordingly and that the matter may be adjourned and kept in abeyance.
5. Respondent informed that the Appeal filed by M/s Dalmia was brought to their notice and submits that the issues raised by Dalmia before the Hon'ble Tribunal and that of the instant Review Petition are similar. Hence, under Order 47 Rule 1 of the CPC, the Review Petition is not maintainable.
6. Accordingly, the Commission, in its Order dated 1st June 2026, adjourned the matter and kept in abeyance until further Orders.
7. However, the Petitioner has on 15th June 2026 submitted an Application, highlighting that upon the adjournment granted by the Commission on the matter, the Petitioner submits that having reviewed the appeal filed by Dalmia Cement Limited, it is clear that the Order dated 09.02.2026 has been challenged on the same issues raised by the Petitioner in the instant Petition. Since, the appeal was filed prior to the captioned Review Petition and is currently pending adjudication before the Hon'ble APTEL, the captioned Review petition cannot be sustained in law.
8. Accordingly, the Petitioner submits that the present application is filed before the Commission seeking permission to withdraw the instant Review Petition and take appropriate legal actions. Furthermore, the Petitioner prayed that court fees of Rs. 1,50,000 (rupees One Lakh Fifty Thousand) only paid may also be refunded to the Petitioner, as the Petitioner is constrained to withdraw this Review Petition due to factors beyond its control. The Petitioner has made the following prayer:

(a) Take the present application on record and allow the Petitioner to withdraw Case No. 02/2026 filed seeking review of Order date 09.02.2026;

- (b) Refund the court fees of INR 1,50,000 paid by the Petitioner; and*
(c) Pass any such order/s and or direction/s, which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

COMMISSION'S ORDER

The Application for withdrawal of the Review Petition filed by the Petitioner is admitted and stands withdrawn.

With regard to the prayer for refund of the court fees of INR 1,50,000, the Commission notes that proceedings had been taken up and a hearing had also been conducted in the matter. Accordingly, the request for refund of the court fees cannot be considered.

The Review Petition is therefore disposed of. There shall be no order as to costs.

Sd/-

Chandan Kumar Mondol

Chairman