

HARYANA ELECTRICITY REGULATORY COMMISSION  
BAYS 33-36, SECTOR-4, PANCHKULA

CASE NO: HERC/RA 2 of 2007

Date of Hearing: 30.8.2007

Date of Order: 26.09.2007

In the matter of

Petition filed by the Haryana Vidyut Prasaran Nigam Limited (HVPNL)  
vide its Memo No. Ch-84 SE/ RAU/ F-71 dated 6.6.2007,

And

Petition filed by Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) vide  
memo No Ch-82/SE/RA/N/F-25 Vol. XIII dated 5.6.2007

And

Petition filed by Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL)  
vide memo No. Ch-44/SE/RA-282/Vol-II dated 8.6.2007

And

Petition filed by Haryana Vidyut Prasaran Nigam Limited (HVPNL) vide  
its Memo No. Ch-12/F-71/Vol-II dated 20.8.2007

seeking review and / or modification of the order dated May 8, 2007  
passed by the Commission in respect of determination of tariff of  
Transmission Business and SLDC Charges for FY 2007-08

PRESENT:	Shri Bhaskar Chatterjee, Chairman
	Shri T.R. Dhaka, Member
	Shri T.S. Tewatia, Member
On behalf of HVPNL	Shri P.K. Das, Managing Director
On behalf of UHBVNL	Apoorva Kumar Singh, Managing Director
On behalf of DHBVNL	Shri G.D.Gupta, CGM Commercial

## **ORDER**

This order relates to the above mentioned review petitions filed under section 10(i) (h) of Haryana Electricity Reforms Act, 1997, section 94 of the Electricity Act, 2003 read with Regulation 78, 79, 80,85 to 91 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2004.

The Commission vide its Memo No.HERC/2007/1427-9 dated 9.8.2007 issued notices to HVPNL, UHBVNL and DHBVNL (the petitioners) communicating to them that a hearing on the review petitions has been scheduled for 30<sup>th</sup> August, 2007 at 11.30 A.M. in the conference hall of the HERC, which was subsequently changed to 10.30 A.M. on request of the petitioner. The hearing on issues raised by the petitioners vide their review petitions was held as per schedule. The Commission heard the petitioners' contention on each issue at length and reserved its order. The said petitions are now being disposed of vide the instant order.

The factual background of the issues under review and Commission's observations & order on the same is stated hereunder.

1. Employee cost (Sub head 2.3 of the said order.) The petitioner has sought a review and reconsideration of the amount of terminal benefits allowed by the Commission.

A) The Commission in its order dated 8.5.2007 had allowed Rs. 1191.70 million as terminal benefit cost for FY 2007-08 as against Rs. 1385 million proposed by the licensee on the basis of a 5% increase per annum over the actuarial valuation of terminal benefits as per audited accounts of FY 2005-06.

The licensee vide its filing dated 20.8.2007 has now provided its audited accounts for FY 2006-07 wherein the actuarial

valuation of terminal benefits, excluding interest on pension bonds, amounts to Rs.1389.32 million. In view of the latest available information the Commission accepts the review sought and revises the terminal benefits for FY 2007-08 to Rs.1385 million as proposed by the licensee.

- B) The Commission in its order dated 1.12.2006 had allowed HVPNL to recover Rs. 1645.69 million as terminal benefits for FY 2006-07 on accrual basis as estimated by HVPNL in its AR filing with a condition that the difference between the projected amount and actual as per actuary certificate will be adjusted in the next ARR. Now HVPNL has filed its audited accounts for FY 2006-07 wherein the actuarial valuation of terminal benefits for FY 2006-07 have been finalized for Rs. 2062.32 million.

In view of the audited accounts and actuary certificate now available, the Commission allows the additional amount of Rs. 416.63 million to be recovered as part of its ARR for FY 2007-08 in terms of its order dated 1.12.2006, this being a statutory levy.

2. Interest on loans for capital expenditure (sub-head 2.6 of the said order)

The licensee has sought review of interest on loans for capital expenditure allowed by the Commission amounting to Rs. 586.33 million as against Rs.719.41 million proposed by them.

The licensee has objected to the date of commissioning of assets considered for calculation of interest to be capitalized. The Commission has considered that assets are commissioned on the last day of each financial year for calculation of interest capitalized which is the same date as is used for calculation of depreciation. The licensee has proposed that the date of

commissioning of assets for the purpose of calculating interest to be capitalized should be taken as mid-year whereas for the purpose of calculating depreciation it is to be taken as last day of the year.

The Commission, since the first ARR order, has adopted a consistent approach of considering last day of the year as the date of commissioning of assets as originally proposed by the licensee in its first ARR filing for FY 1999-2000. The licensee has, for the first time, proposed to change the date of commissioning to mid-year for the purpose of calculating IDC. Though the rationale behind this has some merit, there ought not to be any inconsistency in approach for the purpose of calculating two expenditures namely depreciation and interest. The Commission is not convinced with the arguments and hence rejects the review sought on this issue.

3. Fringe benefit tax (Sub-head 2.9 of the order)

The licensee has sought review and reconsideration of Rs.155.83 million disallowed by the Commission on account of FBT for employer contribution to superannuation fund in view of stay granted by the Hon'ble High Court on this issue. The licensee in its filing dated 20.8.2007 has revised this amount to Rs. 1.01 million on account of revised actuarial valuation.

The Commission finds the review plea reasonable and acceptable and hence allows the licensee to claim this amount in the ARR. However, in view of the stay granted by the Hon'ble High Court, the licensee will not be depositing this amount with the Income Tax Department. Therefore, the Commission directs that this amount shall be invested in govt. securities till the case is

decided and till that time interest will be adjusted to reduce the ARR.

4. Fringe Benefit Tax for FY 2005-06 (Sub-head 2.9 of the said order)

The Commission recovered Rs.142.05 million (Rs.130.95 million+Rs.11.11 million interest) on account of FBT for FY 2005-06. HVPNL has in its Review Petition informed the Commission that out of Rs.130.95 million FBT on employer contribution to superannuation fund, Rs.95.64 million has already been deposited with the income tax authorities till the date of stay granted by the Hon'ble High Court on this issue.

As the case is pending before the Hon'ble Supreme Court and the licensee has already deposited the said amount, the Commission allows interest on Rs.95.64 million at the same rate of interest allowed for working capital borrowing. HVPNL shall keep the Commission informed of the developments in the said case. This interest shall be allowable from the date of deposit of amounts till the date of resolution of the case in the Hon'ble Supreme Court.

5. Return on Equity and Income Tax thereon (Sub-heads 2.15 and 2.10 of the said order)

The licensee has asked for a review and reconsideration of return @ of 8% on equity amounting to Rs.388.36 million. The licensee has informed the Commission that as against Rs.1401.15 million estimated by the Commission towards equity for distribution business related assets as on 30<sup>th</sup> June 1999; the amount works out to be Rs.1259.33 million and consequently, the equity for Transmission Business stands increased by Rs. 388.36 million.

The Commission has examined the details provided by HVPNL and finds merit in the contentions and hence allows it to recover an additional amount of Rs.11.35 million as return on equity. Consequently, income tax of Rs. 1.29 million is also allowed.

6. Transmission losses (Sub-head 2.22 of the said order)

The licensee has sought review and reconsideration of intra-state transmission losses benchmarked by the Commission at 2.6% for FY 2007-08. In view of the massive investment plan proposed by the licensee for modernization and upgradation of the transmission system and the same being approved by the Commission, the intra-state losses ought to be reined in.

Consequently, the Commission finds no merit in the proposal of the licensee and rejects the same. The licensee needs to note that 4.58% transmission losses (intra-state and inter-state) considered by the Commission for FY 2007-08 are higher as compared to 4.4% considered for FY 2006-07.

7. Incentive for reduction in intra-state losses beyond benchmark of 2.6% (Sub-head 2.2 of the said order)

The licensee has asked for either the removal of penalty clause for not achieving 2.6% intra-state loss level or for introduction of incentive for reduction in losses below 2.6%. The Commission finds some merit in the contention of HVPNL and hence removes the penalty clause as sought in the instant review petition.

8. Tariff Design (Sub-head 3.4.2 of the said order)

HVPNL has asked for a review of tariff design based on coincidental peak as considered by the Commission in its order dated 8.5.2007. HVPNL has proposed that the tariff should be

based on transformation capacity at interconnection points as also used by the Central Commission.

It would be relevant to mention in this context that the Commission is in final stages of finalizing its tariff regulation and the matter shall be taken care of in the said regulations as and when finally published. As of now, the tariff design adopted by the Commission and also supported by the distribution licensee has had no negative impact on the revenues of HVPNL, consequently the review plea is rejected.

9. Rate for long-term Open Access customers (sub-head 3.4.2.1 of the said order)

HVPNL has submitted that the order on this issue is conceptually wrong as short term & long term open access customers cannot be charged the same tariff. This is because of the fact that short term open access customers are to be allowed open access on the basis of system redundancy while adequate transmission system is required to be planned and laid for long term open access customer. Further, the order is in contradiction to the provisions in the intra – state Open Access Regulation issued by the Commission under which treatment to be given to short term and long term open access customers are defined. The long term open access customers other than the Discoms should not be given any incentive or Cross-subsidy by charging them transmission tariff applicable to short term open access customers.

The Commission would like to refer to the relevant regulations on the subject.

Regulation 13 of the HERC Regulations on Open Access deals with charges for open access which does not spell out any treatment to short term/long term open access customers. It provides *“Transmission charges and wheeling charges payable by an open access customer shall be determined by the Commission in terms of the regulations framed by the Commission for determination of tariff”*

At this stage the issue is hypothetical as HVPNL has no short term open access customers. Consequently, the Commission shall consider the issue of incentive / cross subsidy etc. while finalizing the regulations on tariff as provided in HERC Open Access regulations. Consequently, the Commission rejects the review plea on this issue.

10. Incentive on availability of Transmission system beyond 98%

The licensee has pleaded for being allowed an incentive on system availability beyond 98% in line with the CERC guidelines.

The Commission is of the view that in the cost plus regime where the licensee is recovering full cost and also earning an assured return, it is the duty of the licensee to ensure full availability of transmission system. Also, in many instances, the transmission system is constrained and the supply to different sets of consumer is being allowed on rotational basis. It does not make sense at present to burden the electricity consumers of Haryana with an additional cost. The Commission shall take a final view on this issue while finalizing its Regulations on terms and conditions of determination of transmission tariff.

11. Reactive Energy

The licensee has submitted that it should be allowed to collect reactive energy charges from Discoms/Open access customers at the rate fixed by CERC. Recovery of reactive energy charges was also upheld by the Hon'ble Appellate Tribunal as a legitimate cost and hence recoverable.

The Commission accepts the contention of HVPNL that reactive energy charges is a legitimate cost associated with power purchase and hence recoverable. However, in the light of the fact that such charges cannot be projected with any degree of accuracy and at times HVPNL gets credit from the common pool too, the Commission shall allow Reactive Energy charges based on the actual invoices received by HVPNL and the same shall be adjusted in the subsequent ARR of HVPNL.

12. Incentive for timely payments (Sub-head 3.7 of the said order)

DHBNL has sought review and reconsideration of incentive clause forming part of the Commission's order dated 8.5.2007.

DHBNL has submitted that HERC in its order has approved an incentive for early payment on the basis of days from the date of bill of transmission charges as given in table 3.6 of the order. However, the rebate should be "from the date of presentation of bill" as proposed by HVPNL in its ARR filing and also as approved by HERC in its order FY 2006-07.

The Commission finds merit in the petition of DHBNL and allows the table 3.6 to be amended accordingly.

13. Non-consideration of objections of UHBVNL while deciding the ARR of HVPNL for FY 2007-08

UHBVNL has submitted that its objections on ARR and tariff filing of HVPNL for FY 2007-08 were not taken into consideration by the Commission while passing the order.

The Commission is of the view that the objections were filed on 28.3.2007, much beyond the last date of filing objections on the said ARR and therefore were not considered. The Commission would appreciate much wider participation in the public proceedings and consultation process for determining the ARRs and suggest that all stakeholders/licensee adhere to the scheduled time frame while filing its objections/suggestions. More so, as the Commission itself as per the Electricity Act 2003, has to pass its order in a time bound manner.

14. Inclusion of market committee loans as part of loans for capital expenditure for calculation of advance against depreciation (sub-head 2.12 of the said order)

UHBVNL has objected to inclusion by the Commission of market committee loans as loans for capital expenditure as these are being treated as part of working capital loan in the ARR filing of UHBVNL. The classification of loans is part of filing submitted by HVPNL and UHBVNL and should have been objected to while the hearing for HVPNL's ARR was taking place. However, the Commission would not like any inconsistency in the treatment for the same loan by two licensees and would consider granting the status of loan for capital works to the market committee loan to UHBVNL as well while deciding its ARR.

15. Provision for redemption of PF and pension bonds

UHBVNL has objected to creation of reserve for redemption of PF and pension bonds when these are due only in FY 2016. UHBVNL has suggested that if any reserve is to be created the same can be done out of 'efficiency gains' keeping in view the fact that as the power purchase cost has increased sharply during the last two years; this additional burden could have been better avoided.

The Commission is seized of the matter and keeping in view the massive burden of redemption of these bonds has decided to allow an early redemption of part amounts so as to spread the burden over a longer period instead of 10 years and hence reduce any tariff shock on this account in a particular year.

Date : 26.09.2007

Place : Panchkula

**(T.S.Tewatia)**  
**(Member)**

**(T.R.Dhaka)**  
**(Member)**

**(Bhaskar Chatterjee, IAS (Retd.))**  
**(Chairman)**