

HARYANA ELECTRICITY REGULATORY COMMISSION  
BAYS NO. 33-36, SECTOR 4, PANCHKULA

DATE OF HEARING: 4.12.2008

DATE OF ORDER: 14/01/2009

In the matter of Review Petition(s) filed by

- i. HVPNL vide Memo No. Ch-14/SE/RAU//F-72/Vol-II dated 22.5.2008
- ii. UHBVNL vide Memo No. 27/GM/RA/N/F-25/Vol. XVIII dated 5.6.2008.
- iii. DHBVNL vide Memo No. Ch-6/SE/RA/325 dated 20.6.2008.

Against HERC order dated 23.4.2008 in case No. HERC/PRO-3 of 2008 approving the Annual Revenue Requirement filed by Haryana Vidyut Prasaran Nigam Limited for Transmission and SLDC Business for FY 2008-09.

The above petitions have been filed under section 10 (h) of Haryana Electricity Reforms Act 1997, section 94 of the Electricity Act 2003 read with Regulations 78, 79, 80, 85-91 of "Conduct of Business Regulations 2004" seeking review and/or modification and/or clarification of the order dated 23.4.2008.

PRESENT	Sh. Bhaskar Chatterjee, Chairman
	Sh. T.S. Tewatia, Member
On behalf of HVPNL	Sh. Ankur Gupta, MD HVPNL
	Sh. Niraj Gulati, CE HVPNL
On behalf of UHBVNL	Sh., K.S.Sangwan, FA/HQ UHBVNL
	Sh. S.K.Jain, GM/ HPCC UHBVNL
On behalf of DHBVNL	D.S. Rathee SE/RA DHBVNL
	Sh. Kapil K. Marwaha CGM Finance DHBVNL

This order of the Haryana Electricity Regulatory Commission (hereinafter referred to as the Commission) disposes of the Review Petitions filed by HVPNL dated 22.5.2008, UHBVNL dated 5.6.2008 and DHBVNL dated 20.6.2008.

Section 94(1) of the Electricity Act 2003 provides that, “the Appropriate Commission shall, for the purpose of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under Code of Civil Procedure 1908 (5 of 1908)”. The matters listed also includes at 94(f), “reviewing its decisions, directions and orders”. The relevant provision of the Code of Civil Procedure provides that a review can be entertained only if the conditions listed in Order XLVII Rule 1 of the Code are fulfilled”. As per this provision, review is allowed only on three specific grounds namely:-

- a) grounds arising from the discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the applicant’s knowledge or could not be produced by him at the time when the order was passed: or
- b) on account of some mistake or error apparent on the face of record; or
- c) for any sufficient reason.

Further, Regulation 78(2) of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations 2004 also provides for the same grounds for filing review as mentioned in Order XLVII Rule 1 of the Code of Civil Procedure.

In the light of the above provisions the Commission has examined the issues on which review has been sought by the petitioner.

Relief sought by the petitioner and Commission's order thereof is set out as given below:

**1. Repair & Maintenance Expenses (Sub head 2.4 of the said Order)**

HVPNL in their review petition on the issue of Repair and Maintenance (R&M) sought an additional amount of Rs. 93.83 millions on account of difference in the in the R&M expenditure of Rs. 211.42 proposed by them and Rs. 117.59 millions allowed by the Commission. However, during the hearing held on 4/12/2008, HVPNL preferred to withdraw the review sought on repair and maintenance related expenditures. **Resultantly, the Commission is not going into the merits of the claim and treats the review sought on this issue as withdrawn.**

**2. Interest on Loans (Sub head 2.6 of the said Order)**

A) On the issue of interest on loans, HVPNL sought review and reconsideration submitting that the disallowance of amount of Rs. 200.69 millions by the Commission on account of difference in the estimated interest on capital expenditure of Rs. 822.29 millions as claimed by them and Rs. 621.60 millions allowed by the Commission is not appropriate due to the reasons that:

- (i) The Commission in its order dated 23rd April 2008 has disallowed capital expenditure amounting to Rs. 2194.19 millions on the ground that the expenditure incurred during Financial Year 2007-08 is not part of the investment plan filed by the licensee which was for Rs. 5410 millions and consequently disallowed the interest on borrowings for the disallowed capital expenditure amounting to Rs. 2194.19 millions.
- (ii) Similarly the commission has disallowed capital investment for the year 2008-09 for the works which are yet to be approved. The works

relating to HUDA were also not considered for purpose of capital expenditure related borrowings by the Commission.

(iii) In this regard the licensee submits as under :-

- The process of review and approval of capital investment by the Commission is general in nature as it is not conducting any technical review of the capital investments. However, in the past on only one occasion Central Electricity Authority was appointed as consultant for technical review of the investment of the petitioner. Barring that order the commission has been allowing capital investment as proposed by HVPNL in its capital investment plans. Thus the disallowance of capital expenditure now is a departure from the earlier policy of the Commission.
- The petitioner filed midterm information of capital expenditure for the year 2007-08, revising the investment plan from Rs. 4060.78 millions to Rs. 5410 millions. The commission did not ask for any technical examination of the revised investment plan. The investments made by the petitioner were based on technical requirements / necessities for serving the transmission system requirements of the Distribution companies having cost implication which ought to be recovered from the beneficiaries as part of the cost of service.
- Some of the works indicated as 'yet to be approved' in the investment plan of the petitioner are technical necessities. However, they are pending for want of formal request from the beneficiaries indicating the matching underlying system to be created in Distribution Companies. These works were actually decided in principle to be executed and should not be viewed as un-authorized.

### **Commission Order:**

The Commission has carefully examined the grounds and submissions of HVPNL while seeking review on the issue of interest on loans. The Commission notes that HVPNL had proposed capital investment of Rs. 4060.78 million in its ARR for FY 2007-08 and the same was approved by the Commission. While submitting the ARR for FY 2008-09, HVPNL revised the capital investment plan for FY 2007-08 in December 2008 to Rs. 5417.57 million on its own without providing any justification or formal request for approval of the revised amount. Consequently, the revised capital expenditure plan, bereft of any justification for consideration of the Commission, submitted when three quarters of the financial year to which it related was over, was not taken cognizance of by the Commission. The records available with the Commission do not support the claims of having filed any midterm review information as stated by them. **The Commission acknowledges the usefulness of periodic review of projects of capital nature in terms of physical, monetary, timelines as well as techno – economic feasibility and pay – back and directs the licensee to do so to ensure strict monitoring and implementation of the capital expenditure approved by the Commission.**

As per Commission's estimates based on the reported progress of the projects an amount of Rs. 3215.41 million out of the original approved expenditure plan was likely to be spent by HVPNL during FY 2007-08. Resultantly, capital expenditure borrowings were restricted to the Commission's estimate of Rs. 3215.41 million only.

**The Commission is open to revisit the capital expenditure for FY 2007-08 as and when HVPNL provides details of actual amount spent during FY 2007-08 on the works included in the approved capital investment plan of Rs. 4060.78 million in the ARR for FY 2007-08 along with reasons and justification for the deviations in the**

**approved capital expenditure plan for FY 2007-08 subject to satisfaction of the Commission.**

For FY 2008-09, HVPNL had submitted the revised capital investment plan of Rs. 9613.98 million. Out of the proposed Capex, works to the tune of Rs. 2633.17 million were reportedly 'yet to be approved' by HVPNL. The petitioner should not have expected the Commission to approve the works which had not been approved even by the petitioner itself. Even then, the Commission took a liberal view and approved 50% of these unapproved works as special case. **In case the licensee is able to provide adequate details and documentations in support of their claims, the Commission may review the capital expenditure for FY 2008-09 and pass a suitable order.**

The Commission had excluded the amount of Rs. 927.68 million from the capital investment plan for FY 2008-09 as this amount was to be contributed by HUDA thereby not forming part of the capital expenditure of HVPNL. **The petitioner has sought review without providing basis / reasoning or counter – arguments in support of their claims. Thus, the Commission finds no merit in the review plea and rejects the same.**

- B) HVPNL has further contended that the Commission has capitalized the interest on opening capital work in progress by considering the work to come into operation by the last day of FY 2008-09 which is not in line with the Accounting Standard (AS) No. 16 issued by the Institute of Chartered Accountants of India on borrowing costs.

## Commission Order:

AS 16 states that “the capitalization of borrowing costs as part of qualifying asset should commence when all the following conditions are satisfied

- a) Expenditure for the acquisition, construction or production of a qualifying asset is being incurred;
- b) Borrowing costs are being incurred; and
- c) Activities that are necessary to prepare the asset for its intended use or sale are in progress.

AS 16 further states that :

“Capitalization of borrowing costs should cease when substantially all the activities necessary to prepare the asset for its intended use or sale are complete”

It is clear from the above provisions that the date of commissioning is of prime importance and the point of difference between the petitioner and the approach adopted by the Commission. The Commission in its order dated 29<sup>th</sup> September, 2007 while deciding the review petition filed by HVPNL on its order dated 8th May, 2007 has clearly stated that there ought not to be any inconsistency in approach for the purpose of calculating two expenditures i.e. depreciation and interest **and the date of commissioning of the asset ought to be same for reckoning both i.e. depreciation and interest. The same approach has been followed by the Commission in its order dated 23.4.2008 as well.**

The petitioner has not provided any reason for the Commission to change its approach. An examination of interest on borrowings for capital works establishes the fact that the difference in interest cost allowed by the Commission and that as per its audited accounts as tabulated below is not very significant:

Year	As per HERC order (Rs. millions)	As per Audited Accounts Rs. million (Rs. millions)
FY 2006-07	538.06	568.04
FY 2007-08	586.33	557.17

**The petitioner has not provided any fresh grounds or facts that may merit consideration by the Commission on this issue hence the review sought are rejected.**

**3. Other Expenses** *(Sub head 2.8 of the said Order)*

The petitioner, during the hearing held on 4/12/2008, withdrew the review sought on this issue. **Resultantly, the Commission is not going into the merits of the grounds / submissions presented in the review petition and treats the review sought on this issue as withdrawn.**

**4. Advance against depreciation** *(Sub head 2.12 of the said Order)*

HVPNL in their review petition under consideration has sought Rs. 215.77 millions as advance against depreciation in addition to the amount already allowed by the Commission. The Commission has considered the claims of HVPNL on this issue and is of the view that the additional claim arises from the difference in capital expenditure proposed by the petitioner and the amount allowed by the Commission. **In case the Commission allows any additional expenditure for capital works for FY 2007-08 and FY 2008-09 as discussed at Para 2 of this order, the amount of advance against depreciation can be considered for revision in case a prayer is made by the petitioner for the same.**

## 5. **Non-Tariff Income** (*Sub head 2.20 of the said Order*)

The commission has approved non-tariff income of Rs. 635.02 millions as against HVPNL proposal of Rs. 62.61 millions. HVPNL has sought review and reconsideration on the grounds that 'other income' amounting to Rs. 328.61 millions earned by HVPNL in FY 2006-07 was on account of penalty & early payment rebate from suppliers /contractors amounting to Rs. 170.39 millions, income from residential / non – residential buildings occupied by UHBVNL/DHBVNL/HPGCL amounting to Rs. 61.58 millions, interest on contingency reserve investment amounting to Rs. 16.35 millions, interest on fixed deposit with bank amounting to Rs. 1.58 millions, rental from staff quarter of Rs. 3.21 millions, other income (sale of scrap & other miscellaneous income) of Rs. 62.38 millions, interest on staff loans and advances to suppliers and contractors of Rs. 3.66 millions. All these incomes except interest on fixed deposit with bank & other income are not covered under the head 'non – tariff income' as per the ARR guidelines notified by the Commission.

As per ARR guidelines issued by the commission, the non-tariff income consists of rental of meters & other apparatus hired to consumers, sale & repair of lamps & apparatus, rents i.e. relating to supply of electricity (service rent), transfer fees, interest on investment, other general receipts accountable for income tax and arising from ancillary or incidental to business of electricity supply and revenue from surcharges for late payment.

### **Commission Order:**

The Commission has examined the submissions of the petitioner and is of the view that the 'non tariff income' adjusted in the order under review is based on the petitioner's audited accounts. Thus, non – tariff income has actually accrued to the petitioner. Further, it is not appropriate for the petitioner to seek adjustment of prior period expenditure without considering adjustment of prior period income

as well. The Commission has taken note of the submission of the petitioner during the hearing held on 4/12/2008 that these items are of non recurring nature and are not expected to occur in future. **These adjustments are in the nature of truing up and are not on projected basis and hence the Commission rejects the review sought on this issue.**

**6. Income Tax (Sub head 2.10 of the said Order)**

While seeking review on the issue of expenditure allowed as Income Tax, HVPNL has submitted that the Commission has allowed income tax of (–) Rs. 13.50 millions as against the claim of Rs. 297.96 millions. The petitioner contended that as per the Annual Revenue Requirement guidelines issued by the Commission the Income tax on the profit earned during the year is a legitimate expense of the Petitioner covered under special appropriation head forming part of total Annual Revenue Requirement. It is also pertinent to mention here that as per Central Electricity Regulatory Commission (Terms and conditions of Tariffs) Regulations, 2004, Tax on income is treated as an expense and is to be recovered from the beneficiaries.

**Commission Order:**

The Commission after detailed deliberations on this issue is of the view that under cost plus regulatory practices wherein revenue requirement of a licensee is capped, the only additional revenue / income that accrues is the return on equity allowed by the Commission. Consequently, income tax on allowed return only is to be legitimately recovered from the consumers. Income tax in addition to the income tax computed on 'allowed return' is to be paid by the petitioner out of the income earned over and above the allowed return and ought not to be passed on to the consumer. **Thus the grounds of review put forward on this issue are not maintainable hence the Commission rejects the review sought on this issue.**

## 7. **Transmission losses** (Para 2.22 Page-43)

HVPNL while seeking review on the issue of transmission losses has submitted that the Commission in its order has stated that it notes with concern the contradictions in the transmission loss data which makes the integrity of the data doubtful. The Commission reiterates that HVPNL should critically examine the above mentioned aberrations in the transmission losses data vis-à-vis energy transmitted and submit a report within three months of the issue of this order. HVPNL is further directed to critically analyse the relevant filings and reason out the inconsistency (ies) before submitting any such data to the Commission.

HVPNL has submitted that transmission losses in a network depends upon many factors such as drawl pattern (load factor and loss load factor), voltage conditions (reactive power flows) and outage condition (both planned and forced outages, loading of lines) etc. The Commission has observed that the Interstate losses were 2.68% in the month of May 2007 which rose to 6.01% in October 2007. As mentioned above, the losses are primarily dependent upon the pattern of usage of energy over the network.

The interstate transmission losses also include losses of other regions as well as inter-region links, whenever power is purchased from the source located outside the region on short term basis.

Similarly, the intrastate transmission losses are also affected by the factors listed above. For example, much of the consumption in UHBVN takes place in paddy season, when load curve of the region / state is almost flat whereas in DHBVN, the demand rises in winter months, when peaks are most pronounced. Thus, there is bound to variation in losses from month to month. Thus the variation in the transmission losses from the design level is beyond the control of HVPNL and HVPNL in no way can exercise any control over Interstate transmission

losses which have been pegged at 3.6%. Thus limit of 3.6% in Interstate losses and 2.1% for intrastate transmission losses may be reviewed and removed.

#### **Commission Order:**

The Commission has examined the review plea of HVPNL at length and is of the view that the inter – state transmission loss considered by the Commission is as per the actual statistics on inter – state, inter – regional losses as well as drawl under UI mechanism made available to the Commission and the trend observed from them. As far as intra – state transmission losses are concerned it is well within the control of the petitioner and the fact that the Commission on an yearly basis allows capital expenditure for modernization, augmentation and strengthening of the transmission system in the state. The increase in the volume of power available within the state should also have a moderating impact on the intra – state transmission losses. Moreover, the Commission while pegging intra – state transmission losses at 2.1% considered a very marginal improvement from the reported actual of 2.17%. There has to be some accountability of reining in the transmission losses to the barest minimum. **As no new facts or computational errors have been put before the Commission the review sought on this issue is rejected.**

#### **8. Transmission Tariff (Para 3.5 Page -53)**

HVPNL while seeking a review of the transmission tariff design has contended that they submitted tariff design on the basis of transformation capacity of the Discoms. The Commission has allowed tariff based on coincidental peak. The tariff design allowed by the Commission has the inherent discrepancy of over recovery or under recovery of transmission charges. Further, In case the Hon'ble Commission feels that the method suggested by HVPNL is not appropriate then the methodology adopted in case of SLDC tariff should be used instead of methodology to charge at Rs. Per kW of co-incident peak per month. The

allowed ARR of transmission business be divided into 12 months and monthly charges be recovered from both Discoms by apportioning the recovery of monthly transmission charges on the basis of respective contribution of Discoms towards co-incidental peak. With this methodology, the chances of over and under recovery of transmission charges shall be taken care of.

**Commission Order:**

The Commission has considered the submissions of HVPNL on the issue of tariff design which has been in vogue since FY 2002-03. As they do not meet the review criteria the Commission is not going into the details of the same. **Thus, the Commission rejects the review sought by HVPNL on this issue.**

The Commission after inviting objections / suggestions and comments from the stakeholders / experts and after holding public hearing has finalized the terms and conditions for transmission & SLDC tariff determination. The Commission is in the process of notifying the same which will become applicable from the ensuing financial year i.e. FY 2009-10 putting to rest a lot many issue including tariff design.

**9. SLDC Application Fee (Para 3.7.2 Page -55 )**

While seeking review on SLDC Application fee HVPNL has contended that the Commission has ordered that 25% of the charges collected from the short term customer use of SLDC shall be retained by HVPNL and the balance 75% shall be adjusted towards reduction in SLDC charges to be recovered from UHBVNL, DHBVNL and other long term open access customer. The order of the Commission to adjust 75% of charges collected from the short term customer use of SLDC to be adjusted towards reduction in SLDC charges to be recovered from UHBVNL, DHBVNL and other long term open access customer is not in order due to reason that the SLDC Charges collected from short term open

access customers are on account of additional work carried out by SLDC for energy accounting in respect of short term open access customer. There should not be any provision for adjustment towards reduction in SLDC charges to be recovered from Discoms and other long term open access customer. In case of CERC also there is no such provision.

**Commission Order:**

The Commission has examined the submissions of the petitioner and is of the view that entire revenue requirement of the petitioner is recovered by way of tariff from the Distribution licensee(s) besides the return allowed by the Commission on the equity deployed for SLDC business. Resultantly, the approach adopted by the Commission to adjust 75% of the additional income earned from the short – term open access customers to reduce the SLDC cost burden of the Distribution licensee is justifiable. The petitioner has also not provided quantitative details of the revenue earned from short term open access customers as well as the expenditures on account of additional works carried out by SLDC for energy accounting in respect of short term open access customers. **Resultantly, the Commission finds no merit in the contention of the petitioner and rejects the review sought on the issue of SLDC Application fee.**

Further, the licensee may note that the entire issue of SLDC including fee & charges is being deliberated at the national level under the initiative of Ministry of Power, Government of India. Once a final report is available, the Commission shall revisit the entire issue relating to SLDC and notify appropriate regulations incorporating terms and conditions for determining the kind and quantum of SLDC fee & charges.

#### 10. Review Sought by UHBVNL & DHBVNL:

The distribution licensees i.e. UHBVNL & DHBVNL in their review petitions against the FY 2008-09 Transmission and SLDC order of the Commission submitted as under:-

(i) **Actuarial valuation:** The distribution licenses have raised issues of valuation of liability of retired employees which should also include credit for interest earned from investment by pension fund.

#### **Commission Order:**

The Commission has considered the review sought for inclusion of interest from investment by the pension fund while undertaking valuation of liability of retired employees. The Commission is of the view that as HVPNL, UHBVNL and DHBVNL will now have a common actuary the issue should be taken up with the actuary who in turn shall adopt the standard practice as the issue is not unique and arises in all valuation of such nature. **Thus the Commission, at this stage, is not passing any order on treatment of interest earned by the pension fund.**

(ii) **Adjustment of the amount realized from sale of assets:** The Commission had allowed HVPNL to recover Rs. 481.93 million from consumer on account of redemption of pension bonds on the plea that the assets allocated to HVPNL towards pension bonds were not earning any income and therefore it was not possible for HVPNL to redeem its liability unless additional funds were allowed to it as part of transmission tariff. The Commission has re – examined the entire issue in the light of the fact that HVPNL has realized some amount on account of sale of land. Consequently, HVPNL is directed to utilize the income from sale of such assets towards early redemption of pension liability in line with the Commission's order dated 23.4.2008.

(iii) **Payment terms:** the issue has already been decided vide Govt. of Haryana, Special Secretary, Power Memo No. 493 dated 11.4.2008.

This order is signed, dated and issued by Haryana Electricity Regulatory Commission on 14<sup>th</sup> January 2009.

Date:

Place:

T.S. Tewatia

Member

Bhaskar Chatterjee

Chairman