

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

CASE NO: HERC PRO – 2 of 2009

Date of Hearing: 12.1.2010

Date of Order: 19.02.2010

In the matter of

1. Petition filed by HVPNL vide memo no. Ch-03/SE/RAU/F-76/ Vol-II Dated 18.6.2009 requesting for additional ARR amounting to Rs. 2465.98 million.
2. Petition filed by HVPNL vide memo no. Ch-03/SE/RAU/F-76/ Vol-II Dated 18.6.2009, requested for an additional benefit of Rs. 946.23 million on account of additional liability towards payment of arrears due to implementation of VIth Pay Commission report.
3. Petition filed by UHBVNL vide memo no. Ch-06/GM/RA/N/F-25/Vol XXIV dt 24.6.2009.
4. Petition filed by DHBVNL vide memo no. Ch-4/SE/RA-351 dt 24.6.2009

under section 10(1) (h) of Haryana Electricity Reform Act, 1997, section 94 of the Electricity Act, 2003; read with Regulations 78, 79, 80, 85 to 91 of the HERC (Conduct of Business) Regulations, 2004 seeking review and/or modification and/or clarification of the order dated May, 18, 2009 passed by the Commission in case No. HERC/PRO-2 of 2009 with respect to the Annual Revenue Requirement filing by HVPNL for its Transmission & SLDC Business for FY 2009–2010.

PRESENT:	Shri Bhaskar Chatterjee, Chairman
	Shri Rohtash Dahiya, Member
	Shri T.S. Tewatia, Member
On behalf of HVPNL	Jyoti Arora M.D.
	H.R.Setia CE/SO Comml.
On behalf of UHBVNL	Gargi Malhotra, FA/ HQ

ORDER

Notice of hearing the review petition on 12th January, 2010 was issued to all the petitioners vide Memo No. HERC 2721-23 dated. 17.12.2009. The Commission heard the arguments of all the contesting parties on each issue at length on the scheduled date and the order was reserved thereafter. The said petition is now disposed of with the following order.

Issues raised by HVPNL:

The licensee has sought additional ARR for FY 2009-10 amounting to Rs. 2465.98 million on the grounds mentioned below:

a. Salary and allowances:

The licensee submitted that for FY 2009-10 they should be allowed salary and DA amounting to Rs. 1237 millions as against Rs. 1035.03 millions allowed by the Commission .The other allowances which works out to Rs. 191 millions may also be given as against the amount of Rs. 166.90 millions sanctioned by the Commission under this head. The review sought is based on the employee cost as per audited accounts of the previous year 2008-09.

The Commission in its order for FY 2009-10 has stated that “The expenditure on account of salary, grade pay and other allowances etc. allowed by the

Commission shall be adjusted when the audited figures of the impact of implementation of the recommendation of the sixth pay commission are available.” The licensee had in its ARR application submitted a proposal for charging Rs. 1465 million on salary, DA and DP hoping that it will recruit 1813 no of employees during FY 2008-09 and 772 during FY 2009-10. As against this, the actual recruitment for FY 2008-09 is 105 and for FY 2009-10 the revised figure was 2096. Consequently expenditure on this account was raised to Rs. 1237 million for FY 2009-10; which the petitioner prayed to be allowed in the review petition.

The Commission observes that there is wide variance in the licensee’s estimations of recruitments and this leads to considerable differences in the allowed cost and actual cost. Therefore the Commission finds no justified reason to amend its order in haste on the basis of revised estimates submitted by the licensee. Rather it decides to wait for the precise audited figures for FY 2009-10 to allow any revised costs to be collected by the licensee.

b. **Arrears of salary:**

The Commission has allowed an amount of Rs. 538 millions as against the petitioner proposal of Rs. 1301.21 million towards arrear of salary for the FY 2008-09 on account of revision of pay due to implementation of the recommendation of sixth pay commission by passing the following order:

“The licensee has proposed that they expect to incur an additional expenditure of Rs. 1301.21 million on account of revision of pay due to implementation of the 6th pay commission. On the basis of filings submitted by the licensee, the Commission estimates that an additional burden of Rs. 538 millions will fall upon the licensee. As the actual cost will be known only when the exact calculation are done, the Commission allows Rs. 538 millions as

expenditure on this account on estimated basis as. The expenditure allowed on this account shall be adjusted as and when actual data is available”.

The licensee has submitted that the Commission, by restricting the amount of arrears to Rs. 538 million as against Rs. 1141 for FY 2008-09 has imposed a financial burden on the licensee.

In this context it is clarified that the amount of Rs. 538 million was allowed to take care of the impact of VIth Pay Commission Report. As per submission of the licensee, the actual cost on this account is only Rs. 417.39 million. Therefore no review is required to be done on this account. It is to be noted that the truing up of accounts for FY 2008-09 was not taken up in the Tariff order dated 8.5.2009 in the absence of audited accounts for FY 2008-09. Now the same will form part of the ARR order of 2010-11 as was done in the previous year.

c. Return on Equity:

The licensee has submitted that the paid up equity capital in respect of Transmission business was Rs. 7776.16 million and for SLDC was Rs. 56 millions at the beginning of the of 2009-10 and claimed return on equity @ 14% for the above two businesses amounting of Rs.1088.66 millions and 7.85 million respectively on the plea that the CERC as well as HERC regulations provide for the same along with tax thereon.

The Commission has examined issue at length. In the context the licensee is advised to refer to our order for FY 2006-07 in which it was specifically mentioned that RoE should be used to improve the financial health of the licensee. The licensee had proposed that due to better financial position, it would be able to access loans at cheaper rates as well fund part of its own capital. This principle was reiterated in our order for 2009-10 as well while

dealing with the issue of RoE. Commission also was mindful of the fact that ROE will only add to the financial burden of the distribution companies which are already carrying huge financial losses. Additionally, all the power utilities are owned by the State Govt. and the equity portion of the capital expenditure is funded by the Government through their annual plan expenditure.

As stated by the petitioner in its application, it is an admitted fact that Regulation 16(1) of Regulation No. HERC/21/2008 notified on 19.12.2008 in respect of Terms and Conditions for Determination of Wheeling Tariff and Distribution & Retail supply Tariff provide "Return on Equity shall be computed on the equity base determined in accordance with Regulation 13 @ 14% per annum or more as considered by the Commission". Also, the Hon'ble Appellate Tribunal for Electricity in its order on case no. 33 and 74 of 2005 had upheld the legitimacy of some sort of return on equity to ensure certain return to the owners.

The Commission after examining the record now put up before it feels that return on equity cannot be justifiably denied to the petitioner. Moreover, as per precedent, Return on Equity was considered favorably by the Commission in its earlier orders in FY 2007-08 and FY 2008-09. Hence despite comfortable financial position of the licensee, the Commission allows return on equity for FY 2009-10 amounting to Rs. 777.61 millions for transmission business and Rs. 5.61 millions for SLDC business @ 10% as per past practice on paid up share capital at the beginning of the FY 2009-10. The above decision of the Commission is based on the holistic assessment of the power sector in Haryana including the financial crunch faced by the distribution licensees. Hence justifiably, 14% return on equity as prayed by the petitioner has not been fully accepted.

d. Payment of Income Tax:

The licensee has calculated the tax liability of Rs. 321.69 million as follows

1. On return on equity
2. On Advance against depreciation
3. Debt redemption obligation
4. Recovery of arrears.

Since the request of the licensee on the subject of ROE has been partly accepted by the Commission, the Commission allows the consequential recovery of Income tax thereon amounting to Rs. 88.74 million @ 11.33%.

Except for return on equity, no other amount is eligible for income tax. Commission is not aware of any law, or any statute, under which these recoveries are allowed inclusive of income tax. The licensee has also not quoted any such law which will enable the recovery of income tax. The Licensee is advised not to propose such claim without properly supporting the same with relevant law / regulation etc. The Commission would appreciate if the licensee could provide copies of the Act, Rule etc. under which the income tax has been claimed for AAD, Debt redemption obligation and arrears. Regarding tax on RoE the Commission observes that if the RoE is treated as an income by the licensee in its books of accounts then such income need to be set off against the accumulated losses. In such a case there shall be no tax liability on RoE. Therefore, tax liability including any other statutory levies, if any, shall be allowed by the Commission only on actual basis against documentary evidence of the amounts having been paid in the ensuing ARR.

On the recovery of Rs. 1.05 million income tax on SLDC business, the licensee may refer to page 226 of ARR application filing for SLDC business for FY 2009-10 wherein no income tax paid has been shown for FY 2007-08 which are stated to be based on actual expenditure by HVPNL. If the application for ARR itself does not mention any expenditure

on this amount, the licensee cannot expect the Commission to consider the same suo moto and return back the amount.

e. **Interest on working capital:**

The petitioner has prayed for additional interest on working capital amounting to Rs. 109.11 millions by allowing the two month ARR as working capital instead of one month ARR. On this, the Discoms have submitted that the working capital be allowed on the basis of current assets minus current liabilities.

HVPNL, in its appeal has argued that its financial position has not improved and that the profits as shown in its audited accounts are before taking into account the accumulated losses. It has also stated that the profits in the audited accounts are mainly due to the additional recovery ordered by the Commission vide its order dated 5.12.2006 on the Review Petition.

The Commission perused the audited accounts of HVPNL and observes that the licensee has not shown revenue on account of additional recovery ordered by the Commission relating to the review orders separately. The licensee has, in its review application, also stated that it has accumulated losses of Rs.825 million as on 31.3.2008. However as against these losses, Commission has already ordered recoveries amounting to Rs 2430 million (Rs. 3630 million less Rs. 1200 million recovered in FY 2007-08). Therefore, the past losses appearing in the accounts of HVPNL stand wiped off. In the light of above the Commission is of the considered view that the financial position of the licensee has improved. Additionally, the licensee is recovering interest on transmission charges remaining unpaid after one month of billing. Thus in case working capital is allowed for more than one month the consumers shall be doubly burdened once by way of interest on additional one month of working charges and then again on

interest paid on delayed payment by the distribution companies. Consequently, the Commission rejects the review sought on this issue.

f. Appropriation of SLDC application fee:

The licensee has requested that SLDC charges from short Term Open Access Customers may be allowed to be retained by it in view of recommendations of the Report of the “ Girish Pradhan Committee”.

The Commission has closely examined the submission of the licensee and observes that their plea cannot be accepted in view of the fact that entire cost of SLDC business is allowed to be recovered from the distribution licensees in 50:50 ratio. The recovery of charges from short term open access consumers is over and above the total expenditure including return on equity of the licensee for operating SLDC. Therefore, the Commission has rightly allowed 75% of SLDC charges recovered from the short term open access consumers to be set off against the amount payable by the distribution licensees and feels that there is no need to revisit the same. Also, the Girish Pradhan Committee report is under consideration by the State Government and no final decision has been taken as yet.

G. Truing up of ARR and tariff order of FY 2008-09 based on the audited accounts.

i) The petitioner has prayed that they may be allowed the differential amount of arrears of Rs. 603 millions (difference between the revised additional employee cost of Rs. 1141 millions less additional employee cost of Rs. 538 millions already allowed by Commission) for the FY 2008-09.

The Commission has considered the argument of the licensee. The Commission is of the opinion that the ARR is allowed on a best estimate basis and it will definitely differ from the expenditure as per audited accounts. However, this is a standard feature of the ARR and not a matter of review as per regulation. This is a truing up exercise and forms part of each subsequent

ARR order as was done in the ARR order for FY 2009-10 when the truing up for FY 2007-08 was done on the basis of the available audited accounts. Therefore the Commission declines to take up the truing up exercise on a piecemeal basis and orders that the same shall form part of the ARR order for the subsequent year.

ii) Review Petition filed by UHBVNL and DHBVNL:

Although separate review petitions have been filed by UHBVNL vide memo no. Ch-06/GM/RA/N/F-25/Vol XXIV dt 24.6.2009 and DHBVNL vide memo no. Ch-4/SE/RA-351 dt 24.6.2009 on the Transmission ARR and tariff order dated 18h May, 2009, yet the issues raised in their petitions are the same. Therefore, the Commission has taken up the petitions of the distribution licensees together. The issues raised relate to actuarial valuation, interest on investments of pension fund, pension liability of retired employees, debt redemption obligation of provident / pension funds, adjustment of sale of assets of pension fund etc.

The Commission has examined these issues in its earlier orders and directed the licensees to have uniformity in valuation process. The Commission notes with concern that despite directives issued by the Commission such important issues remain unresolved for years. The Commission, therefore, directs HVPNL, UHBVNL and DHBVNL to make a presentation before the Commission, bringing the facts of the case and issues involved along with documentary evidence. A separate order will be passed by the Commission after considering the presentation as and when done.

iii) Actuarial valuation:

The Discoms have requested the Commission to appoint an Actuarial for all the licensees and resolve the issue relating to actuarial valuation method. The Commission has already considered the matter and vide its order dated

18.5.2009 and had directed that “it would be in fitness of things to have uniformity in the valuation process and the discounting rate”. The Commission considers this as sufficient and does not intend to revisit the issue.

IV Interest not accounted for:-

The Discoms have requested that the interest on investments made by the pension fund be utilized while working out incremental liability. HVPNL has submitted that if the credit of interest is given to the Discoms then the pensioner liability of HVPNL will increase and will be again be passed on to the Discoms.

The Commission after examining the issue directs that the benefit of interest earned by the investments of the pension fund be clearly brought out in the accounts of the fund and the incremental liability only be passed on to the contributing utilities.

V. Pension Liability for retired employees:

The Distribution licensees in their review petition have not brought forward any new point which requires additional consideration by the Commission. Hence no review order is required on this.

VI Debt redemption obligation of Provident and Pension Fund:

The orders on the subject were quite exhaustive in the ARR order for FY 2009-10. Since no new point has been raised now, no further examination of the issues is needed at this point.

VII Adjustment of sale of assets of Pension Fund:

The Commission in its order dated 18.5.2009 has already ordered that the amounts earned by way of sale of assets or utilization of assets for other

business be used for balancing the deficit arising out of pension fund. No further order is required on the issue.

VIII Payment terms:

The Commission in its order dated 18.5.2009 has defined payment terms which are in contravention of the payment terms notified on 3.7.2008. In this regard the Commission has been informed that a clarification has already been issued.

IX Working Capital and Interest thereon:

The Commission in its order dated 18.5.2009 has allowed interest on working capital at SBI PLR of 12% whereas the actual cost of borrowings is only 9.5% -10%. The Discoms have requested that the interest be allowed on actual rate of HVPNL.

As the Commission has allowed working capital borrowings on normative basis, the rate of interest is also allowed on normative basis. Therefore no review is warranted on this issue.

X Advance against depreciation:

The commission in its order dated 18.5.2009 has allowed Rs.487.98 million as advance against depreciation to HVPNL under Regulation 56(ii) of CERC Regulation 2004. The Discoms have stated that this Regulation has been replaced by Regulation on terms and conditions of Tariff for the period 2009-14 wherein CERC has not considered advance against depreciation.

The Commission has considered the pleas of the licensees and is of the opinion that the even though the CERC regulation currently do not provide for advance against depreciation, the same has been allowed keeping in view the gap between the depreciation and the repayment requirements. In the

cost plus regime, the gap between these amounts shall have to be met and additional amount has been considered as legitimate cost. However, looking at the tax implication of the AAD, the Commission may have to consider some other alternative in the ARR in future. No review is therefore required on this issue at this stage.

XI Transmission charges:

UHBVNL has further raised the issue of allowing Transmission charges to be recovered on per unit basis and not transformation capacity basis as allowed in the order. They have claimed that the transformation capacity by UHBVNL has been created to cater to the seasonal demand of agriculture and is not used all the year. This adversely burdens the consumers of UHBVNL.

The Commission has explained the rationale behind the tariff design in great detail in its order dated 18.5.2009. The design is based on the nature of cost of transmission charge which is a direct result of capacity creation and maintenance of that capacity at designated availability. The Commission feels that its order is based on reason and does not call for any review at this stage.

The total impact of the review order is as below:

S.No	particulars	Amount Rs. Million
1	Return on equity for transmission business	777.61
2	Return on equity for SLDC business	5.61
3	Income tax on ROE	88.74
	Total	871.96

As the ARR and Tariff order of the Transmission and SLDC business for FY 2010-11 is due shortly, the Commission orders that the amount be added to the total ARR for FY 2010-11 for transmission business. Consequently, no separate order for recovery is made.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 19th February, 2010.

Date: February 19, 2010.

Place: Panchkula.

Rohtash Dahiya
(Member)

T.S. Tewatia
(Member)

Bhaskar Chatterjee
(Chairman)