

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

Date of Hearing: 17/03/2010

Date of Order: 25 -03 -2010

In the matter of

1. M/s JSL Limited, O.P. JIndal Marg, Hisar (Case No. HERC/PRO – 6 of 2010)
– Petitioner.

2. M/s Star Wire (India) Limited with their registered office at 35, Link Road, Lajpat Nagar Part III, New Delhi–110024.
- Petitioner.

3. Dakshin Haryana Vidyut Vitran Nigam (DHBVNL), Vidyut Sadan, Vidyut Nagar, Hisar – 125005 -
Respondent.

And in the matter of:-

- Power Factor (PF) rebate on Fuel Surcharge.
- Sales circular no. 3/2006 issued by the respondent i.e. DHBVNL.

PRESENT:	Shri Bhaskar Chatterjee, Chairman
	Shri Rohtash Dahiya, Member
On behalf of JSL Limited	Shri R.K. Jain Shri R.P. Jindal Shri O.P. Aggarwal
On behalf of Star Wire (India) Limited	Shri D.K. Gangwar
On behalf of HPPC / DHBVNL	Shri A.K. Viridi SE/HPPC Shri S.K. Sachdeva, CE/Coml./DHBVNL

ORDER

M/s JSL Limited has submitted that they are large industrial consumers of the respondent i.e. DHBVNL and as per the power supply agreement signed and executed between the petitioner and the respondent, the petitioner is required to maintain a power factor rebate of 0.9 lagging. In case of the same being less than 0.9 then a penalty @1% of the sale of power (SOP) component of the monthly energy bill is levied for every 1% decrease of power factor upto 0.85 and 2% of SOP on any decrease of power factor thereafter. Conversely in case the power factor maintained by the petitioner is more than 0.9, a rebate @ 0.5% of the SOP is given by the respondent for every 1% increase of power factor.

In December, 2006, DHBVNL levied Fuel Surcharge Adjustment (FSA) @ 0.38 Paise per unit on H.T Industrial Consumer in line with the FSA approved by the Commission. However, while preparing the monthly energy bill for the month of December 2006 the respondent did allow the necessary higher power factor rebate on the SOP but did not allow the same on the FSA component of the energy bill. The issue was taken up with the respondent but the respondent DHBVNL did not heed to the genuine request and threatened to disconnect the electricity supply in case the bill is not deposited. Left with no alternative the petitioner deposited the entire amount mentioned in the bill under protest.

On the above issue the petitioner appearing at serial no. 2 above has submitted that the power factor rebate on energy charges was allowed and made applicable from December 2004 onwards. DHBVNL has given the power factor rebate to the petitioner from December 2004 onwards only on the basic electricity tariff and not on the FSA component. Thus the petitioner has paid Rs. Fifteen Lakhs Twenty One Thousand One Hundred and Ninety Eight (15, 21,198) excess amount due to less power factor rebate allowed to them. Hence the excess amount should be refunded with interest by DHBVNL. In this context they have pointed out that in exercise of the powers conferred on the Commission by the Haryana Electricity Reforms Act, 1997 and the Electricity Act, 2003 the Commission had granted license to DHBVNL to carry on distribution and retail supply business in the southern circles of Haryana. After the enforcement of these Acts the respondent Nigam are bound by the orders and regulations of the Haryana Electricity Regulatory Commission. Further, the respondent Nigam has no right or legal authority to

issue any sales circulars which had financial implications, without prior approval of the Commission.

In addition to the above JSL Limited (the petitioner at serial no. 1) submitted that they in order to mitigate the power supply shortage have installed 6 Captive Power Plants (CPPs – D.G. Sets) in their Industrial Unit located at Hisar in the licensed area of DHBVNL. These CPPs are operating in parallel to the grid of HSEB/DHBVNL on the terms and conditions mentioned in the HSEB Memo No. 32 dated 9/11/1995 on payment of wheeling charges. Thus a bilateral contract signed by both the parties is in force and the same cannot be altered, modified or amended without prior written consent of the petitioner company. In violation of the agreement the respondent Nigam i.e. DHBVNL issued sales instructions no. 3/2006 dated 6/01/2006 which has huge financial impact on the petitioner. Further, the respondent Nigam has issued a letter no. 7548/50 dated 31/12./2009 asking the petitioner company to deposit one time permission for parallel operation as well as a monthly parallel operation charges amounting to Rs. 2.53 Crore. The officers of the respondent company are pressing hard to deposit the amount and are threatening to disconnect the electricity supply to the industrial unit of the petitioner.

Both the petitioner relied on the Supply Code notified by the Commission in August 2004 which defines SOP to include any fuel surcharge allowed to be recovered as well as the Commission's order dated 20/12/2007 in the matter of Smt. Manju Gupta, Chief Electricity Distribution Engineer, Northern Railways, New Delhi with respect to power factor rebate in Railway Traction tariff at Jagadhari sub – station of Northern Railway.

In response to the above submissions of the petitioner(s) the respondent distribution licensee submitted as under:

1. **Power Factor Rebate:** On the issue of power factor rebate DHBVNL, the respondent, vide Memo No. CH-6/SE/RA-332(loose) dated 16/03/2010 submitted that while admitting the petition of the Northern Railways the Commission allowed power factor rebate on the FSA component being a part of SOP from prospective date. Hence the respondent issued sales circular no. D-39/2008 dated 05/11/2008 for allowing power factor rebate on FSA component to all eligible categories of consumers with prospective effect. The same is being granted to all eligible consumers. Allowing rebate from the past period will result

into heavy financial burden on the Nigam which will further deteriorate their financial health. Hence they have prayed that the instructions of Nigam to allow power factor rebate/penalty with prospective effect be acceded to.

2. **Sales Instruction No. 3/2006 dated 6/01/2006:** DHBVNL vide their memo no. CH-3/93/GEN/RA (Coml.) dated 16/03/2010 submitted that on the basis of sales instructions dated 6/01/2006 they started raising demand for parallel operation charges from the petitioner JSL Limited both one time as well as monthly recurring. They levied these charges since due to parallel operation the consumer is sharing the Nigam's system and hence the Nigam is compensating the various harmonics injection, reactive power requirement and voltage droop. They also submitted that such charges are being levied by other states as well. DHBVNL has prayed for post facto approval and requested to regularize these charges as per sales circular already issued by them.

The Commission, in order to have the benefit of the views of the petitioner(s) as well as the respondent, issued notice of hearing to them vide Memo No. 3850-51/HERC/D(Tariff) dated 5/03/2010 and Memo No. HERC/Tariff (E)/ PF Rebate/3943-45 dated 12/03/2010. Hearing was held as per the schedule i.e. on 17th March 2010 in the conference hall of the Commission at Panchkula. The Commission heard at length the arguments of both the petitioner(s) as well as the respondent and also sought several clarifications. Based on the records available including written submission of the petitioner and the respondent's reply thereto as well as oral submissions of the parties during the hearing held on 17th March 2010 the Commission disposes of the petitions(s) filed by M/s JSL Limited and M/s Star Wire (India) Limited as under:-

1. The Consumption charges is clearly defined in the relevant regulations of the Commission i.e. HERC Regulation No. 5/2004 namely Electricity Supply Code dated 10th August 2004 - **“Consumption charges means the consumption of electrical energy in kWh multiplied by appropriate tariff and also includes demand charges, fixed charges, Fuel Surcharge Adjustment (FSA) and customer charges etc, whichever applicable”**. Thus it is clear from the notification of the Commission that FSA is part of SOP (Sale of Power) and power factor incentives / penalties should be on Energy + Demand + Fuel Charges. The Commission referred to the Schedule of Tariff for Supply of energy to HT Industrial Consumers i.e. the consumer category to which

the petitioner belongs. On the issue of power factor the order provides, “In case the monthly average power factor falls below 90% lagging, the consumer shall have to pay a surcharge of 1% of SOP charges for every 1% decrease in the power factor up to 80% and 2% of SOP charges for every 1% decrease in power factor below 80%. Rebate of 0.5% on SOP will be allowed for every 1% increase in Power Factor above 90%”. Thus, it is evident that penalty / rebate is applicable on SOP (Sale of Power) and hence consumers not maintaining the required power factor pays a penalty while those maintaining better power factor than the required power factor i.e. 0.9 are entitled for rebate. Under the H.T. Industrial and Steel Furnace Power Supply (Annexure 3 – Schedule of Tariff for Supply of energy – HERC Order on Distribution and Retail Supply ARR and Tariff dated 22, December 2000) the note appended to ‘Tariff – Energy Charge’ states that “For this purpose energy charges shall also include fuel surcharge and peak load exemption charges”. Resultantly, it is clear that energy charge for sale of power includes fuel surcharge adjustment as well.

Further, HERC Regulation No. 5/2004 on ‘Electricity Supply Code’ dated 10th August, 2004 defines consumption charges as, “consumption of electrical energy in kWh multiplied by appropriate tariff rates and also includes demand charges, fixed charges, Fuel Surcharge Adjustment (FSA) and customer charges etc. whichever applicable”. It is clear from the definition that FSA is a part of SOP.

The Commission has closely examined the issue and agreed with the petitioner that power factor rebate is admissible on FSA component as well. It is an admitted fact that at present the rebate is extended to the petitioner on FSA. However, with regard to the date of implementation there appears to be difference of opinion between the licensee and the petitioner. It seems the licensee is insisting for recovery from the date of issue of its circular dated 5.11.2008 with prospective effect as the principle of prospective effect was agreed to by the Commission in its order dated 20.12.2007 and the petitioner’s insistence that since FSA etc. is included in the consumption charges and clearly defined in Electricity Code dated 10.8.2004 of HERC, the effect should be given from much earlier date. Having kept the view point of both the parties, the Commission feels that in the facts and circumstances of the case it would be appropriate to stick to the date when the Commission has passed its order in a dispute relating to Northern Railways with prospective effect. **Hence, the Commission directs the licensee to give power factor rebate on FSA to the petitioner and all other consumer with effect**

from 20.12.2007. However, keeping in view the fragile financial condition of the licensee it is ordered that the due amount which becomes refundable relating to the period between the Commission's order dated 20.12.2007 and the licensee's Sale Circular dated 5.11.2008 may not be refunded back to the petitioner at present. The same may be calculated and adjusted in the running bills of the petitioner in equated installments spreading over next twelve months.

2. The Commission has also examined the issue of parallel operation charges and in principle agrees with DHBVNL that it is a legitimate charge and is in vogue in several other Indian States. However, the fact remains that as per the Haryana Electricity Reforms Act (a saved Act) as well as the Electricity Act, 2003 distribution of electricity is a licensed business and a licensee can collect only the tariff and charges (including miscellaneous and general charges) that are approved by the appropriate Commission (in the instant case the Haryana Electricity Regulatory Commission). Section 64(6) of the Electricity Act, 2003 clearly provides that, **“if any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee”**.

In the light of the above mentioned statutory position and the fact that the Commission has not, so far, determined any one time or monthly parallel operation charges that could be levied / collected by the licensee(s), the instruction no. 3/2006 dated 6/01/2006 issued by DHBVNL with respect to parallel operation charges is declared null and void. DHBVNL & UHBVNL are therefore directed to withdraw the sales circular no. 3/2006 dated 6/01/2006 with immediate effect and report compliance to the Commission within a week's time.

The Commission has considered DHBVNL's submission i.e. be granted post facto approval and request to regularize these charges as per sales circular dated 6/01/2006 including their contention that due to parallel operation the consumer is sharing the Nigam's system and the Nigam is compensating the various harmonics injection, reactive power requirement and voltage drop. The Commission is of the considered view that on more than one occasion the Commission has directed both DHBVNL and

UHBVNL to comprehensively revise the schedule of General and Miscellaneous charges in vogue for more than a decade now and submit the same for approval of the Commission. However, the distribution licensees have not done so despite the fact that their own interest is involved. **Consequently, the Commission decides that all such (new) charges including parallel operation charges should be submitted to the Commission with due justification within one month from the date of this order. On receipt of a formal petition along with supporting details the Commission shall hear the stakeholders and consider the submissions of the distribution licensee(s). However, any collections made on account of parallel operation charges prior to the instant order may not be refunded. The Commission will separately pass order on the amount, if collected, by the licensee(s) on this account.**

DHBVNL & UHBVNL are advised to desist from collecting any tariff or charges that have not been approved by the Commission and directs **not to issue any circular which has financial implications without prior approval of the Commission.**

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 25th March 2010.

Date: 25/03/2010

Place: Panchkula

Rohtash Dahiya
(Member)

Bhaskar Chatterjee
(Chairman)