

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134113, HARYANA**

Date of Hearing: 27.8.2010

Date of Order: 3.09.2010

**IN THE MATTER OF: Application of Bulk Non Domestic Tariff by DHBVNL on
Domestic & Residential Complexes.**

Parties:

1. Beverly Park Condominium, Gurgaon & Others.

Petitioner/Applicant

2. M/s Dakshin Haryana Bijli Vitran Nigam Ltd - Respondent

Present:

1. Shri Bhaskar Chatterjee

Chairman

2. Shri Rohtash Dahiya

Member

ORDER

Brief Background of the Case:

The Commission, on a review petition filed by the distribution licensees in Haryana i.e. Uttar Haryana Bijli Vitran Nigam (UHBVNL) and Dakshin Haryana Bijli Vitran Nigam (DHBVNL), against the order dated 26th July 2006 in respect of introduction of separate schedule of tariff for bulk domestic supply consumers passed an order dated 13/10/2006. The Commission in its review order observed as under:-

“In view of the presentation made by the licensees during the course of the hearing on 21/09/2006 that the proposal is revenue neutral and hence no additional cross-subsidy will be required, the Commission accepts the review plea and allows introduction of Bulk Domestic Supply Category to be billed @ 3.50/Unit”

The above tariff was subject to the following conditions:-

1. The colony / Group Housing Society should have minimum 70 KW load.

2. The connected load of residential and domestic use should be at least 85% of the total connected load. The balance 15% shall be for common facilities and no industrial activity will be permitted.
3. The colony / Group Housing Society shall be bounded by boundary wall or fence and should have only secured entry points for ingress and egress.
4. A single point electricity connection shall be provided at the H.T. (11 kV) level (or higher) and further distribution within shall be owned and managed by the Colony / Group Housing Society.

The Commission while passing the above order for introduction of a separate class of consumers i.e. those residing in multistoried apartments and sharing common services, observed as under:-

“it would encourage eligible consumers to avail bulk domestic supply and hence savings in metering, billing & collection expenditure. The amended tariff shall be applicable with immediate effect”.

Representation of Consumers / Consumer Association:

The petitioners aggrieved by the provision of clause – 2 of sales Instructions 62/2006 issued by DHBVNL (the respondent) vide which the respondent raised demand for electricity dues in alleged violation of the bulk domestic tariff decided by HERC approached the Commission with following submissions:-

1. HERC vide its order dated 13/10/2006 allowed creation of a new category of consumer namely bulk domestic at an effective tariff rate of 3.50/unit applicable for colony / group housing society having minimum 70 KW load and a single point connection at 11 KV. Despite the fact that the consumption is strictly for the domestic category of consumers and is being used towards providing common facilities to the residents, DHBVNL is insisting that the charges as applicable to non – domestic users shall be applied for the reason that the common area load has exceeded the 15% of the connected load. This goes directly against the initial conduct of DHBVNL when after survey had allowed the applicants the new bulk domestic supply rate in accordance with the Commission’s order. It was further submitted that the staff of the respondent Nigam carried out surveys in the

intervening years and verified the terms and conditions mentioned in the aforesaid circular. There was no complaint of electricity being diverted or being put to such use as would be out of the purview of the sale circular. Despite this the respondent Nigam issued notice in July 2010 instructing the petitioner(s) to deposit huge amounts as arrears for the last three years on account of difference in rates i.e. bulk domestic and bulk non – domestic.

2. In the light of the position brought out above the petitioners submitted that the spirit of the HERC order dated 13/10/2006 was to provide benefit to the multistoried housing complex that have availed bulk supply connection at 11 KV and further distribution of electricity up to the apartment is also their responsibility. This leads to cost savings for DHBVNL as they in such cases are not required to operate and maintain the system, bear cost of energy losses beyond the single point supply or spend on metering and billing. Further neither the Commission's order nor the circular issued by the Nigam defines what would constitute 15% common service load which has led to the instant dispute.
3. It was further stated that as per statutory requirements the high rise apartments are required to install lifts as well as fire fighting equipments and water supply pumps. Hence all such load has to be accounted for as residential / domestic load and not as part of common area load. Additionally, basements parking light load, pump houses, ventilation and sump pumps etc. are also essential for residential purposes and hence ought to be classified as domestic usage. If these are considered as common area load then no high rise apartment will be able to take advantage of the Commission's order introducing a separate category of bulk domestic supply tariff. In support of their arguments the order dated 8th July 2010 of Kerala State Electricity Regulatory Commission was cited which is reproduced below:

"It is clarified that if a commercial consumer does not use common facilities in a multistoried building and if the common facilities are used exclusively by domestic consumers only domestic tariff shall be applicable for common facilities irrespective of the percentage of connected load of the consumers other than domestic".

In the light of the above it has been prayed that the demand of the Nigam be set aside, the condition of 15% common area connected load be removed as long as it is being used for residential purpose and treat all electrical loads of lifts, fire fighting and water supply equipments etc. as domestic load and not a part of non – domestic load of common area. Domestic bulk supply rate of Rs. 3.50/unit to the societies may be restored with retrospective effect and DHBVNL may be directed to withdraw the demand raised by them including the arrears.

DHBVNL's Reply:

1. The respondent i.e. DHBVNL vide memo no. 94/SE/RA-282/V dated 26/08/2010 submitted Para-wise reply to the issues raised by the petitioner(s). A brief summary of their written submissions is reproduced below:-

The petitioners submission for exempting high capacity fire pumps and lifts etc. while calculating total connected load for 'common facilities' on grounds of dead – weight load is not appropriate as in practice all such loads are generally included while calculating total connected load. On the issue of alleged inadequacy and arbitrariness of 15% connected load for common facilities DHBVNL submitted that it is beyond Nigam's purview and the matter should be taken up with the Commission. The Nigam vide its sales circular 62/2006 dated 4/11/2006 has only implemented the Commission's order. More so if the petitioner(s) felt that limitation of 15% was without any rationale then they should have taken up the matter with the Commission when the order was issued on 13/10/2006 or with the Nigam when in accordance with the Commission's order sales circular dated 4/11/2006 was issued.

Public Hearing:

The Commission, in order to have the benefit of the views on the difficulties faced by the electricity consumers of multistoried apartments, decided to hold a hearing before taking a decision in the matter. As almost all the petitioners were from Gurgaon and the surrounding areas the Commission decided to hold the hearing

at Gurgaon. Accordingly a hearing was held on 27/08/2010 at 11.30 A.M. in the Mini Secretariat Gurgaon. The hearing was attended by large number of consumers / representatives of consumers' association and residents' welfare association as well as the officers of the distribution licensee of the area.

The Ld. Counsel(s) Shri Manoj Bhardwaj and Shri Rohit Khanna appearing on behalf of the petitioner(s) reiterated the statutory requirements including the National Building Code which makes it mandatory for high rise apartments to install lifts, high pressure water pumps and fire fighting infrastructure or be liable for cancellation of license or pay penalty for violations. Consequently, for obeying law of the land the petitioner(s) cannot be penalized simply because after including the connected load of the mandatory requirements the threshold limit of 15% for common facility supply is exceeded. By doing so DHBVNL has defeated the very objective of HERC order dated 13/10/2006 providing benefit to the bulk domestic supply consumers.

On the issue of why the petitioner did not object to the pre – conditions set out by the Commission in their order introducing a separate bulk domestic tariff in 2006, the Ld. Counsel submitted that DHBVNL has now raised the bill claiming arrears on account of difference in tariff i.e. bulk domestic supply @ 3.50/Unit and Non Domestic Supply @ Rs. 4.09/Unit in case of the societies for alleged violation of 15% of connected load for common facilities. Hence cause of action has arisen now and therefore the matter has been brought before the Commission. They further submitted that the nature of consumption has not undergone any change i.e. power is not diverted towards industrial or commercial usage. Consequently, levying any other tariff instead of bulk domestic tariff is unjustified and illegitimate.

In response to the above the Managing Director of DHBVNL submitted in the hearing that they have implemented the Commission's order dated 13/10/2010 in letter and spirit. It is but natural that in case the common area load of 15% as set out in the said order is exceeded the consumer would fall in a separate category other than bulk domestic and hence the tariff as determined by the Commission

for that category i.e. NDS becomes applicable. As such there is no illegality in the demand raised by the Nigam.

Commission's Order:

The Commission has considered the written submissions of the parties as well as the oral submission made by Ld. Counsel Bhardwaj & Shri Khanna, appearing on behalf of the petitioners as well as the reply of the Managing Director & other technical officers of the respondent power utility/

The Commission has examined at length the availability clause for the Bulk Domestic Supply category as well as the Domestic Supply category of consumers. It is a fact that each bulk domestic supply consumer is part of a larger complex and therefore has within its complex a varying mix of load, which besides domestic load for light, fan, household appliances etc. also includes lift, water pumps and fire fighting equipments besides other common facilities. The very purpose of introducing Bulk Domestic Supply category was that the Commission was convinced that such a category is advantageous to both the parties i.e. the power distribution company as well as the consumers. The former saves in terms of operational & maintenance cost including metering and billing while the latter gets the benefit of preferential tariff as they impose comparatively low cost on the distribution system of the Utility. Thus given the win – win situation for both the parties it is clearly a need to encourage residents of multistoried apartments to opt for single point bulk domestic supply despite the fact that they have legal rights to demand individual domestic connection.

It is observed from the schedule of DS tariff as per Commission's order dated 22/12/2000 that the same is available to consumers "**for lights, fans, domestic pumping sets and household appliances**". The order of the Commission on Bulk Domestic Supply Tariff dated 13/10/2006 did not go into the details of what would comprise of domestic usage and common area supply except for the fact that it mentioned, "**the connected load of residential and domestic use should be at least 85% of the total connected load. The balance 15% shall be for common facilities and no industrial activity will be permitted**".

As there are large number of multistoried apartments having a single point bulk domestic supply it is not possible for the Commission to examine the load profile of each such consumer, which given the size of the area and the manner in which it was developed, would be fairly diverse. Nevertheless the Commission is of considered view after examining the record of the case and hearing all the stakeholders and after going through the relevant instructions, rules, statutes/Codes on the subject that the multi-storied including group housing buildings for which a concessional domestic tariff has been extended from a single point connection, needs a close examination. The Commission feels that since such high rise buildings are of recent development in the process of rapid urbanization of the state specially in NCR and other big towns like Panchkula etc., their domestic needs were not fully taken care by the Commission's order on domestic tariff dated 22.12.2000. The Commission agrees with the views of the petitioners that statutorily under different laws/National Building Codes they have to compulsorily maintain services like lift, pumps, fire-fighting etc. to make the high rise building complex functional for residential use and the absence of which would render the complex unfit for housing and hazardous for the people living therein. **Consequently it is ordered that connected loads of lift, fire-fighting equipment and water supply pumps would henceforth be included as part of domestic use within the permissible 85% of the total connected load as mentioned in the Commission's order dated 13.10.2006.** The Commission feels that it would bring more clarity in the definition of domestic use

and make it workable in practice. This order would be implemented with prospective effect only i.e. from the date of issue of this order.

The Commission is not passing any order on the issue of arrears claimed by the Nigam as the status may vary from consumer to consumer. In such an eventuality the consumer(s) may approach the Consumer Grievances Redressal Forum (CGRF) set up by the distribution licensee in their respective licensed area for redressal of individual grievances..

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on September 3, 2010.

Date: 3/ 09 / 2010
Place: Panchkula.

Rohtash Dahiya

Member

Bhaskar Chatterjee

Chairman