

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

CASE NO. HERC/RA-09 of 2011

DATE OF HEARING : 18/10/2011

DATE OF ORDER : 03/11/2011

IN THE MATTER OF:

Dakshin Haryana Bijli Vitran Nigam Limited, Vidyut Nagar, Hissar

.....Petitioner

Petition filed by DHBVNL under clause no. 78 (2) of Chapter VI of HERC (Conduct of Business) Regulations, 2004 seeking review of the order dated 27th May, 2011 passed by the Commission in the matter of the Hon'ble Appellate Tribunal for Electricity judgment dated 1st March, 2011 in appeal no. 16 & 117 of 2010 filed by the biomass based renewable power developers and UHBVNL against the Commission's order dated 6th November, 2009 determining the tariff for sale of electricity to the distribution licensees in Haryana.

Present:

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| 1. | Shri Rohtash Dahiya | Chairman |
| 2. | Shri Ram Pal | Member |

On behalf of the Petitioners

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| 1. | Shri Piyush Kumar Arora | Consultant , DHBVNL |
| 2. | Shri S.S. Kentnu | XEN RA/DHBVNL |

On behalf of the Respondents

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| 1. | Shri R.K. Jain | Advisor Power, Star Wire (India) Ltd. |
| 2. | Suneel Dirakarti | Dy. Director, Sri Jyoti Biomass |

ORDER

The petitioner Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), a distribution licensee in the southern electricity distribution circles of Haryana has filed the instant review petition seeking the following specific relief:-

1. Condone delay in filing the review petition.
2. Biomass fuel cost for FY 2011-12 should be considered at Rs. 1906/MT in place of Rs. 2390/MT as per CERC Regulations.
3. Consider the rate of interest on working capital loans as per HERC Regulations i.e. interest rate equivalent to average SBI short term PLR/Base Rate during the previous year instead of CERC Regulations (Para 17 (3) of the Financial Principles.
4. Consider O&M expenses as per HERC regulations i.e. Normative O&M expenses allowed at the commencement of the control period (i.e. FY 2010-11) to be escalated at the rate of 5.72% per annum instead of CERC regulations (Para 39 (2) which provides for Normative O&M expenses at the commencement of the control period (FY 2009-10) to be escalated as the rate of 5.72% per annum.
5. In light of the above the tariff for Biomass based projects may be revised taking into consideration the HERC (Terms and Conditions for determination of tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2010.
6. Consider the tariff determination taking into CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 only for FY 2011-12 and FY 2012-13 in conformity with the fact that the Hon'ble Tribunal's Judgment dated 1st March, 2011 was in reference to the impugned order by the Commission dated 6/11/2009 which was a review order of the Commission's order dated 15th March, 2007.
7. Pass any such order(s) and or direction(s) which the Commission may deem fit and proper in the facts and circumstances of the case.

Public Proceeding:

In order to have the benefit of the views of the stakeholders on the issues raised by the petitioner while seeking review of the Commission's order dated 27/05/2011, the Commission vide Memo No. 2165-69/HERC/Tariff dated 4/10/2011 issued notice of hearing to parties i.e. UHBVNL, DHBVNL, HPGCL, M/s Sri Jyoti Renewable Energy Pvt. Ltd. and M/s Starwire (India) Limited. The hearing was held on 18/10/2011 at 11.30 A.M. in the Court Room of the Commission. The petitioner was represented by Shri Piyush, consultant PWC and XEN/RA DHBVNL. Shri R.K. Jain, Advisor (Power) and Shri Sanapala, Director, presented the case on behalf of the objector i.e. Starwire and Sri Jyoti respectively.

The Commission, before hearing the petitioner on merit, asked the petitioner to explain the inordinate delay in filing the review petition. The petitioner's representative cited administrative reasons and consultation process as the reasons for about 3 months delay in filing the instant petition and prayed that the same may be condoned. This was vehemently objected to by the representatives of Sri Jyoti and Starwire on the plea that the matter is under litigation since the Commission passed the original order dated 15th May, 2007 and since then due to tariff uncertainty no Biomass based renewable energy generation project has, so far, come up in Haryana. More so, they submitted that the petitioner has failed to explain each day of delay. Hence their general reply seeking condonation of delay may not be accepted.

After hearing the rival contention on the issue of 3 months delay in filing the review petition as against 30 days period from the date of order provided in HERC Regulations, the Commission decided to condone the delay and proceed with hearing the review petition in order to afford a fair chance to the petitioner to argue their case on merit.

The representative of the petitioner reiterated the points submitted by them in their review petition. In conclusion he submitted that as relevant Regulations of the Commission existed the tariff should have been accordingly decided and not as per the CERC Regulations. He further submitted that the order of the Hon'ble Appellate Tribunal was in reference to the appeal filed against the tariff order which was valid till FY 2012-13, hence beyond that the HERC norms should have been considered for determination of tariff for biomass based projects in Haryana where as vide order dated 27/05/2011 the

Commission has determined biomass based generation tariff till 2015-16 which needs to be reviewed.

In response to the submission of the petitioner, Shri R.K. Jain appearing on behalf of M/s Starwire made the following counter submissions:-

On the issue of fuel cost he referred to the Judgment of Hon'ble Appellate Tribunal which is reproduced below:

“we direct the State Commission to re-determine the price of biomass fuel after detailed analysis and considering the regulations of the Central Commission and give a reasoned order in this regard.”

Accordingly after examining the fuel cost at great length including those submitted by HAREDA, Biomass Power Project Developers and the fuel cost considered by different SERCs the Commission observed that the fuel cost ranges between Rs. 2333/MT to Rs. 3000/MT. Hence CERC norms relating to biomass fuel including cost i.e. Rs. 2390/MT was considered reasonable and adopted by the Commission.

On the issue of interest rate on term loan / working capital loan he brought to the notice of the Commission the relevant judgment of the Hon,ble Tribunal dated 1/03/2011 in line with which the impugned order of the Commission dated 27/05/2011 was passed. The relevant portion is reproduced below:-

“....the State Commission to determine the interest rate keeping in view of the Central Commission's Regulations”.

He further submitted that the relevant HERC Regulations relied upon by the petitioner provides for interest rate to be reckoned at average prime lending rate of SBI / Base Rate. The fact is PLR has been discontinued and only Base Rate is relevant and the lending by the Commercial Bank is at a premium to the Base Rate depending on the risk profile of the borrower in this case mostly first generation entrepreneurs whose effective cost of borrowings would be the even higher than what has been allowed by the Commission. Consequently, the CERC Regulations has rightly incorporated the premium of

150 / 100 basis points which was adopted by the Commission in line with the findings of the Hon'ble Appellate.

Arguing on the issue of O&M expenses Shri Jain again relied on the findings of the Hon'ble Appellate Tribunal which is reproduced below:-

“..... the State Commission to determine the O&M and depreciation keeping in view the Central Commission's Regulations”.

In view of the above the Commission determined the O&M expenses while determining biomass based generation tariff in Haryana. Hence it calls for no further review as sought by the petitioner.

Shri Sanapala arguing on behalf of Sri Jyoti Biomass in addition to agreeing with the above submission of Shri R.K. Jain submitted the following additional arguments disputing the review sought by the petitioner.

On the issue of interest rate he submitted that in the last 19 months the interest rates have been revised upwards almost 16 times and the same is currently hovering at around 17 to 18% as per the loans actually tied up by them. Thus he argued that the normative interest rate(s) considered by the Commission in line with CERC norms i.e. 14.5% (for working capital loans) and 11% (project loans) is very much on the lower side which would make attaining financial closure for the projects in the initial stages a difficult task.

Arguing at length on the issue of O&M cost considered by the Commission against which the petitioner has preferred the instant review, he submitted that for FY 2011-12 the Commission has considered a normative O&M cost as per HERC Regulations at Rs. 20.25 lakh / MW along with an escalation of 5.72%. Whereas as per CERC Regulations the base year for which Rs. 20.25 lakh has been provided is FY 2009-10 with an annual escalation of 5.72%. Hence effectively the Commission, as per CERC norms, should have considered Rs. 21.40 lakh / MW for FY 2010-11 and further escalated the same by 5.72% for FY 2011-12.

Commission's Analysis & Order:-

After considering the written and oral submissions of the petitioner as well as the objectors the sole issue framed for our consideration is as under:-

Whether the Commission can adopt CERC Regulations for determination of biomass based energy generation tariff which are at variance with HERC Regulations on the subject.

In order to answer the above question framed by us for our consideration and order we examined the provisions of the Electricity Act, 2003. The relevant provision is reproduced below:-

Section 61. Tariff regulations – The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees.”

It is apparent from the above that so far as Generation and Transmission is concerned the principles and methodologies specified by the Central Commission needs to be considered as the guiding factor.

In order to get further clarity on the above issue we examined para 6.4(3) of the Tariff Policy notified by the Central Government in pursuance to Part II, Section 3 of the Electricity Act, 2003. The relevant provision is reproduced below:-

6.4(3) of the Tariff Policy:

“The Central Commission should lay down guidelines within three months for pricing non – firm power, especially from non – conventional sources,

to be followed in cases where such procurement is not through competitive bidding”.

It is therefore evident from the above that there are statutory provisions which enable the State Commission to adopt CERC norms in such cases.

We have further examined the impugned order dated 27/05/2011 passed by the Commission against which the petitioner has preferred the instant review petition. It is observed from the relevant paragraph that vide the said order the Commission disposed of the petition filed by biomass based power project developers for execution of the Hon'ble Appellate Tribunal's judgment dated 1st March, 2011. Hence as far as this Commission is concerned the remedy of review /appeal was available to the aggrieved parties before the Hon'ble Appellate Tribunal against their order dated 1/03/2011. Since the same was not exercised by any of the parties including the State Commission who was a respondent before the Hon'ble Appellate Tribunal the order dated 1/03/2011 passed by the Hon'ble Appellate Tribunal had reached finality and the same was implemented by the Commission. Thus the Commission holds that there is no statutory bar on the State Commission from adopting the norms specified by the central Commission for determination of generation tariff.

In addition to the above as per HERC (Conduct of Business) Regulations, 2004 an order can be reviewed on discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or order was made. Additionally, the order can be reviewed in case of some mistake or error apparent on the face of record.

The Commission observes that the instant review petition relying solely on the fact that the Commission considered CERC Regulations rather than its own Regulations does not qualify for a review because of the fact that the provisions of HERC Regulations were known to the petitioner as well as the Commission at the time of passing the impugned order dated 27/05/2011.

Thus no new and important matter of evidence was brought before the Commission which may merit review.

In view of the above findings the review petition is disposed of as devoid of merit with the observation that the order of the Commission dated 27/05/2011 needs no further interference.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 3rd November, 2011.

Date: 03/11/2011

Place: Panchkula.

**(Ram Pal)
Member**

**(Rohtash Dahiya)
Chairman**