

HARYANA ELECTRICITY REGULATORY COMMISSION
S.C.O. 180, SECTOR 5, PANCHKULA. HARYANA-134109

CASE NO. HERC/RA – 2 OF 2002

Date of Hearing : 23.05.2002
03.07.2002

Date of Order: 16.07.2002

Petition filed by HVPNL for review under section 10(1)(h) of Haryana Electricity Reform Act, 1997, read with sections 114 & 151 of the Code of Civil Procedure, 1908 seeking review of the order dated 16.02.2002 passed by the Commission in case No. HERC/PRO-6 of 2001 with respect to the application filed by Haryana Vidyut Prasaran Nigam Limited seeking approval of proposal for revision of existing LT industrial connections with load above 50KW upto 70 KW to HT.

PRESENT:-

Shri Ramesh Chandra, Chairman
Shri K. S. Chaube, Member
Lt. Col. (Retd.) Raghbir Singh, Member

On behalf of the HVPNL

Sh. R.K. Jain, Director, HVPNL

On behalf of the UHBVNL

Sh. M.P. Seth, Director, UHBVNL
Sh. S.K. Dewan, Chief Engineer, UHBVNL

On behalf of the DHBVNL

Sh. R. S. Malik, Chief Engineer, DHBVNL
Sh. B.R. Sharma, S.E., DHBVNL

ORDER

1) Haryana Electricity Regulatory Commission (hereinafter referred to as the Commission) in their order of 16th February 2002 in the matter of petition filed by Haryana Vidyut Prasaran Nigam Limited

(hereinafter referred to as HVPNL) in case No. HERC/PRO – 6 of 2001 for approval of proposal for revision of existing L.T. Industrial connections with load above 50 KW upto 70 KW to H.T., had quashed the sales circular No. 8/99 of 27.09.1999, circular No. 9/99 of 12.10.1999, circular No. 12/99 of 10.12.1999, circular No. 8/2000 of 28.02.2000 and circular No. 46/2000 of 05.09.2000 issued by the HVPNL/its subsidiaries on the subject. This meant that Industrial connections with connected load upto 70 KW would continue to be governed under L.T. Industrial tariff as before. The petitioner was also directed to either refund or adjust in the subsequent bill all moneys deposited by affected L.T. Industrial consumers in compliance with the sale circulars quashed by Commission order dated 16th February 2002.

2) HVPNL have filed the present Review Petition under section 10 (l) (h) of Haryana Electricity Reform Act 1997 read with Sections 114 and 151 of the Code of Civil Procedure 1908 seeking review of the order dated 16.02.2002 passed by the Commission in the case No. HERC/PRO-6 of 2001 with respect to the application filed by HVPNL seeking approval of proposal for revision of existing L.T. Industrial connection with load above 50 KW upto 70 KW to H.T..

3) HVPNL states that review of Commission's order dated 16.02.2002 is sought, inter-alia, on the following grounds:-

- A) The said order was passed without considering and/or dealing with some material facts on record and without appreciating the state of the crucial circumstances and facts as submitted by HVPNL.
 - B) That the said order is inconsistent with the scheme and objectives of Haryana Electricity Reform Act 1997.
- 4) Briefly the grounds for review given by the HVPNL are:-
- a) The Commission has observed on page 14 of their order dated 16.02.2002 that though the financial analysis given by the Petitioner was flawed, it indicated that the payback period for the investment would be 23 years and 10 months when the economic life of the distribution system is 25 years. HVPNL submits that while working out the payback period the Commission has considered only the reduction in distribution losses but not the increase in load factor which is likely to increase to 17 or 18 percent after conversion to H.T. If this likely increase in load factor is taken into account the total cost of conversion would be paid back in 47.4 months for UHBVNL and 29 months for DHBVNL.

- b) 11 KV lines can not be directly tapped. The main idea is to avoid direct tapping of lines by L.T. industrial consumers, even bypassing meters.
- c) Consumers expressed during the hearing that by re-categorization of consumers, HVPNL alone stands to gain and should, therefore, make the necessary investment. HVPNL now has proposed that it is willing to meet the expenditure on conversion of L.T. Industrial consumers to H.T. but the consumers still will be required to meet certain additional expenditure/increase in tariff as follows:
 - i. Where separate transformers are already installed, the existing L.T. industrial connections can be converted to H.T. by installing the H.T. metering equipment, the cost of which it will be borne by the Licensee. But the consumers will be billed on L.T. industrial tariff by making adjustment for the transformation losses.
 - ii. For the remaining consumers, the Licensee could meet the entire cost connected with the change of existing L.T. metering to H.T. metering including the cost of its conversion. The metering would only

be changed from L.T. to H.T. but the consumer would have the option either to adopt H.T. tariff and pay for the conversion charges or continue with the L.T. tariff with metering on H.T. plus the transformation losses.

HVPNL maintains that by doing so there should be no grouse from the honest consumers and if it is objected that inter-alia shows the bad intention of the consumer.

- d) Prevention of power theft by controlling the Licensee staff –

HVPNL argues that the consumer tempted by the savings he makes by concealing the actual consumption allures the staff for connivance. In majority of cases such act is done without any active connivance of the staff.

- e) **Advantage of proposed conversion.** These are basically the same as given in the original petition.
- f) HERC order on Distribution & Retail Supply ARR & Tariff – 2000 Annexure –3 - Schedule of Tariff for supply of energy (page-117)

3. L.T. Industrial Power Supply

(ii) Character of Service

AC 50 Cycles, Single-Phase, 230 volts,

AC 50 Cycles, Three-Phase, 400 Volts (for load above 5 KW but upto 20 KW)

AC 50 Cycles, Three-Phase, 11000 volts or higher voltage (above 20 KW)

The aforesaid tariff order of the Commission issued on 22.12.2000 clearly stipulates that the L.T. Industrial Power Supply could either be taken on single phase/three phase L.T.(upto 20 KW) or 11 KV or higher voltage (above 20 KW). Thus, it is very clear that the L.T. industrial loads above 20 KW have to be given power supply at 11 KV or higher voltage. Accordingly, the Licensee is bound to give L.T. industrial supply for loads above 20 KW on 11 KV or higher voltage.

Even by following the above provision of the tariff order of the Commission, all L.T. industrial consumers above 20 kW have to be given power supply on 11 kV and metered on 11kV. We appreciate the view taken by the Commission itself that the loads above 20 kW should preferably be released on 11 kV. The petition filed by

the Licensee was only to seek supply of electricity to L.T. industrial consumers above 50 kW and upto 70 kW on 11 kV, which is already covered under the existing tariff order of the Commission.

By the above argument also, the proposal submitted by the Licensee was very much in line with the policy of the Commission.

g) In paragraph 7 of the Review Petition HVPNL have submitted a revised proposal for the consideration of the Commission.

5) HVPNL have filed a Review Petition in terms of order XLVII of the Civil Procedure Code 1908. Any person considering himself aggrieved by an order from which an appeal is allowed but from which no appeal has been preferred and who from the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not produced by him at the time when the order was made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason desires to obtain a review of the order made against him may apply for a review.

It is also enjoined that no such application shall be granted on the discovery of new matter or evidence which the applicant alleges

was not within his knowledge or could not be adduced by him when the order was passed, without strict proof of such allegation.

6) In order to test the maintainability of the review application filed by HVPNL, we shall examine whether the above criteria/conditions are satisfied in the present case. The grounds and the arguments advanced by the petitioner HVPNL under paragraph (4) above generally fall under the following categories.

- i) Mistake or error apparent on the face of the record. Under this category will fall (a) of paragraph (4) above.
- ii) Discovery of new and important matter which after the exercise of due diligence was not within the knowledge of the petitioner when the order was made. Under this category will fall ((f) mentioned in paragraph (4) above.
- iii) Old arguments advanced in the original petition like prevention of theft of energy by consumers, advantages presumed to accrue to consumers by the proposal, improving H.T. and L.T. ratio of transmission lines etc. Under this category fall (b), (d) and (e) of paragraph (4) above.
- iv) Revision of the proposals made in the original petition which amounts to making fresh proposals. Under this category fall (c) and (g) of paragraph (4) above.

7. We shall now examine the grounds for review put forth by the petitioner:-

- (i) The petitioner contends that by ignoring the likely improvement in load factor of the affected L.T. industrial consumers after conversion to H.T., the Commission order has not arrived at the correct estimate of the payback period. The Commission during the hearing asked Sri R.K. Jain for the reasons why a consumer would start using more power after conversion to H.T. Sri Jain's argument was that because the consumer would not be able to steal power and, therefore, his load factor will improve. Questioned further by the Commission, Sri Jain conceded that in case of honest consumers, the load factor will not increase. It is common knowledge that the load factor of a consumer depends on his consumption pattern and the energy consumed by him and if meters are functioning correctly, mere change from L.T. to H.T. will not make the consumer consume more energy and improve his load factor. The presumption of the petitioner that L.T. industrial consumers with connected load between 50 KW and 70 KW alone are prone to steal power is seriously questionable. The Commission has, therefore, rightly

ignored the presumed improvement in load factor of the affected L.T. consumers while working out the pay-back period of the investment required. This ground for review, therefore, fails.

- (ii) In (f) of paragraph(4), the petitioner has contended that the tariff order of the Commission dated 22.12.2000 clearly stipulates that L.T. industrial supply could either be given on single phase / three phase (upto 20 kW) or 11 kV or higher voltage (above 20 kW). According to the petitioner as per this tariff order, all L.T. industrial consumers above 20 kW have to be given power supply at 11 kV and metered on 11 kV. In the same breath, the petitioner adds that it appreciates the view taken by the commission itself that the load above 20 kW should preferably be released on 11kV. The original petition filed by the Licensee was only to seek supply of electricity to L.T. industrial consumers above 50 kW and upto 70 kW on 11 kV which is already covered under the existing tariff order of the Commission. Thus the proposal submitted by the Licensee in the original petition was very much in line with the policy of the Commission.

We are constrained to observe that arguments and the thinking of the petitioner on this point as disclosed in the Review Petition are thoroughly confused and can not be accepted for the following reasons:-

- a) The petitioner holds that according to the tariff order of 22.12.2000, it was binding on him to supply power to L.T. industrial consumers with loads above 20 kW or above on 11 kV. In the same breath, the petitioner also says that it appreciates the view taken by the Commission that power supply to L.T. industrial consumer above 20 kW should preferably be released on 11 kV or above. These are self contradictory arguments and don't stand scrutiny.
- b) A careful and minute study of schedule of tariff for L.T. industrial power supply in Annexure – 3 of Commission's tariff order of 22.12.2000 on page 117 reveals from "Applicability" that this tariff is inter-alia available to all industrial loads upto 70 kW (Loads above 70 kW are dealt with under the schedule of tariff for H.T. industrial and Steel Furnace power supply). The petitioner is relying on "Character of Service" under schedule of tariff for

L.T. industrial power supply to support his interpretation that all loads above 20 kW have to be on 11 kV or above. We would like to clarify that under the existing tariff the consumer has a right to choose the character of service and the petitioner can not force 11 kV supply on L.T. industrial consumers.

- c) Even if for the sake of argument it is accepted that the petitioner genuinely felt that the tariff order imposed an obligation on him to supply L.T. industrial consumer above 20 kW only on 11 kV or above, the question why he did not immediately after December 2000 convert all L.T. industrial consumers above 20 kW to H.T., elicited a response from Sh. R.K. Jain that they discovered this only now in 2002 after a lapse of one and half years after the issue of the Tariff order and this is a new discovery of fact which after exercise of due diligence was not within the knowledge of the petitioner and could not be produced when the order sought to be reviewed was passed by the Commission. We consider that these arguments and

responses are without any merit and are accordingly dismissed.

- iii) The old arguments advanced in the original petition like prevention of theft of energy by consumers, advantages presumed to accrue to consumers by the proposal, improving the H.T. and L.T. ratio of transmission lines etc. under (b), (d) and (e) of paragraph (4) have been elaborately dealt with in our order on the original petition and need not be repeated here.
 - iv) The petitioner has now submitted a revised proposal. We hold that a Review Petition is not the correct or appropriate vehicle for presenting a **revised proposal**. They have to be submitted separately under appropriate section of the Haryana Electricity Reform Act 1997. In passing we would like to observe that at the time of hearing of the original petition, the Commission had asked the petitioner whether he would like to share the cost of conversion with the consumers. The reply of petitioner was in the negative and he wanted the consumer to pay the cost as per relevant sale circulars issued.
- 8) No case has been made out by the petitioner to show that the order of the Commission dated 16.02.2002 is inconsistent with the

scheme and objectives of Haryana Electricity Reform Act 1997. This plea of the petitioner also fails.

9) In view of our foregoing discussion of the issues raised in the review petition submitted by HVPNL we hold that this Review Petition is not maintainable and **is, therefore, rejected.**

Place: Panchkula
Date: 12.07.2002

(K.S.Chaube)
Member

(Ramesh Chandra)
Chairman

1. In view of the provision of section 9(3) of the Haryana Reform Act, 1997, I express my difference of opinion as under: -

The discovery of new and important matter brought out by the petitioner in the review petition warrants the hearing of petitioners and objectors. These points are:

- (a) As per HERC Order on Distribution & Retail Supply ARR and Tariff December 22, 2000 all LT Industrial Consumers above 20 KW have to be given power supply on 11 KV and metered on 11 KV. Thus there is an apparent contradiction in the Tariff Order above and order No. HERC/PRO-6 of 2001 dated 16.02.2002 against which the petitioner has filed the review petition

- (b) Although the petitioner has agreed that by conversion from LT to HT the consumption of an honest consumer would not change, but if we presume that every consumer is honest then the present level of distribution losses would not be there. Therefore, it has to be accepted that the proposal to convert LT industrial consumers in the range of 50 to 70 KW into HT is a right step to check theft or misuse of electricity. The proposed correction would significantly help in improving the load factor.
- (c) The Commission would definitely like that the Licensee checks an unauthorized abstraction of power and would support any such step taken by the Licensee. The instant proposal of the Licensee is a step in that direction. Therefore, the Commission should support this move.
- (d) The main grievance of the consumers was that the total cost of conversion of LT supply to HT should be born by the Licensee. Now the petitioner has brought before the Commission a revised proposal, which takes care of the objection/grievance of the consumers and the proposal reads as under: -
 - (i) “For existing LT industrial consumers with load more than 50 KW and up 70 KW where independent transformers already exist.

- The total cost of installing HT metering would be borne by the Licensee and the consumer would only provide space for installation of the metering cubical.
 - The consumer who had borne the cost of independent transformer earlier will have the option to be billed on HT tariff provided he is ready to bear the additional expenses involved towards installation of 11 kv cables payable in convenient instalments and the rentals for HT metering equipment. Alternatively, he could continue to be billed on normal LT tariff and the consumption as recorded on HT meter (plus transformation losses at the rate of 3%)
- (ii) For existing LT industrial consumers with load more than 50 KW and up 70 KW where independent transformers have not been installed.
- The total cost of conversion of LT supply to HT including installation of HT metering would be borne by the Licensee and the consumer would only provide space for installation of the metering cubical.
 - The consumer will have the option to be billed on HT tariff provided he is ready to bear the additional expenses involved towards conversion LT supply in to HT supply payable in convenient instalments and the

rentals for HT metering equipment. Alternatively, he could continue to be billed on normal LT tariff and the consumption as recorded on HT meter (plus transformation losses at the rate of 3%).

- (iii) New industrial consumers in the connected load range of above 50 KW and up to 70 KW.
- All new connections in this category would be released on 11 KV.
 - The HT industrial tariff would be applicable to such consumers.”

2. Taking a dispassionate view of revised proposal, HERC order on distribution & Retail Supply ARR and Tariff, December 22, 2000 and in the interest of Licensee and the honest consumers, I am of the opinion that the Review Petition be admitted. The Commission must hear the petitioner and consumers to meet the justice to both the parties. In case my views are not accepted by the Commission being not of the view of majority, the Licensee should bring the fresh petition as suggested in paragraph 6 (iv) above.

(LT. Col. (Retd) Raghbir Singh)
Member

Order

- 1) In terms of section 9(3) of Haryana Electricity Reform Act 1997 majority order of Sh. Ramesh Chandra, Chairman and Sh. K.S. Chaube, Member will be the order of the Commission.
- 2) The review petition filed by HVPNL is not maintainable and is, therefore, rejected.
- 3) This order is signed dated and issued by the Haryana Electricity Regulatory Commission on 16th July 2002.

Place: Panchkula
Date: 16.07.2002

(Lt. Col.(Retd.) Raghbir Singh)
Member

(K.S.Chaube)
Member

(Ramesh Chandra)
Chairman