

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

Case No. HERC/PRO – 36 of 2018

DATE OF HEARING : 14.12.2018
DATE OF ORDER : 14.12.2018

IN THE MATTER OF:

Petition under Section 62(6) and 86(1)(f) of the Electricity Act, 2003 for refund of the excess amount i.e. Rs. 176.22 crores recovered by the HPGCL towards annual fixed charges of RGTPP & DCRTTP for the FY 2013-14 in excess of annual fixed charges it was entitled to recover corresponding to achieved PLF as per Commission Order dated 29.03.2013 by misinterpretation of provisions of HERC MYT Regulations as clarified by the Commission in its Orders dated 31.03.2016 and 29.06.2016 and/or further for issuance of such other appropriate Orders as this court may deem fit and proper in the facts and circumstances of the case and in the interest of justice and fair play.

Petitioner

M/s Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL)

Respondent

Haryana Power Generation Corporation Limited, Panchkula (HPGCL)

Present On behalf of the Petitioner

1. Shri Naveen S. Bhardwaj, Advocate

Present On behalf of the Respondent

1. Shri Rohtas Bansal, Chief Accounts Officer, HPGCL
2. Shri Vijay Jindal, Xen, HPGCL

QUORUM

Shri Jagjeet Singh, Chairman
Shri Pravindra Singh Chauhan, Member

ORDER

1. The case was heard on 14.12.2018 as scheduled.
2. The Petitioner – M/s. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), has filed the Petition under Section 62(6) of the Electricity Act 2003 seeking refund of excess fixed charges amounting to Rs. 176.22 Crores recovered by HPGCL for FY 2013-14

in respect of RGTPP and DCRTPP in violation of 's Order dated 29.03.2013 for generation tariff of HPGCL for FY 2013-14 by misinterpretation of the regulation 30 of the HERC MYT Regulation, based on the similar recovery allowed by the Commission in its Order dated 31.03.2016 for true up of FY 2014-15 and determination of generation tariff for FY 2016-17, wherein the Commission directed the HPGCL to reverse the excess amount of fixed cost of Rs. 64.45 crore in respect of above three generating units recovered in the FY 2014-15 to the Discoms. The relevant part of the Commission's Order dated 31.03.2016 is reproduced below:-

"19 True-up for Recovery of Fixed Cost

The Commission observes that HPGCL has incurred fixed cost of Rs. 1806.74 Crore only during the FY 2014-15 as against the normative fixed cost of Rs. 2044.53 Crore determined by the Commission. Against this, HPGCL has recovered fixed cost amounting to Rs. 2125.31 crore. Thus, the fixed cost actually incurred by HPGCL is less than the approved fixed cost. Further, it is observed that RGTPS Unit-2 was not available during the period from April to June 2014, however, HPGCL has recovered full fixed cost of this boxed-up unit as well. Even on the basis of annualised PLF, on deemed generation basis, HPGCL was allowed to recover Rs. 760.13 Crore only in respect of RGTPS (even after allowing fixed cost recovery for the period in which that unit was not available), whereas, HPGCL has actually recovered Rs. 805.34 Crore. Thus, there is over recovery of fixed cost amounting to Rs. 45.21 Crore in respect of RGTPS. Similarly, there is over recovery of fixed cost amounting to Rs. 19.44 Crore, in respect of DCRTPS also. Consequently, HPGCL's claims for true-up of Fixed Cost of RGTPS and WYC are without any merit and accordingly rejected. Hence, HPGCL is directed to reverse the excess amount of fixed cost of Rs. 64.45 crore in respect of above three generating units recovered in the FY 2014-15 to the Discoms."

3. The Commission observes that the Petitioner has earlier also filed two Petitions on the similar matter. The brief description of the same along with the Order of the Commission, is given as under:-
 - a) Petition No. HERC/PRO-58 of 2017 for review of true up of fixed cost of DCRTPP and RGTPP for the FY 2013-14. The said Petition for review of true up was dismissed by the Commission vide its Order dated 15.03.2018 as having been filed beyond the prescribed limitation period of 45 days.
 - b) Petition No. HERC/RA-2 of 2018 on 17.07.2017 seeking review of the ibid Order of the Commission dated 15.03.2018. The Review Petition was subsequently

withdrawn by UHBVNL and the Commission vide its Order dated 30.10.2018, dismissed the same as withdrawn.

4. The Ld. Advocate for the Petitioner advanced the arguments by asserting that the present petition has been filed under Section 62(6) of the Electricity Act 2003, which is different from the Review Petition filed earlier. Upon the specific query raised by the Commission, he informed that wherever the act is silent about the time period, the provisions of Limitation Act, 1963 shall be squarely applicable, mutatis-mutandis.
5. The Commission observes that it would not be appropriate to reopen the case decided on 29.03.2013. The cause of action can't arise on 31.03.2016 i.e. the date when the Commission passed the Order in which HPGCL was directed to refund the fixed cost for the FY 2014-15. The Commission has not framed new Rules/Regulations vide its Order dated 31.03.2016 giving rise to some actionable claim for the Petitioner, rather by application of the existing Regulations, the ibid Order was passed. Further, the Petition on the similar issue has earlier been upheld by the Commission as Review Petition and disposed off accordingly. The principles of res-judicata will be applicable to the present case, which in substance means that an issue or a point which is decided and which has attained finality should not be allowed to be re-opened and re-agitated twice over.
6. In view of the above discussion, the Petition is dismissed as not maintainable.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 14th December, 2018.

Date: 14.12.2018
Place: Panchkula

(Pravindra Singh Chauhan)
Member

(Jagjeet Singh)
Chairman