

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

Case No. HERC/RA-11 of 2019

Date of Hearing : 28.05.2019

Date of Order : 28.05.2019

In the Matter of

Petition under section 10(1) (h) of Haryana Electricity Reform Act, 1997, section 94 of the Electricity Act, 2003; read with Regulations 78, 79, 80, 85 to 91 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 and its amendments from time to time seeking review and/or modification and/or clarification of the order dated 7th March 2019 passed by the Commission in Case No. HERC/PRO-60 of 2018 with respect to the True up of Aggregate Revenue Requirement (ARR) of Transmission Business & State Load Dispatch Centre (SLDC) for FY 2017-18, Annual (Mid-Year) Performance Review for FY 2018-19 and Determination of Transmission Tariff and SLDC Charges for the FY 2019-20

Petitioner

Haryana Vidyut Prasaran Nigam Limited (HVPNL)

Present On behalf of the Petitioner

1. Shri Ashok Singla, SE
2. Shri Sanjeev Gupta, SE/RA, UHBVN
3. Shri Siddartha Ramakant, Consultant
4. Shri Rajesh Goel, Xen/HVPNL
5. Shri Vinay Upadhyay, AE/HVPNL
6. Shri Amit Vohra, Sr. AO
7. Shri Vinay, Xen

Quorum

**Shri Jagjeet Singh, Chairman
Shri Pravindra Singh Chauhan, Member**

ORDER

Brief Background of the Case

1. The Petitioner has filed the petition against the HERC Order dated 7th March, 2019

submitted for True up of the Aggregate Revenue Requirement (ARR) for Transmission Business & State Load Dispatch Centre (SLDC) for FY 2017-18, Annual (Mid-Year) Performance Review for FY 2018-19 and Determination of Transmission Tariff and SLDC Charges for the FY 2019-20.

2. The petitioner has submitted as under: -

- a) That the Petitioner is the holder of the Haryana Transmission License (License No. 1 of 1999, 1st Amendment dated 11.01.2013).
- b) That in the order dated 7th March 2019 passed by this Commission in the case No. HERC/PRO-60 of 2018, the Commission has not considered some of the points raised by the Petitioner. Therefore, the Petitioner is filing Review Petition and invoking the powers of the Commission under section 10(1)(h) of the Haryana Electricity Reform Act, 1997, section 94 of the Electricity Act, 2003; Regulations 78, 79, 80, 85 to 91 of the HERC (Conduct of Business) Regulations, 2004 and its amendments from time to time ["HERC Regulations"] to review, reconsider, modify and/or clarify certain specific findings and observations of the Tariff Order.
- c) That the Tariff Order was issued on 7th March, 2019 and since the Commission has not pronounced the orders in open court, the ruling in Tariff Order dated 7th March, 2019 was delivered at the office of the Petitioner on 22.03.2019 vide memo no. 4975-78/HERC/Tariff dated 11.03.2019.
- d) That the present Petition is filed with respect to certain specific findings and observations of the Commission in the Tariff Order seeking review, reconsideration, and/or appropriate modifications / clarifications thereof based on the following grounds:
 1. Review of True-Up for FY 2017-18
 - i) Clause 3.1.7 of Tariff Order "Interest and finance charges for FY 2017-18" regarding transferring of amount to the Pension Trust and Interest cost on UDAY Bonds.
 - ii) Clause 3.2 of Tariff Order "Incentives and Penalty: System Availability for FY 2017-18"
 - iii) Clause 3.1.3 of Tariff Order "Terminal Benefits for FY 2017-18" regarding Carrying Cost for true up of FY 2017-18.
 - iv) Clause 3.22.6 of Tariff Order "Interest & Finance Charges" regarding weighted average Interest rate for calculation of interest cost on term loans for FY 2017-18.

- v) Clause 3.5 of Tariff Order “True up for the FY 2015-16 & Carrying Cost” regarding determination of carrying cost on revenue gap of True up for the FY 2015-16

2. Review of ARR for FY 2019-20

- i) Clause 3.22.6 of Tariff Order “Interest & Finance Charges” regarding weighted average Interest rate for calculation of interest cost on term loans for FY 2019-20.
 - ii) Clause 3.22.2 of Tariff Order “Employee Cost” regarding expenses for additional employees for FY 2019-20.
- e) That the Petitioner seeks the review, reconsideration, modification, and/or clarification of the specific findings and observations made in the Tariff Order, which are briefly set out below, along with the relevant grounds for the review/ reconsideration/ modification/ clarification, without prejudice to and independent of each other.

3. **Grounds and Submissions for Review of True-Up for FY 2017-18**

- a) Clause 3.1.7 of Tariff Order “Interest and finance charges for FY 2017-18” regarding transferring of amount to the Pension Trust and Interest cost on UDAY Bonds.

Observations and findings of Commission

The petitioner is aggrieved by the observations and findings of the Commission in the Tariff order dated 7th March 2019 at page number 81, clause 3.1.7 in the True-up for FY 2017-18 which directed the Petitioner to deposit Rs. 228.64 crores with its pension trust to enable it to meet the existing unfunded gap between the present value of DBO/ OLTB (Rs. 4067.77 crores) and the fair value of plan assets (Rs. 3409.60 crores) of the pension trust.

The petitioner has submitted that the Commission has adjusted the other income towards redemption of PF and Pension Bonds in the previous years to be passed on to the beneficiaries of transmission system as shown in the following table:-

(Rs. In Crore)

Sr. No.	Particulars	Amount
FY 2011-12		
1	Profit from sale of land during FY 2008-09	60.6

Sr. No.	Particulars	Amount
2	Profit from generation business 2009-10	19.73
FY 2012-13		
3	Profit from sale of fixed assets	8.26
FY 2013-14		
4	Profit on sale of assets	0.29
5	Liability on DVB written back	139.76
	Total	228.64

The Petitioner submits that the Commission has ignored the important fact that the infusion of funds by the State Govt. as UDAY bonds is just a book transfer but not cash transfer. Also, the basic and only objective of the UDAY Scheme was to improve the financial health of utility and by reducing the interest burden. In fact, the UDAY MOU signed between the Government of India and Government of Haryana and Haryana Distribution Companies (Haryana DISCOMs i.e. UHBVNL & DHBVNL) has mandated for regular tariff increase for bridging the gap between ACS (Average Cost of Supply) and ARR (Average Revenue Recovery) to make the utilities financially sustainable.

The Petitioner also submits that as per the nature of its business, it has to incur expenses on account of Interest on Working Capital Loan. However, the Commission allows expenses on this account only on actual expenses. The actual expenses towards interest on Working Capital incurred by HVPNL are much lower than the Interest on Working Capital on normative basis as per the provisions of MYT.

The Petitioner further submits that the UDAY bonds are short term in nature. This has helped HVPNL in reducing the gap between the actual interest expenses and the normative interest expenses to some extent; though the actual expenses incurred by HVPNL are lower than the normative expenses allowed by the Commission even after the grant under UDAY scheme. The consumers of HVPNL have already enjoyed the benefits of lower tariffs due to actual interest on working capital. Thus, it is difficult for HVPNL to restore these funds for reduction of tariff.

The Petitioner respectfully submits that the UDAY Bonds should be treated as loan for working capital and the interest should be allowed as claimed under IoWC (Interest on Working Capital) to the tune not exceeding normative Interest on working capital as per regulations.

Further, the Petitioner submits that the Govt. of Haryana has provided the assistance under UDAY Scheme is a notional amount. The Petitioner has not

received any assistance in cash, it is just a book entry. The conversion of PF, Pension Bonds in UDAY Bonds by the State Govt. has resulted no effects on the cash flow of the Petitioner as it is merely book entry.

The Petitioner further submits that Commission is not allowing any interest on UDAY Bonds and at the same time asking HVPNL to deposit the other income adjusted towards redemption of PF and Pension Bonds. Further, ROE is also not allowed on this amount. This way the Petitioner is getting adversely affected in both the ways. Further, any assistance provided by the State Govt. is beyond the purview of regulatory framework and if the Petitioner is to deposit Rs. 228.64 Crore with its pension trust this will further aggravate the financial health of the Petitioner and any benefit that was achieved through UDAY scheme would be lost.

The Petitioner most respectfully requests the Commission not to compel HVPNL to deposit Rs. 228.64 crores with its pension trust and also to consider the part of Interest on UDAY bonds as Interest on Working capital.

Net Impact on the true-up for FY 2017-18:-

(Rs. In Million)

Particular	Approved by HERC vide order dt. 07.03.2019	Actual expenses	Proposed by the petitioner for Review	Difference
Interest on Working Capital	239.27	588.97(Including Interest on UDAY Bonds	588.97	349.70

b) Clause 3.2 of Tariff Order “Incentives and Penalty: System Availability for FY 2017-18”

Observations and findings of Commission

The petitioner has submitted that the Penalty amounting Rs. 44.54 Mn was proposed by the petitioner in the ARR petition for FY 2019-20 since the system availability had been lower than the normative availability during FY 2017-18 as shown in the following table: -

Particulars	Formula	Figures
Annual Transmission Charges (Rs. In Million)	ATC	17802.2
Actual Transmission Availability	AA	98.9518%
Normative Transmission Availability	TA	99.20%
	(AA-TA)/TA	-0.002502
Incentives/(Penalties)	ATC*(AA-	(44.54)

Particulars	Formula	Figures
(Rs. In Million)	TA/TA	

Grounds and submissions

The petitioner has computed the Tariff penalty based on the ARR claimed. The Commission at the Table in Paragraph 3.7 has approved total Aggregate Revenue Requirement as Rs.16173.66 Million against the claim of Rs. 17802.22 Million. However, instead of calculating the penalty on revised ARR approved by the Commission for FY 2017-18 at Rs.16173.66 Mn, Commission has approved the same as calculated by the Petitioner. This is an error on the face of records and needs review.

The Petitioner most humbly requests the Commission to allow the Penalty on revised ARR approved as shown in following table: -

Particulars	Formula	Figures
Annual Transmission Charges (Rs. In Million)	ATC	16173.66
Actual Transmission Availability	AA	98.9518%
Normative Transmission Availability	TA	99.20%
	(AA-TA)/TA	-0.002502
Incentives/(Penalties) (Rs. In Million)	ATC*(AA-TA)/TA	(40.47)

Net Impact on True-up for FY 2017-18: - (Rs. In Million)

Particular	Approved by HERC vide order dt. 07.03.2019	Proposed by the Petitioner for Review	Difference
Incentives/ (Penalty)	(44.54)	(40.47)	4.07

c) Clause 3.1.3 of Tariff Order “Terminal Benefits for FY 2017-18” regarding Carrying Cost for true up of FY 2017-18.

Observations and findings of Commission

The petitioner is aggrieved by the observations and findings of the Commission in the Tariff order that the Commission at page number 73 - clause 3.1.3 has ruled that the terminal benefits being uncontrollable expenses, are approved at Rs. 4973.45 million as proposed for FY 2017-18 for the purpose of true up. The Commission further stated in the Tariff Order that as per the audited balance sheet HVPNL has deposited only Rs. 2861.82 million with the pension trust up to 31.3.2018. Accordingly, Commission did not allow any carrying cost on true up gap up to Rs.

2111.63 million (Rs. 4973.45 million less Rs. 2861.82 million).

Grounds and submissions

That the petitioner submitted that HVPNL has paid the entire amount of terminal benefits liability of Rs 4973.45 Million as per the details given below:

(Rs. In Million)

Date	Particulars	Dr.	Cr.
01-04-2017	Opening Balance		422.40
31-03-2018	Terminal Benefit Liability (1/3 rd of total amount of Rs 955.65 Crs. as per actuarial report of 2016-17)	3185.50	
	Terminal Benefit Liability for FY 2017-18	1787.94	
	Pension Payouts		2930.70
	Total	4973.45	3353.10
	Closing Balance	1620.34	
25-06-2018	Amount paid by HVPNL		500.00
10-07-2018	Amount paid by HVPNL		500.00
16-08-2018	Amount paid by HVPNL		250.00
01-09-2018	Amount paid by HVPNL		800.00
	Balance as on 01-09-2018		430.34

The Petitioner most respectfully submits that as per the Para 3.25 of the Tariff Order, Commission has allowed Rs. 608.04 Mn as Revenue Gap for FY 2017-18. However, it is pertinent to note that Commission in the Tariff Order, has ruled that true up cost, once determined and approved by the Commission, is required to be recovered as part of tariff for the year in which the true up is so determined. While doing so Commission has computed the carrying cost on the True-up for FY 2015-16. The petitioner has further submitted that not allowing carrying cost on the Revenue Gap for FY 2017-18 is against the very own principle adopted by the Commission in the Tariff Order dated 7th March 2019. It is pertinent to mention here that APTEL, in its Judgment dated 8th April, 2015 in the matter of Reliance Infrastructure Limited Vs. the Maharashtra Electricity Regulatory Commission & Others (Appeal no. 215 & 211 of 2013) has ruled that the carrying cost should be calculated for the period from the middle of the financial year in which the revenue gap had occurred up to the middle of the financial year in which the recovery has been proposed.

The Petitioner most humbly requests the Commission to recognize the Revenue Gap for FY 2017-18 as per the submissions made with this petition and to allow the carrying cost on Revenue Gap for FY 2017-18 as per the principle set out in the Tariff Order as well as by Hon'ble APTEL in its judgment dated 08.04.2015, as

computed below:-

(Rs. In Million)

Particulars	Oct-17 to Mar-18	Apr-18 to Mar-19	Apr-19 to Sep 19
Revenue Gap	608.04	608.04	608.04
Interest Rate	8.95%	8.70%	9.05%
Interest Amount	27.21	52.90	27.51
Total			107.62

Net Impact on Trueing up of FY 2017-18:

(Rs. In Million)

Particulars	Approved by HERC vide order dt. 07.03.2019	Proposed by petitioner for Review	Difference
Carrying Cost for FY 2017-18	0	107.62	107.62

- d) Clause 3.22.6 of Tariff Order “Interest & Finance Charges” regarding weighted average Interest rate for calculation of interest cost on term loans for FY 2017-18.**

Observations and findings of Commission

The petitioner is aggrieved by the observations and findings of the Commission in the Tariff order that the Commission has computed the weighted average interest rate as 6.70% for FY 2017-18 at page number 122 - clause 3.22.6, as per the Audited Accounts.

Grounds and submissions

The petitioner submitted that no details of such computation is available in the tariff order and requests the Commission to provide the detailed calculations for weighted average interest rate.

- e) Clause 3.5 of Tariff Order “True up for the FY 2015-16 & Carrying Cost” regarding determination of carrying cost on revenue gap of True up for the FY 2015-16**

Observations and findings of Commission

The petitioner is aggrieved by the observations and findings of the Commission in the Tariff order that the Commission at page 90 – clause 3.5 has observed that the true up cost, once determined and approved by the Commission, is required to be recovered as part of tariff for the year in which the true up is so determined. Therefore, the true up for the FY 2015-16 which was allowed to be recovered as part of tariff for the FY 2017-18 is included as such in order to arrive at the true up amount to be recovered either from the consumers or from the licensees.

Grounds and submissions

The Petitioner would like to submit that the Hon'ble APTEL, in its Judgment dated 8th April, 2015 in the matter of Reliance Infrastructure Limited Vs. the Maharashtra Electricity Regulatory Commission & Others (Appeal no. 215 & 211 of 2013) has ruled that the carrying cost should be calculated for the period from the middle of the financial year in which the revenue gap had occurred up to the middle of the financial year in which the recovery has been proposed. This is because the expenditure is incurred throughout the year and its recovery is also spread out throughout the year.

The Petitioner submits that the carrying cost for the true up for the FY 2015-16 was approved by the Commission for a period of 1.5 years at an estimated interest cost of Rs 123.46 million based on 10% rate of interest. However, while considering the same in ARR for FY 2017-18 at page 90 – clause 3.5, Commission revised the interest rate at 6.70% based on the Audited Accounts of FY 2017-18. However, the petitioner has to avail working capital for day to day operations and Commission while approving the Interest on Working Capital has considered the interest rate of 8.95%. The Petitioner further submits that the revenue gap for FY 2015-16 is accrued from 1st October 2015 and not for FY 2017-18 and requests the Commission to consider the rate of Interest in Working Capital approved from the respective period, instead of considering the average rate of 6.70% as below:

(Rs. In Million)		
Particulars	Oct-15 to Mar-16	Apr-16 to Mar-17
Revenue Gap	839.9	839.9
Interest Rate	9.70%	9.3%
Interest Amount	40.74	78.11
Total	118.85	

Net Impact on Truing of FY 2017-18: -

(Rs. In Million)

Particulars	Approved by HERC vide order dt. 07.03.2019	Proposed by petitioner for Review	Difference
Carrying Cost on true-up for FY 2015-16	84.38	118.85	34.47

4. **Grounds and Submissions for Review of ARR for FY 2019-20**

a) **Clause 3.22.6 of Tariff Order “Interest & Finance Charges” regarding weighted average Interest rate for calculation of interest cost on term loans for FY 2019-20**

Observations and findings of Commission

The petitioner is aggrieved by the observations and findings of the commission in the Tariff order that Commission has computed the weighted average interest rate as 6.70% for FY 2017-18 and 6.06% for FY 2018-19 at page number 121 & 122 - clause 3.22.6 in the ARR for FY 2019-20, as per the Audited Accounts and also that the Commission has also considered different opening balance of loan for all years.

The petitioner has submitted that the Commission while calculating the interest cost on capex loans has taken receipt of loan from the Capex Financer as capital expenditure minus equity @ 20% supported by Government of Haryana and consumer contribution on the basis of figures of FY 2017-18.

Grounds and submissions

The petitioner has submitted that no details of computation of the weighted average interest rate as 6.70% for FY 2017-18 and 6.06% for FY 2018-19 is available in the tariff order.

The Petitioner would also like to submit that the State Government while finalising the budget does not approve the full amount of equity portion of the Capital outlay submitted by the Petitioner. Thus, the presumption by Commission for balance amount of Capex to be funded through Capex Loans is not correct.

The Petitioner also submits that on the basis of projected figures of FY 2018-19, the average rate of interest on capex loans works out to be 8.63% and not 6.06% computed by the Commission. The detailed working of 8.63% is given in following

table:-

(Rs. In Million)

Source	31.3.18	31.3.19	Average	Interest
Other	53057.85	121883.41	87470.63	12188.34
REC	143505.24	127150.82	135328.03	13347.25
NABARD	5532.49	4946.19	5239.34	561.14
PFC	27141.08	23660.01	25400.55	2658.59
IBRD	123870.93	118333.99	121102.46	3550.02
Total	353107.59	395974.42	374541.00	32305.34
				8.63%

The Petitioner most humbly requests the Commission to provide the detailed calculations for weighted average interest rate and to allow the interest on long term loans as per the balance shown in audited accounts which has been calculated at 8.63% instead of 6.06% for FY 2019-20.

Net Impact on ARR for FY 2019-20: -

(Rs. In Million)

Particulars	Approved by HERC vide order dt. 07.03.2019	Proposed by Petitioner for Review	Difference
Interest on Loans for FY 2019-20	1983.36	2823.38	840.02

b) Clause 3.22.2 of Tariff Order “Employee Cost” regarding expenses for additional employees for FY 2019-20

Observations and findings of Commission

The petitioner is aggrieved by the observations and findings of the commission in the Tariff order that Commission at page no. 118 -clause 3.22.2 has not approved the cost of additional employees with a reason that fresh recruitment is likely to be offset by the reduction in employee strength by normal attrition and superannuation.

Grounds and submissions

The petitioner has submitted that the number of additional employees likely to be recruited is greater than the number of employees attaining superannuation or normal attrition and therefore the Commission is requested to allow the increase in employee cost as per actuals at the time of Truing up for the year FY 2019-20.

5. PRAYER

The Petitioner therefore, based on the submission made in the foregoing paragraphs, most respectfully prays to this Commission:

- a) To condone the delay of 07 days in submission Review petition. The delay in submission has solely been due to the preparation and compilation of requisite data/information on each point of submission by the Petitioner so that a significant Petition can be submitted for kind consideration of Commission. The petitioner thus prays to the Commission to admit the petition and pardon the delay in submission of same.
- b) To review, reconsider, modify and/or clarify the Tariff Order in terms of the submissions made above;
- c) To pass any such other order/s and/or direction/s, which the Commission may deem fit and proper in the facts and circumstances of the case.
- d) To condone any error/omission and to give opportunity to rectify the same;
- e) To permit the Petitioner to make further submissions, addition and alteration to this Petition as may be necessary from time to time.

Proceedings in the Case

3. The case was heard by the Commission on 28.05.2019, as scheduled.
4. The counsel appearing on behalf of the Petitioner reiterated the contents of the petition and the same are not being reproduced herein for the sake of brevity and to avoid prolixity.

Commission's Analysis and Order

5. The delay in filing the present review petitions being minor and procedural in nature is condoned as prayed for. The Commission shall now proceed to examine the case on merit.
6. In order to examine the scope of review jurisdiction, the Commission has perused the provision of Regulation 78(2) of the HERC (Conduct of Business) Regulations, 2004 including its subsequent amendments, which empowers the Commission to exercise review jurisdiction. The relevant regulation is reproduced below:-

78 (2) "REVIEW OF THE DECISIONS, DIRECTIONS, AND ORDERS:

“The Commission may review its Orders or decisions if:-

- (a) There exists an error apparent on the face of the record, or*
- (b) Any new and important matter of evidence was discovered which after the exercise of due diligence, was not within the knowledge of or could not be produced by the party concerned at the time when the Order or decision was made, or*
- (c) For any other sufficient reasons”.*

Further, the Commission has also perused the judgment of Hon’ble Delhi High Court in *Aizaz Alam Versus Union of India & Others* (2006 (130) DLT 63: 2006(5) AD (Delhi) 297. The relevant extract from the aforesaid judgment is reproduced below:-

*“We may also gainfully extract the following passage from the decision of the Supreme Court in *Meera Bhanja V. Nirmala Kumari Choudhury*, where the Court, while dealing with the scope of review, has observed:*

The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. The review petition has to be entertained on the ground of error apparent on the face of record and not on any other ground (emphasis added). An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivable be two opinions. The limitation of powers of courts under Order 47 Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the Orders under Article 226.

*Applying the above principles to the present review petition, there is no gainsaying that the review of the Order passed by this Court cannot be sought on the basis of what was never urged or argued before the Court (emphasis added). The review must remain confined to finding out whether there is any apparent error on the face of the record. As observed by the Supreme Court in *Lily Thomas and Ors. V Union of India & Ors.*, the power of review can be used to correct a mistake but not to substitute one view for another (emphasis added). That explains the reason why Krishna Iyer, j. described a prayer for review as “asking for the moon” *M/s Northern India Caterers (India) Ltd. V. Lt. Governor of Delhi*”.*

7. The Commission has examined the review sought, issue wise, by the petitioner including on maintainability tested on the anvil of the aforesaid Regulations / Case Laws as under:-

8. Review of True-Up for FY 2017-18

a) Clause 3.1.7 of Tariff Order “Interest and finance charges for FY 2017-18” regarding transferring of amount to the Pension Trust and Interest cost on UDAY Bonds.

The petitioner has submitted that the Commission in the Tariff order dated 7th March 2019 directed the Petitioner to deposit Rs. 228.64 crores with its pension trust to enable it to meet the existing unfunded gap between the present value of DBO/ OLTB (Rs. 4067.77 crores) and the fair value of plan assets (Rs. 3409.60 crores) of the pension trust. The Commission has adjusted the other income towards redemption of PF and Pension Bonds in the previous years which was to be passed on to the beneficiaries of transmission system.

Per contrary, the licensee has submitted that the aforesaid portion of the order be revised in view of the following facts:

- i) That the infusion of funds by the State Govt. as UDAY bonds is just a book transfer but not cash transfer. The Petitioner has not received any assistance in cash. The conversion of PF, Pension Bonds in UDAY Bonds by the State Govt. has resulted in no effects on the cash flow of the Petitioner as it is merely book entry.
- ii) The Petitioner also submits that as per the nature of its business, it has to incur expenses on account of Interest on Working Capital Loan. However, the Commission allows expenses on this account only on actual expenses. The actual expenses towards interest on Working Capital incurred by HVPNL are much lower than the Interest on Working Capital on normative basis as per the provisions of MYT due to lower borrowings on account of UDAY funds being available to the licensee. The consumers of HVPNL have already enjoyed the benefits of lower tariffs due to actual interest on working capital. Thus, it is difficult for HVPNL to restore these funds for reduction of tariff.
- iii) The Petitioner respectfully submits that the UDAY Bonds should be treated as loan for working capital and the interest should be allowed as claimed under IoWC (Interest on Working Capital) to the tune not

exceeding normative Interest on working capital as per regulations. The Petitioner further submits that Commission is not allowing any interest on UDAY Bonds and at the same time asking HVPNL to deposit the other income adjusted towards redemption of PF and Pension Bonds. Further, ROE is also not allowed on this amount. This way the Petitioner is getting adversely affected in both the ways. Further, any assistance provided by the State Govt. is beyond the purview of regulatory framework.

- iv) If the Petitioner is to deposit Rs. 228.64 Crore with its pension trust this will further aggravate the financial health of the Petitioner and any benefit that was achieved through UDAY scheme would be lost.
- v) The petitioner has requested to consider the part of interest on UDAY bonds as interest on working capital and therefore Rs. 228.64 Crore need not to be deposited with pension trust.

The Commission has perused the arguments put forth by the licensee in support of its arguments against the order of the Commission to deposit additional amount of Rs. 228 crores with the pension trust fund and observes that all the arguments put forth by the licensee are erroneously based on the assumption that the adjustments have been ordered against the receipt of UDAY bonds by the licensee. **In fact a plain reading of the order would make it clear that no adjustment has been ordered by the Commission against substitution of the PF and Pension Bonds by the UDAY Bonds.** The substitution of one loan with another has to be dealt with in accordance with the MYT regulations. However, as all the PF and Pension bonds have been paid off by the Commission in its earlier orders, the Commission is not required to either allow interest on these bond through the Tariff or to take cognisance of fund requirement for its repayment.

However, the Commission, in its order dated 31.10.2018 had observed that the licensee has received Rs. 342 crores from the Government of Haryana as Share Application money towards redemption of these bonds as disclosed by the licensee in its audited balance sheet for the FY 2016-17. The relevant portion of the HERC Order dated 30.10.2018 is reproduced below for reference:

“The Commission has examined the matter and observes that the Commission has already been allowing interest on unpaid balance of PF and Pension bonds to HVPNL and the said bonds have been fully paid off in the

*FY 2016-17 for the purpose of ARR. Substitution of one loan with the other can only be allowed to the extent of outstanding amount. As no amount is outstanding against PF and Pension bonds as on 31.3.2017, no substitution of loan amount or interest on UDAY bonds is allowed. Further, the Commission had allocated certain incomes e.g. profit on sale of fixed assets etc. towards repayment of PF bonds instead of the amounts being reduced from the tariff for the consumers of the state in view of the prayer of the petitioner that it has no funds to repay these liabilities. **The Commission notices that the petitioner received Rs. 342 crores from the state government as share application money in the FY 2016-17 towards part repayment of these bonds. In view of the fact that the Commission has already paid off the PF and pension bonds for the purpose of ARR and that the licensee is now receiving certain subventions from the state governments towards repayment of these bonds, the Commission directs the licensee to calculate the amount of “other income” that ought to have been used for reduction of transmission tariff but has been adjusted towards repayment of these bonds and submit the calculations to the Commission along with the next ARR application so that appropriate adjustment may be made for the benefit of consumers (emphasis supplied).***

The Commission, in light of the above discussions, retains the interest allowed in the ARR for the FY 2016-17 towards the PF bonds at Rs. 6.72 million for true up.”

On perusal of the above excerpt it is apparent that the adjustment has been ordered not against the UDAY Bonds but against Rs. 342 crores provided as subvention by the State Government for redemption of the PF bonds. Attention is drawn to the Order(s) of the Commission dated 23.04.2008 and dated 18.05.2009 when, on the prayer of the licensee that it had no funds to repay the outstanding PF and Pension Bonds, the Commission had allowed certain non-tariff incomes to be utilised for repayment of these bonds instead of utilising these funds for reduction in the ARR in accordance with the prevalent regulations. This practice has resulted in higher tariff for the consumers/ beneficiaries as otherwise the non-tariff income would have resulted in lower tariff. The licensee has neither denied the fact of such adjustment, nor has it denied that but for such appropriation, the same funds would have been available for reduction of transmission charges for long term

beneficiaries of the Transmission System. The Commission further observes that out of total funds amounting to Rs. 629 crores allocated for repayment of PF and Pension bonds, only Rs. 228.64 crores, being amounts allocated out of Non-Tariff Income as per information provided by the licensee, have been ordered to be deposited with the Pension Trust as these funds were provided to the licensee for a specific purpose. Now that additional funds have been made available to the licensee for redemption of the same bonds which has been disclosed as share application money, the Commission is duty bound to restore the funds diverted from the consumers of the state and held in trust by the licensee back to these consumers. The appropriation of funds was for a specific purpose, and now that purpose no longer exists, or has been satisfied by infusion of funds through another source, the claim of original beneficiaries has to be restored. None of the above facts, though forming part of the orders of the Commission, have been contested by the licensee. The Commission observes that it was the duty of the State Government to provide funds for the pensionary liabilities existing on the date of unbundling of the power utilities which has now been appropriately taken care of by the State Government.

The Commission further observes that as additional funds by way of share application money have been made available by the State Government, the claim that the deposit of Rs. 228.64 crores with the pension trust would adversely impact the financial health of the petitioner is unfounded. Further, the interest on working capital has been tried up as proposed by the licensee and the Return on equity has also been allowed as per regulations; no review can be envisaged on the amount of working capital or Return on Equity.

The Commission, therefore, is of the considered view that the review sought on this issue is not admissible as the same is beyond the scope of review jurisdiction as no new facts / figures or error apparent on the face of record has been put forth by the Petitioner. It may also be noted that what has not been urged in the original petition cannot be urged at review stage. The Commission finds no merit regarding this issue and rejects the same as un- sustainable.

- b) Clause 3.2 of Tariff Order “Incentives and Penalty: System Availability for FY 2017-18”

Petitioner has submitted that the Commission has approved the Penalty amounting Rs. 44.54 Mn as proposed by the petitioner in the ARR

petition for FY 2019-20 since the system availability had been lower than the normative availability during FY 2017-18. In this regard, the petitioner submitted that the tariff penalty computation ought to have been based on the revised ARR approved by Commission for FY 2017-18, i.e. 16173.66 million.

The Commission has examined the submission and finds the same in order. The penalty has to be calculated on the revised ARR approved by the Commission. Therefore, it would be appropriate to allow the penalty on revised ARR as proposed by the licensee as per below table: -

Particulars	Formula	Figures
Annual Transmission Charges (Rs. In Million)	ATC	16173.66
Actual Transmission Availability	AA	98.9518%
Normative Transmission Availability	TA	99.20%
	$(AA-TA)/TA$	-0.002502
Incentives/(Penalties) (Rs. In Million)	$ATC*(AA-TA)/TA$	(40.47)

- c) Clause 3.1.3 of Tariff Order “Terminal Benefits for FY 2017-18” regarding Carrying Cost for true up of FY 2017-18.

Petitioner has submitted that though the Commission has held that the “terminal benefits” being uncontrollable expenses, are approved at Rs. 4973.45 million as proposed for FY 2017-18 for the purpose of true up, the Commission has not allowed carrying cost on true up amount for the FY 2017-18, in accordance with its previous Orders. The Commission has further stated in the Tariff Order that as per the audited balance sheet HVPNL has deposited only Rs. 2861.82 million with the pension trust up to 31.3.2018. Accordingly, Commission did not allow any carrying cost on true up gap up to Rs. 2111.63 million (Rs. 4973.45 million less Rs. 2861.82 million).

In this regard, petitioner has submitted that the entire amount of terminal benefits liability of Rs 4973.45 Million has been paid as per the details given below:

(Rs. In Million)			
Date	Particulars	Dr.	Cr.
01-04-2017	Opening Balance		422.40
31-03-2018	Terminal Benefit Liability (1/3 rd of total amount of Rs 955.65 Crs. as per actuarial report of 2016-17)	3185.50	
	Terminal Benefit Liability for FY 2017-18	1787.94	

	Pension Payouts		2930.70
	Total	4973.45	3353.10
	Closing Balance	1620.34	
25-06-2018	Amount paid by HVPNL		500.00
10-07-2018	Amount paid by HVPNL		500.00
16-08-2018	Amount paid by HVPNL		250.00
01-09-2018	Amount paid by HVPNL		800.00
	Balance as on 01-09-2018		430.34

The Commission observes that the payment details forming part of its order dated 07.03.2019 were confirmed by the licensee through email dated 07.03.2019 as also brought out in the audited Balance Sheet for the FY 2017-18. Further, it is observed that though the licensee has claimed that it has paid Rs. 431.03 crores towards Terminal benefit liability for the FY 2016-17 and Rs. 498.07 crores for the FY 2017-18, the same is not reflected in the disclosure tables for terminal benefits in the balance sheet. On examination of the Audited Balance Sheet it is observed that Rs 207.88 crores only is reflected as contribution/ by payments to the pension trust by the licensee in FY 2016-17 and Rs 2861.23 crores in FY 2017-18. In case additional contributions to the trust had been made by the licensee as claimed as in the review petition, the same would be reflected in the value of plan assets as well as contributions. The Commission directs the licensee to examine the anomaly pointed out as above and submit a report within one month.

The Commission is of the considered view that the submissions of the licensee in support of its arguments for review on this issue are not supported by the audited balance sheet and are liable to be rejected. The order of the Commission was based on information provided by the licensee and duly supported by the Audited Accounts.

The Commission, therefore, is of the considered view that the review sought on this issue is not admissible in the absence of new facts / figures or error apparent on the face of record as part of the submissions put forth by the Petitioner. It may also be noted that what has not been urged in the original petition cannot be urged at review stage. The Commission, therefore, finds no merit regarding this issue and rejects the same as un- sustainable.

- d) Clause 3.22.6 of Tariff Order “Interest & Finance Charges” regarding weighted average Interest rate for calculation of interest cost on term loans for FY 2017-18.

The petitioner is aggrieved by the observations and findings of the Commission in the Tariff order that the Commission has computed the weighted average interest rate as 6.70% for FY 2017-18 at page number 122 - clause 3.22.6, as per the Audited Accounts. The petitioner has submitted that no details of such computation is available in the tariff order.

The Commission has examined the submissions of the licensee and observes that the true up of interest cost for the FY 2017-18 as approved is based on the details submitted by the licensee. The average rate of interest on those borrowings which have been approved by the Commission for the Transmission business in its order dated 18.8.2015 and subsequent additions and repayments thereon as per details submitted by the licensee works out to 6.70% p.a. and the same has been used to calculate the interest to be allowed as true up for the FY 2017-18. **It is further observed that the licensee has not provided any alternate calculation of the rate of interest in order to demonstrate the error apparent in the Order which would necessitate a review. The licensee is required to submit its own estimation of interest on term loan based on its audited records in accordance with the regulations. As the licensee has not demonstrated any basis for seeking a change in the applicable rate of interest on term loan for calculation of true up amount of interest, the Commission finds no reason to review its Order dated 07.03.2019 on this account.**

- e) Clause 3.5 of Tariff Order “True up for the FY 2015-16 & Carrying Cost” regarding determination of carrying cost on revenue gap of True up for the FY 2015-16.

Petitioner has submitted that the true up cost, once determined and approved by the Commission, is required to be recovered as part of tariff for the year in which the true up is so determined. Therefore, the true up for the FY 2015-16 which was allowed to be recovered as part of tariff for the FY 2017-18 is included as such in order to arrive at the true up amount to be recovered either from the consumers or from the licensees.

However, the petitioner has submitted that the Commission has wrongly applied the interest rate for the FY 2017-18 on the carrying cost, whereas the interest cost pertains to FY 2015-16 and FY 2016-17. The licensee has further submitted that the period of holding cost ought to have been two years and not 1.5 years as calculated by the Commission.

The Commission has examined the submission of the licensee and finds merit in the argument pertaining to the rate of interest. Accordingly, the Commission allows the licensee to recover holding cost for the true up of the FY 2015-16 amounting to Rs. 118.85 million as proposed by the licensee in the review petition as against Rs. 84.38 million approved by the Commission in its order dated 07.03.2019.

However, the Commission observes that the argument for recovery of carrying cost for two years on the true up for the FY 2015-16 did not form part of the original petition of the licensee in PRO 60 of 2018; against which the present review has been filed. It is a settled law that what has not been urged in the original petition cannot form part of the review in the same matter. Further, the Commission has approved the recovery of the amount as proposed by the licensee in the review petition. **The Commission therefore, finds no reason to examine the submissions regarding period of holding cost forming part of the review petition.**

9. Review of ARR for FY 2019-20

- a) **Clause 3.22.6 of Tariff Order “Interest & Finance Charges” regarding weighted average Interest rate for calculation of interest cost on term loans for FY 2019-20.**
- b) **Clause 3.22.2 of Tariff Order “Employee Cost” regarding expenses for additional employees for FY 2019-20.**

10. The Commission observes that the rate of interest used for calculating interest cost on term loans for the FY 2019-20 has been derived from the projected loan and interest details for the FY 2019-20 submitted by the licensee in its petitions in PRO 60 of 2018 and is very close to the rate of interest for the FY 2017-18 which is based on the audited accounts. It is further observed that the interest cost, employee cost and the composition of funding of actual capital expenditure are all subject to true up based on actual expenditure as per the audited accounts for the relevant year. The Commission has accorded its

approval to the ARR for the FY 2019-20 based on a considered and careful examination of the petition filed by the licensee and other facts and the Commission would like to wait for the actual figures to be available before revising the ARR for the FY 2019-20. It is also observed that the licensee has requested that the employee cost for the FY 2019-20 may be true up based on actual cost. The Commission finds the request in order and in accordance with the regulations. However, the Commission finds no merit in the request for revision of rate of interest on term loan for the FY 2019-20 at this time and rejects the same as un- sustainable. However, the same shall also be eligible for true up in accordance with the regulations.

11. The Commission is of the considered view that it would not be appropriate to realign the tariff determined by the Commission for such small amount. Hence the licensee may include the amount in the next ARR and Tariff application.
12. In terms of the above findings / decisions, the review petition preferred by the HVPNL against the Commission's Order dated 07.03.2019 (Case No. HERC/RA-11 of 2019) is disposed of.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 28th May, 2019.

Date: 28.05.2019
Place: Panchkula

(Pravindra Singh Chauhan)
Member

(Jagjeet Singh)
Chairman