

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION

BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA

Case No. HERC/PRO – 3 of 2019

DATE OF HEARING : 29.05.2019

DATE OF ORDER : 07.06.2019

IN THE MATTER OF:

Petition under Section 43 & 46 of the Electricity Act, 2003 read with Regulation No. HERC/27/2014 and HERC/34/2016.

Petitioner

B.M. Gupta Developers Private Limited

V/s

Respondent

Dakshin Haryana Bijli Vitran Nigam, Hisar

PRESENT

On behalf of the Petitioner:

1. Shri R.K. Jain, Advisor/Legal & Power

On behalf of the Respondent:

1. Shri Samir Malik, Advocate, DHBVN
2. Shri Abhishek K. Srivastava, Advocate, DHBVN
3. Shri Amit Kamboj, XEN, Rewari, DHBVN
4. Smt. Rekha, XEN (RA), DHBVN

QUORUM

Shri Jagjeet Singh, Chairman

Shri Pravindra Singh, Member

Shri Naresh Sardana, Member

ORDER

Brief background of the Case:

1.1. The Petitioner has submitted that:

- a) They are company registered under the Companies Act, 1956 with its Marketing Office at FF-37, BMG Mall, Circular Road, Rewari, Haryana. The Company has authorised Sh. Ravi Shanker Gupta, working as Director of the Company to file this Petition.
- b) They were granted License No. 35 of 2009 by the Town & Country Planning Department, Government Haryana vide letter dated 11.07.2009 for setting up of a Residential Plotted Colony at Village Dhaliwas, Padinwas & Dhamlaka, Sector-26, Tehsil & District Rewari. The License was initially valid up to 10.07.2013 but it was extended till 10.07.2019 later on vide Town & Country Planning Department letter dated 20.09.2017.
- c) The Clause 10 of the Licensee required the Licensee to convey the 'Ultimate Power Load Requirement' of the project to the Power Utility. Accordingly, the Petitioner Company submitted the estimated power requirement of the project to the Respondent Nigam and requested for approval of the electrification scheme for township proposed at village Dhaliwas, Sector-26, Garhi Bolni Road, Rewari. The Electrification Scheme was approved by CE/Comml., DHBVN, Hisar vide Memo. No. Ch.-2/GM/C-SOL-32 dated 04.11.2011.
- d) There has been lot of controversy regarding the load norms to be adopted for assessment of electric load for the Colonies/Multi-storied Buildings/Group Housing Societies developed by HUDA/ HSIIDC/ Private Colonizers/ SEZ and associated electrification Plan for these residential/commercial complexes.
- e) There has been controversy on the release of electric connections to the occupiers of these buildings and it has been getting serious attention of the Commission since the year 2000 whether to allow single connection to each of the residents or a single point supply to these complexes. Number of individual Petitions filed by various Developers/Colonizers have also been decided by the Commission in the past.
- f) While the Petitioner was in the process of planning for the electrical layout plan of the project, the Power Utility successively revised its instructions from time to

time looking at the field experience and the pleadings of various Project Developers. After lot of discussions at the State Government level and in consultation with the concerned Government Departments detailed set of instructions were issued by the Respondent Nigam vide Sales Circular No. D-9/2014 dated 27.01.2014.

- g) The said Circular reiterated historical background of the fixation of load norms since the year 1993 onwards and need for such revisions. It did recognize the impact these load norms have on the investment to be made by the Developers on laying the electrical infrastructure in the plotted area. This decision was an outcome of the high-level meeting held at the State Government level with heads/representatives from various stakeholders i.e. State Power Department, Town & Country Planning Department, Haryana Transmission & Distribution Utilities, HUDA and HSIIDC. These instructions were made applicable retrospectively i.e. January 2006. The circular read as under,

“Now the matter has been reviewed again in the meeting held on 13.12.13 under the Chairmanship of PS (Power) regarding pending issues of HUDA, HSIIDC & Power Utilities and decided that load norms and other factors will be applicable retrospectively from January 2006.....”

- h) The above instructions on load norms to be adopted for development of plotted areas were again revised vide Sales Circular No. D-16/2017 dated 12.04.2017 with the approval of the Hon’ble Chief Minister, Haryana. One of the important points to be noted is that in the Circulars issued in the year 2014 and subsequently in the year 2017, there has been slide in the sharing of cost of the system amongst the Developers and the Power Utilities i.e. Footnote x) reads as under:

“The cost sharing arrangement between power utilities and developer shall be as under,

- ✓ *For the sectors floated before 1986: Power Utilities 75%, Developer 25%;*
- ✓ *For sectors floated after 1986 and before 2006: Power Utilities 25%, Developer 75%;*

✓ *For the sectors floated after 2006: 100% Developer.*

Thus, with the passage of time more and more burden was passed on to the Developers with reduced responsibility of the Power Utilities.

- i) This transfer of responsibility on to the Developer was totally in violation of the provisions under the Electricity Act, 2003 and the Regulations framed by the Hon'ble Commission. The layout plan approved by the Respondent Nigam dated 04.11.2011 was based on the instructions issued vide Sales Circular No. D-9/2011. However, the revised load norms notified by the Respondent Nigam in the year 2014 were made applicable retrospectively w.e.f. 01.01.2006. pursuant to the above decision of the Respondent Nigam, the Petitioner submitted a request for revision of load requirement of the project from earlier 9844 kVA to 3930 kVA vide letter dated 09.04.2018.
- j) The above reference was scrutinized by the Xen/Op. Division, Rewari of the Respondent Nigam and found it technically feasible. The feasibility report was forwarded by the Xen/Op., Rewari to the SE/Comml., DHBVN, Hisar vide his office Memo. No. Ch.-06/SOL-I dated 26.04.2018 for further necessary action.
- k) The Petitioner Company again represented to the Respondent Nigam vide letter dated 04.07.2018 requesting to approve the revised layout plan as per the Sales Circular D-9/2014 and subsequent Sales Circular No. D-16/2017 dated 12.04.2017. In this representation the load requirement was revised to 4176 kW (4640 kVA) in line with the revised load norms adopted by the Respondent Nigam retrospectively with effect from 01.01.2006.
- l) The Respondent Nigam rejected the above request vide Memo. No. Ch.-28/SE/R-APDRP/RWR/SOL-268 dated 19.07.2018, totally in contradiction to its own revised load norms applicable w.e.f. 01.10.2006. This letter read as under,

The management of DHBVN after having gone through your representation and details associated with your case is of the considered view that your request for re-approval of Electrification Plan for Ultimate Load of 9844 kW of M/s BM Gupta developers Pvt. Ltd., Sector-26, Garhi Bolni Road, Rewari, as per revised load norms of DHBVN, (Sales Circular No. D-16/2017), is not maintainable.”

- m) Such rejection of request which was fully in line with the contents of the Sales Circular No. D-9/2014 dated 27.01.2014 read with Sales Circular No. D-16/2017 dated 12.04.2017, was totally biased and uncalled for.
- n) In the absence of approval of the revised layout plans of electrification scheme the request of the Petitioner to release power load to the project is lying pending and the occupants of the buildings are at loss to utilize the investment made therein. Moreover, the release of connection to the Petitioner is unnecessarily being delayed much in violation of the instructions contained in Regulation No. HERC/29/2014 dated 08.01.2014 (Electricity Supply Code) and HERC/34/2016 dated 11.07.2016 (Duty to Supply).
- o) Subsequent representations filed by the Petitioner vide letter dated 09.09.2018 has not found favour with the Respondent Nigam. Meanwhile, the Petitioner has already offered land for construction of Substation in Township and duly acknowledged by the Respondent Nigam vide letters dated 03.10.18, 11.10.18 and 12.10.18.

Jurisdiction of this Hon'ble Commission

- p) The Petitioner Company has filed the present Petition, for kind consideration and appropriate relief with respect to the use of electricity in the plotted areas developed by the Licensees and release of load to such Colonies in pursuance to the enabling provisions of the relevant Acts and Regulations mentioned hereunder: -
- (i) Section 43 of the Electricity Act 2003 casts duty on the Distribution Licensee to give supply of electricity to any person applying for such connection within the timeframe prescribed by the appropriate Commission. The relevant portions of the Act are reproduced hereunder,

Section 43. (Duty to supply on request): --- (1) Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply

the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation. - For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

- (ii) Section 46 of the Electricity Act, 2003 further permits the distribution licensee to recover expenses reasonably incurred in providing the electric supply. The relevant provision reads as follows,

Section 46. (Power to recover expenditure): The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

- (iii) Hon'ble Commission has been insisting for release of a single point connection to the various Residential and Commercial Complexes developed by Government or Private Developers. These instructions were contained in the ARR and Retail Distribution Tariff order dated 22.12.200 which read as under,

“The Utility shall provide individual connections to the flat owners of the Group Housing Societies/Multi storeyed Buildings etc. if they individually apply for such connection subject to the fulfilment of other conditions. The Group Housing Societies/ Multi storeyed Buildings shall have the option to go in for a single point connection for the supply of power to the flats collectively. However, in such case they will require an exemption from obtaining a license under Section-16 of the Haryana Electricity Reforms Act, 1997.” Detailed guidelines were issued vide Regulation No. HERC/27/2013.”

However, these guidelines were reviewed in subsequent orders of the Hon’ble Commission through the below mentioned orders and finally it was desired that all such complexes will be given a single point connection and all functions of the distribution licensee will be performed by these Societies/Developers/Colonisers, although these Societies/Developers/Colonisers did not have the valid license for distribution of electricity in their areas or/exemption thereof;

- HERC/PRO-31 of 2013 dated 13.09.2013 in the matter of single point power supply to police Colony/academy at Madhuban, Karnal;
- HERC/PRO-44 of 2013 dated 30.12.2013 in the matter of single point power supply to police Colony/academy at Madhuban, Karnal;
- HERC/PRO-44 of 2013 dated 19.05.2014 in the matter of single point power supply to police Colony/academy at Madhuban, Karnal;
- HERC/PRO-27 of 2014 dated 05.02.2015 in the matter of single point power supply to Mata Mansa Devi, Sector 5, Residents Welfare Association, Panchkula vs State of Haryana & others.

SUBMISSIONS

A. Issuance of directions for approval of Electrification Plans for the Colonies/Multi-storied Buildings/Group Housing Societies developed by HUDA/HSIIDC/Private Colonizers/SEZ:

- q) The State Distribution Licensees have been issuing repeated guidelines/instructions on the above-mentioned subject from time to time without getting

necessary approval from the Hon'ble Commission. Some of these instructions issued in the past are by way of Sales Circulars mentioned hereunder,

- i) Sales Circular No. D-63/2001 dated 17.07.2001
 - ii) Sales Circular No. D-10/2002 dated 08.02.2002
 - iii) Sales Instructions No. D-02/2005 dated 22.02.2005
 - iv) Sales Circular No. D-09/2011 dated 21.03.2011
 - v) Sales Circular No. D-09/2014 dated 27.01.2014
 - vi) Sales Circular No. D-16/2017 dated 12.04.2017
- r) Though these Circulars/instructions the Respondent Nigam has been transferring the burden of discharging the duties and functions to be carried out by the Licensee to these Developers, totally against the spirit of the Sections 43 and 46 of the Electricity Act, 2003.
- s) At no stage the Respondent Nigam even never thought of getting these Circulars/ instructions approved from the Hon'ble Commission although these had direct financial impact on the Colonisers/Developers. Hon'ble Commission has given repeated directions to the Respondent Nigam not to issue any such instructions which had financial impact with the prior approval of the Commission.
- t) In this connection directions/order issued by Hon'ble Commission in Petition Nos. HERC/PRO-62 of 2014 & HERC/PRO-63 of 2014 dated 07.05.2015 is reproduced hereunder to highlight the relevant direction of the Hon'ble Commission on this subject;

"It is reiterated that non – compliance of Commission's directions/Orders shall attract the penal provisions under section 142 of the Electricity Act, 2003. Further, all sales/commercial circulars issued by the Discoms which have been set aside by the Commission should be immediately withdrawn and no sales /commercial circulars having any financial implications should be issued without prior approval of the Commission."

Non-adherence to the Sales Circulars/Instructions issued by the Licensee from time to time:

- u) The Respondent Nigam issued detailed Guidelines relating to the 'Approval of Electrification Plan in the Colonies / Multi-storeyed Buildings/ Group Housing Societies developed by HUDA/ HSIIDC/ Private Colonizers/ SEZ vide Sales Circular No. D-9/2014 dated 27.01.2014 annexed at P-19 above, but is not

following its own instructions in the present case of the Petitioner Company. The said Sales Circular specifically mentioned as under,

“Now the matter has been reviewed again in the meeting held on 13.12.2013 (Copy Attached) under the Chairmanship of PS (Power) regarding pending issues of HUDA, HSIIDC & Power Utilities and decided that load norms and other factors will be applicable retrospectively from January, 2006 as given below:-”

- v) The above Circular clearly stipulated that the load norms decided now will be made applicable retrospectively from January 2006. Therefore, it was clear that all Electrification Plans, relating to the period commencing January 2006 will be governed by the load norms approved now through this order.

- w) This is the case of the Petitioner wherein the Respondent Nigam approved the initial Electrification Plan/Scheme with an estimated load of 9844 kVA as per old load norms in the year 2011, which should have been revised to 4367 kW in view of the Sales Circular D-9/2014 dated 27.01.2014 taking the new load norms effective from January 2006. A request to this effect was made by the Petitioner Company while submitting the revised Electrification Plans vide letter dated 09.04.2018. This contention was also supported by the XEN/Op., DHBVN, Rewari while forwarding the revised Plans to SE/Comml., DHBVN, Hisar vide his office Memo. Dated 26.04.2018.

- x) Ignoring all such instructions/provision of the circulars the Respondent Nigam rejected the request without giving any valid reason.

Issuing of the above Sales Circulars/Instructions by the Licensee in violation of the Electricity Act, 2003 and Regulations framed thereof:

- y) As per the provision under S.43 and 46 of the Electricity Act, 2003, it is the basic duty of the Licensee to provide the required transmission and distribution network required to release electric connection to the applicant. The Licensee is authorised to recover from a person requiring supply of electricity any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

- z) In the present case the Licensee is trying to lay the entire responsibility of laying

the electric line and electrical plant by the Petitioner Company. Although in successive years the extent of responsibility has been increased.

aa) The Hon'ble Commission has also laid down similar provision in Reg. 4 of the "The Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security) Regulations, 2016", which reads as under,

4. POWER TO RECOVER EXPENDITURE

4.1 Subject to the provisions of the Act and these Regulations and subject further to such directions, orders or guidelines issued by the Commission, every distribution licensee is entitled to recover from an applicant requiring a supply of electricity or modification in existing connection, any expenses reasonably incurred by the distribution licensee in providing any electric line or electrical plant used for the purpose of giving that supply. The service connection charges or the actual expenditure to recover such expenses shall be computed in accordance with these Regulations.

bb) That the above Sales Circulars/Instructions of the Respondent Nigam are thus totally in violation of the IE-Act, 2003 and the Regulations mentioned above.

Delay in release of electricity connection to the Petitioner Company and consequent inconvenience to the residents/allottees of the residences constructed by the Petitioner Company:

cc) Due to the non-approval of the revised Electrification Plans by the Respondent Nigam it has not been possible for the Petitioner Company to decipher/finalise the load to be applied for and submit formal application seeking sanction/release of power supply connection for the Elegant City of the Petitioner Company. The delay in the power supply to the residential complex set up by the Petitioner Company is creating lot of contractual complications for the Petitioners and associated discomfort to the residents/allottees of the residential units.

dd) The illegal stand taken by the Respondent Nigam in disallowing approval of revised Electrification Plan based on the current relevant Instructions, Rules and Regulations is resulting in un-necessarily delay in release of Single Point Connection to the residential complex. This action of the Respondent Nigam forfeits the very purpose of issuing HERC/27/2013 Regulations dated

09.01.2013 namely “*Haryana Electricity Regulatory Commission (Single Point Supply to Employer’s Colonies, Group Housing Societies and Residential or Commercial cum Residential Complexes of Developers) Regulations, 2013*” and the HERC/34/2016 Regulations dated 11.07.16 namely “*Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security) Regulations, 2016*”.

ee) They have not filed any other Petition before any Court or Forum seeking similar relief as prayed for in this Petition.

1.2. In view of above, the Petitioner has prayed as follows:

“...

- (b) *May kindly consider if the Sales Circular issued by the Respondent Nigam as mentioned in para 17 above have the implicit/explicit approval of the Hon’ble Commission and if not then are these Circulars worth implementation?*
- (c) *Pending decision on prayer at (b) above, may please issue directions to the Respondent Nigam to abide by the contents of the Sales Circular No. D-9/2014 dated 27.01.2014 and Sales Circular No. D-16/2017 dated 12.04.2017 and accept load norms provided therein;*
- (d) *May please direct the Respondent Nigam to approve the revised Electrification Plan of the Petitioner Company as per the load norms and other factors notified through the above Sales Circulars;*
- (e) *May please direct the Respondent Nigam to sanction/approve the revised load to the Petitioner Company in view of the revised Electrification Plan;*

...”

Respondent’s Replies

2.1 The Respondent has submitted that:

- a) All submissions and allegations made by the petitioner are denied in their entirety and same may be treated as denial in seriatim. The contents of the accompanying

petition are denied and disputed in terms of the present reply. Nothing in the present reply be construed as an admission on the part of the answering Respondent unless specifically admitted.

- b) Under the garb of the present petition, the Petitioner is trying to question the provisions of the Electricity Act, 2003 vis-à-vis regulations issued by this Hon'ble Commission by way of which the Respondent i.e., Distribution Licensee has been empowered to recover any sort of expenses incurred in providing power supply to the consumers.
- c) Section 46 of the Electricity Act 2003 empowers the State Regulatory Commission to allow the Distribution licensee to charge any expenses reasonably incurred in providing electric supply, as follows:

'Section 46. (Power to recover expenditure): The State Commission may, by regulations, authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply'.

- d) The Commission has issued *"The Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security) Regulations, 2016*. Pertinently, as per Regulation 4.1, the distribution licensee has been permitted to recover expenditure that has been incurred reasonably for providing the supply of electricity to the applicant.
- e) Prior to aforesaid Regulations of 2016, *Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply & Power to require security) Regulations, 2005*, were in force. Further, the application of the Petitioner for approval of ultimate load requirement and electrical layout scheme has been approved by C.E, Commercial vide letter dated 04.11.2011 in accordance with Regulations of 2005. Pertinently, in terms of Regulations of 2005 also, the distribution licensee was empowered to

recover expenditure that is incurred reasonably for providing the supply of electricity to the consumer.

- f) The above-mentioned facts and circumstances clearly stipulate that the petitioner has not approached the Hon'ble Commission with clean hands and true facts. It is further submitted that as a rule of equity, as well as of law the present petition deserves to be dismissed-in-limine on the grounds of "suppresio veri" and "suggestio falsi".
- g) All the sales circulars/instructions i.e., Sales Circular No. D-63/2001 dated 17.07.2001, Sales Circular No. D-10/2002 dated 08.02.2002, Sales Instruction No. D-02/2005 dated 22.02.2005, Sales Circular No. D-09/2011 dated 21.03.2011, Sales Circular No. D-09/2014 dated 27.01.2014 and Sales Circular No. D-16/2017 dated 12.04.2017 as questioned by the Petitioner have been issued by the Respondent with the prior approval of the State Government and Board of Directors of the Respondent and same are in consonance with the Regulations framed by this Hon'ble Commission.
- h) The Petitioner had submitted an application for approval of Ultimate load requirement and electrical layout scheme in the year 2011 and consequently, the scheme was approved by CE/Commercial, DHBVN vide letter dated 04.11.2011 with an estimated load of 9844 kVA based on the load norms applicable at that time in pursuance to the Sales Circular No. D-9/2011. Subsequently, Sales Circular No. D-09/2014 dated 27.01.2014 was issued by the Respondent, as per which the builders/developers were required to create an optimum level of electrical infrastructure in the properties developed by them, commensurate to the ultimate load. However, there were various representations from CREDAI requesting for review and reduction of the load norms, one of which was addressed to the then Ld. ACS, Power, Government of Haryana. Pertinently, it was decided to constitute a three member committee i.e., Chief Engineer, Operations/ Delhi Zone, SE, Operations/Gurgaon and SE, Operations/Faridabad in order to analyse the issues raised by CREDAI and to submit a detailed report to the Board of Directors for further consideration. That the Board of Directors, in principle agreed to the recommendations made by the

committee which were limited to only Gurgaon and Faridabad towns.

- i) Board of Directors keeping in view the recommendations advanced by CREDAI further decided to consider similar requirements for other cities/towns as well through a committee comprising of MD, HVPNL (Chairman), MD/UHBVNL (Member), MD/DHBVN (Member) duly notified by Power Dept., Government of Haryana. Moreover, the Chief Administrator, HUDA & Director, Town and Country Planning were also involved in the meetings of the committee. Thereafter, the committee based upon the discussion held submitted their recommendations, on the basis of which a draft notification was circulated through public notice inviting objections from the all the stakeholders including builders/developers.
- j) The aforesaid recommendations/suggestions made by the committee were duly approved and notified by Government of Haryana. Thereafter, the aforementioned sales circular of 2014 was amended/revised vide Sales Circular No. D-16/2017 dated 12.04.2017. Pertinently, the sales circular of 2017 does not contain any provision as to application of the load calculation norms retrospectively instead it was stipulated that the load norms stated therein are being enforced with immediate effect i.e., prospectively.
- k) The petitioner submitted the request for revision of load norms/requirement on 09/04/2018 i.e., after Sales Circular No. D-09/2014 stands revised/amended by way of Sales Circular No. D-16/2017 dated 12/4/2017. It is pertinent to state here that unlike Sales Circular No. D-09/2014, the Sales Circular No. D-16/2017 is prospective in nature and not retrospective as a consequence of which load norms of the Petitioner cannot be revised at this belated stage.
- l) The approval accorded to the Petitioner by CE/Commercial, DHBVN vide letter dated 04.11.2011 is sustainable in view of the aforesaid preliminary submissions. Further, aforementioned stand taken by the Respondent has also been conveyed to the Petitioner vide letter dated 12.11.2018 issued by SE, R-APDRP, DHBVN.

Petitioner's Rejoinder

- 3.1 The clause 10 of the Licensee required the Licensee to convey the 'Ultimate Power Load Requirement' of the project to the Power Utility. Accordingly, the Petitioner Company submitted the estimated power requirement of the project to the Respondent Nigam and requested for approval of the electrification scheme for the proposed township. The Electrification Scheme was approved by CE/Comml., DHBVN, Hisar vide Memo. No. Ch.-2/GM/C-SOL-32 dated 04.11.2011. Important points to be noted are, (i) this is estimated ultimate power requirement of the Project and (ii) Approval of electrification scheme to feed this estimated/projected load.
- 3.2 The electricity requirement is estimated as per load norms notified by the Respondent Nigam from time to time. The Respondent Nigam has been successively changing these load norms over the years. These load norms have huge direct financial impact on the Developers as they are required to make large investment to build the required electrical infrastructure. Any change in load norms directly affects the initial investment to be made by the Developer.
- 3.3 None of the instructions issued by the Respondent have ever been submitted to the Hon'ble Commission for prior approval. The Hon'ble Commission has repeatedly directed Distribution/ Transmission Licensees not to issue any Instructions/Circulars which have financial implications, without prior approval of the Commission. Some of such orders passed by the Hon'ble Commission are quoted hereunder,
- a) HERC order dated 25.03.10 in the matter of Jindal Stainless Ltd. and Star Wire (India) Limited vs DHBVN:
- "DHBVNL & UHBVNL are advised to desist from collecting any tariff or charges that have not been approved by the Commission **and directs not to issue any circular which has financial implications without prior approval of the Commission.**"*
- b) HERC order dated 07.05.2015 in Case No. HERC/PRO-62 of 2014 & HERC/PRO-63 of 2014:
- "It is reiterated that non - compliance of Commission's directions/Orders shall attract the penal provisions under section 142 of the*

*Electricity Act, 2003. Further, all sales/commercial circulars issued by the Discoms which have been set aside by the Commission should be immediately withdrawn **and no sales /commercial circulars having any financial implications should be issued without prior approval of the Commission.***”

- 3.4 The aforesaid Instructions/Sales Circulars issued by the Respondent Nigam do not have prior/subsequent approval of the Hon’ble Commission although these have huge financial implications. The Respondent Nigam has in the instant reply to the Petition has given an argument which reads as under;

*All Sales circulars/instructions i.e. Sales Circular No., as questioned by the Petitioner have been issued by the Respondent **with the prior approval of the State Government and Board of Directors of the Respondent and the same are in consonance with the Regulations framed by this Hon’ble Commission.***”

This statement of the Respondent Nigam is totally false and the instructions issued are in gross violation of the above directions given by the Commission.

- 3.5 The Respondent Nigam has argued that it is recovering the expenses from the Petitioner as per Electricity Act, 2003 and the Regulations issued by the Commission. In support thereto S.46 of the EA-2003 and Regulations 4.1 and 4.3 of HERC Duty to Supply Regulations, 2016 have been referred to. This is again a blatant lie. In all these legal provisions main point to be noted is that the Licensee is authorised to recover only “*any expenditure that the Licensee shall be required to reasonably incur in providing any electric line or electric plant for the purpose of giving such supply to the applicant.*” In the instant case there is no expenditure to be incurred by the Licensee rather the entire expenditure which was under law to be incurred by the Licensee is pushed on to the Petitioner/ Developer. Hence the arguments preferred by the Respondent Nigam fall flat.

- 3.6 The reference given to Sales Circular D-9/2014 is not correctly stated in the reply. Although the Respondent Nigam has stated Para 11, “*That the Board of Directors, in principle agreed to the recommendations made by the Committee which were limited to only Gurgaon and Faridabad.*” The fact is that the new instructions were

for whole of the State and to take effect from retrospective date. The said Circular read as under,

*“Now the matter has been reviewed again in the meeting held on 13.12.13 under the Chairmanship of PS (Power) regarding pending issues of HUDA, HSIIDC & Power Utilities and **decided that load norms and other factors will be applicable retrospectively from January 2006.....**”*

3.7 The above instructions on load norms to be adopted for development of plotted areas were again revised vide Sales Circular No. D-16/2017 dated 12.04.2017 with the approval of the Hon'ble Chief Minister, Haryana. If the contents of these two Sales Circulars are examined it would be noted that *“the load norms for Plots of Residential Sectors/Colonies Developed by HUDA/Private Colonizers”* remained unchanged. This is exactly what was prayed by the Petitioner that the load norms which were prevalent in January 2006 should be applied for the Petitioner as well. Reference to letter dated 12.11.18 is irrelevant as it does not address the issue raised by the Petitioner.

3.8 The basic difference introduced through Sales Circular D-9/2014 was that while calculating ultimate load, a demand factor was introduced, which was not there in earlier Sales Circular D-9 Of 2011. The Note-1 reads as under,

Note – 1. Demand factor of 0.4 for Residential Plots and 0.5 for Group Housing Societies shall be applied to arrive at loads for which the infrastructure capacity has to be developed by HUDA/HSIIDC/Private Colonisers/Developers/SEZs etc.

As this Sales Circular was made applicable from January 2006, the Ultimate Load requirement had to be revised as per this Circular. The earlier load which was assessed as 9844 kVA has to be reworked out taking demand factor of 0.5 i.e. the load requirement gets reduced to 50% or less than 5 MVA.

3.9 The Respondent Nigam had issued Sales Circular D-1 of 2015 dated 02.01.15 relating to the 'Approval of electrification plan and sanction of load for the colonies/multi-storeyed buildings developed by private developers/ Colonizers/ Licensees/SEZ', which reads as under,

“2. Wherever the ultimate load of a site as per latest norms is below 5 MVA, the builder/developer shall be released a connection at 11 kV through an independent feeder for which the builder/ developer has to pay to HVPN/DHBVN only the

proportionate share cost of feeding substation corresponding to their ultimate load.”

3.10 Another important fact to be appreciated related to the date of application for sanction/release of load for the area of the Petitioner. Hon'ble Commission has consistently been taking the view that the Rules/Regulations, as applicable on the date of submission of formal Application by the Consumer/Applicant seeking electricity supply connection, will be the adopted for processing the case of the Applicant/consumer. This Principle rightly deserves to be adopted in the instant case as well.

3.11 The Petitioner is yet to submit the formal application for sanction/release of load for the area being developed by the petitioner. Therefore, the application for sanction of load should be processed as per the Load Norms or the Sales Circulars/Regulations, as applicable today. However, the Respondent Nigam is sticking to the estimated load approved in the year 2011. It needs to be appreciated that the load of the Petitioner has not yet been applied/sanctioned and therefore, the Respondent Nigam has to go by the Load Norms as applicable today and not in the year 2006 or 2011.

Proceedings

4.1 The matter was listed for hearing on 26/03/2019. Shri R.K. Jain, Advisor/Legal & Power appeared on behalf of the Petitioner and briefed the case to the Commission, mainly summarising the submissions in the Petition. He submitted that DHBVN has issued detailed guideline related to approval of electrification plan vide circular No. D-9/2014 dated 27/01/2014 but is not following its own instruction of revising the load norms retrospectively from January, 2006. Further, Shri Jain submitted that DHBVN vide its memo dated 04/11/2011 had approved the load of 9844 kVA as per its Sales Circular No. D-9/2011. The Petitioner vide its letter dated 09/04/2018 had requested DHBVN for revision of its electrification plan and reduction of load from 9844 kVA to 3930 kVA in view of Sales Circular No. D-16/2017 of DHBVN which was communicated technically feasible by XEN, OP., Div. Rewari. However, DHBVN vide its letter dated 19/07/2018 had rejected the representation of the Petitioner indicating that the request for reapproval of electrification plan is not maintainable.

- 4.2 The Commission directed the Respondent to submit their replies. The respondent submitted their replies on dated 07/05/2019.
- 4.3 The matter was again listed on 28/05/2019. However, Shri R.K. Jain, Advisor/Legal & Power appeared on behalf of the Petitioner and sought adjournment on 29/05/2019. The matter was accordingly heard on 29/05/2019. The respondent submitted that they have already submitted their replies which they briefed again to the Commission.
- 4.4 Further, during the hearing held on 29/05/2019, the Petitioner submitted that they are not pressing on their other prayers related to approval of sales circular by the Commission. Accordingly, the Ld. Counsel on behalf of the Respondent preferred not to argue on other prayers.

Commission's Order & Analysis

- 5.1 On perusal of materials placed on record, the Commission observes that the Petitioner had applied for approval of Ultimate load requirement and electrical layout scheme in the year 2011 and consequently, the scheme was approved by CE/Commercial, DHBVN vide letter dated 04/11/2011 with an estimated load of 9844 kVA based on the load norms applicable at that time in pursuance to the Sales Circular No. D-9/2011.
- 5.2 Subsequently, Sales Circular No. D-09/2014 dated 27/01/2014 was issued by the Respondent, as per which the builders/developers were required to create an electrical infrastructure in the properties developed by them, commensurate to the ultimate load.
- 5.3 Thereafter, the Sales Circular No. D-09/2014 was amended vide Sales Circular No. D-16/2017 dated 12/04/2017 prescribing the revised load norms but do not contain any provision as to application of the load calculation norms retrospectively, instead it is stipulated that the load norms stated therein are being enforced with immediate effect i.e., prospectively. The relevant clause of the Sales Circular No. D-16/2017 is as follows:

“viii) These load norms will be revised/updated every three years in sync with up dation of EDC charges and will be made applicable prospectively.”

5.4 The Commission observes that the Petitioner had submitted the request for revision of load requirement on 09/04/2018 in view of Sales Circular No. D-16/2017 dated 12/4/2017 which is prospectively operative and cannot be applied retrospectively as indicated in relevant clause quoted above.

5.5 The Petitioner has further submitted that the basic difference introduced through Sales Circular D-9/2014 was that while calculating ultimate load, a demand factor was introduced, which was not there in Sales Circular D-9 Of 2011 i.e.

“Note – 1. Demand factor of 0.4 for Residential Plots and 0.5 for Group Housing Societies shall be applied to arrive at loads for which the infrastructure capacity has to be developed by HUDA/HSIIDC/Private Colonisers/Developers/SEZs etc.”

As this Sales Circular was made applicable from January 2006, the Ultimate Load requirement had to be revised as per this Circular. The earlier load which was assessed as 9844 kVA has to be reworked out taking demand factor of 0.5 i.e. the load requirement gets reduced to 50% or less than 5 MVA.

5.6 The Commission observes that the demand factors for various categories of loads were specified for estimating the ultimate load of 9844 kVA based on the load norms during the period the Sales Circular No. D-9/2011 was in vogue and the demand factor 0.5 was applied while making the assessment of load for Group housing as per layout plan applicable at that time. Therefore, the submission of the Petitioner that the earlier load of 9844 kVA, wherein there is no demand factor, has to be reworked considering demand factor of 0.5 is misleading.

5.7 The Commission further observes that during the hearing held on 29/05/2019, the Petitioner submitted that they are not pressing on their other prayers related to approval of sales circular by the Commission. The respondent have submitted that all the sales circulars/instructions i.e., Sales Circular No. D-63/2001 dated 17.07.2001, Sales Circular No. D-10/2002 dated 08.02.2002, Sales Instruction No. D-02/2005 dated 22.02.2005, Sales Circular No. D-09/2011 dated

21.03.2011, Sales Circular No. D-09/2014 dated 27.01.2014 and Sales Circular No. D-16/2017 dated 12.04.2017 as questioned by the Petitioner have been issued by the Respondent with the prior approval of the State Government and Board of Directors of the Respondent and same are in consonance with the Regulations framed by this Hon'ble Commission.

- 5.8 The commission also acknowledges that the Hon'ble APTEL in its judgement dated 19/01/2017 in Appeal No. 282 of 2014 has ruled that in absence of any regulatory provisions, various circulars/guidelines issued by the licensee are in order. The relevant extract of the said judgment is as follows:

“v. The situation has arrived in absence of any regulatory provisions to levy charges by the Appellant for such nature of jobs in the state of Haryana. The Board of Directors of the Appellant has tried to fill the void to perform its duties under section 39 of the Electricity Act, 2003 and after considering similar type of arrangements prevailing in other states/utilities in the country. Thus, we are of the view that the Appellant was acting in accordance with section 39 of the Electricity Act, 2003 and its various circulars and guidelines while collecting supervision charges from the consumers.”

- 5.9 In view of the above, the commission is of considered view that the load norms revised in 2017 are applicable prospectively as evident in sale circular No. D-16/2017 and that the petitioner claim is devoid of merit and hence, the petition is disposed of accordingly.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 07/06/2019.

Date: 07.06.2019	(Naresh Sardana)	(Pravindra Singh)	(Jagjeet Singh)
Place: Panchkula	Member	Member	Chairman