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

Case No. HERC/Petition no 56 of 2023 and Petition no 62 of 2023
Date of Hearing: 20.12.2023
Date of Order: 22.12.2023

In the Matter of

Petition for relaxation in levying of FPPAS (Fuel and Power Purchase Cost Surcharge Adjustment) during the FY 2023-24 under regulation 66, 78 & 79 of HERC (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations 2019.

Petitioner(s)

Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL)
Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL)

Present on behalf of the Petitioner(s)

1. Sh. Amit Gupta, IDAS, Director Finance, UHBVNL
2. Sh. Rattan Kumar Verma, Director Finance, DHBVNL
3. Mr. J S Nara, SE/RA, UHBVNL
4. Ms. Urmila Grewal, XEN, RA, DHBVNL

Quorum

Shri Naresh Sardana Member

ORDER

Brief background of the case

1. The present petition has been filed by Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) and Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) seeking relaxation in levying of FPPAS during FY 2023-24 as prescribed under regulation 66, 78 & 79 of HERC (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations 2019.
2. As the matter and prayer filed by both the petitioner(s) is identical, hence, the Commission has considered it appropriate to deal with the present petition(s) filed separately by UHBVNL and DHBVNL together (hereinafter referred to as the Discoms) and dispose of the same vide the present common order.
3. The details of the petition filed by the Discoms is reproduced as under:
   I. Regulatory provisions for applicability of FPPAS

i) Section 62 of the Electricity Act 2003 entails that no tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

ii) Clause 5 (h) (4) of the National Tariff Policy, 2016 also directs that all uncontrollable costs should be speedily recovered from consumers so that the future consumers may not get burdened with past costs. The uncontrollable costs would include but not be limited to fuel costs, costs on account of inflation, taxes and cess, variation in power purchase unit costs including on account of hydro-thermal mix in case of adverse natural events. The relevant portion of the National Tariff Policy, 2016 is reproduced as under:

5(h)(4) "…Uncontrollable costs should be recovered speedily to ensure that future consumers are not burdened with past costs. Uncontrollable costs would include (but not limited to) fuel costs, costs on account of inflation, taxes and cess, variations in power purchase unit costs including on account of hydro-thermal mix in case of adverse natural events…"

iii) Further, the Clause 8.2 of National Tariff Policy, 2016 specified that total power purchase costs shall be considered as legitimate expense unless it is established that merit order principle has been violatoted or power has been purchased at unreasonable rates. The relevant excerpts of National Tariff Policy, 2016 are reproduced as under:

8.2.1"...(1) All power purchase costs need to be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates. The reduction of Aggregate Technical & Commercial (ATC) losses needs to be brought about but not by denying revenues required for power purchase for 24 hours supply and necessary and reasonable O&M and investment for system up-gradation. Consumers, particularly those who are ready to pay a tariff which reflects efficient costs have the right to get uninterrupted 24 hours supply of quality power. Actual level of retail sales should be grossed up by normative level of T&D losses as indicated in MYT trajectory for allowing power purchase cost subject to justifiable power purchase mix variation (for example, more energy may be purchased from thermal generation in the event of poor rainfall) and fuel surcharge adjustment as per regulations of the SERC..."

iv) The Discoms have submitted that in exercise of the powers conferred under Section 181 of the Electricity Act 2003, the Hon'ble Commission notified the Multi Year Tariff Framework Regulations, 2019 for Second Control Period from FY 2020-21 to FY 2024-25 (hereafter referred as HERC MYT

Regulations, 2019) on 31.10.2019 and the same came into effect since 1st April 2020. The first amendment of the ibid regulation was notified on 25.11.2019. The second amendment was notified on 31.01.2022, and the third amendment was notified on 12.04.2023.

v) That regulation 66 (Fuel and Power Purchase Cost Surcharge Adjustment) of the HERC MYT Regulations 2019 allows the distribution licensees to recover Fuel and Power Purchase Adjustment Surcharge (FPPAS) on account of increase in fuel and power purchase cost from consumers. The third amendment of the HERC MYT Regulations 2019 changed the FPPAS calculation methodology from quarterly to monthly basis. The details of the amendment are as under: -

vi) That as per the amended Regulation 66, FPPAS shall be calculated and billed to consumers, automatically, without going through the regulatory approval process, on a monthly basis, according to the formula prescribed in the HERC MYT Regulations 2019 and its amendment thereof, subject to true up, on an annual basis, as may be decided by the Commission. The relevant excerpts of the HERC MYT Regulation 2019 are reproduced as under:

"66. Fuel and Power Purchase Adjustment Methodology

1. Computation of fuel and power purchase adjustment surcharge:

1) "Fuel and Power Purchase Adjustment Surcharge" (FPPAS) means the increase in cost of power, supplied to consumers, due to change in Fuel cost, power purchase cost and transmission charges with reference to cost of supply approved by the Commission.

2) Fuel and power purchase adjustment surcharge shall be calculated and billed to consumers, automatically, without going through regulatory approval process, on a monthly basis, according to the formula, prescribed in these regulations, subject to true up, on an annual basis, as may be decided by the Commission: Provided that the automatic pass through shall be adjusted for monthly billing in accordance with these rules.

3) Fuel and Power Purchase Adjustment Surcharge shall be computed and charged by the distribution licensee, in (n+2)th month, on the basis of actual variation, in cost of fuel and power purchase and Interstate Transmission Charges for the power procured during the nth month. For example, the fuel and power purchase adjustment surcharge on account of changes in tariff for power supplied during the month of April of any financial year shall be computed and billed in the month of June of the same financial year: Provided that in case the distribution licensee fails to compute and charge fuel and power purchase adjustment surcharge (FPPAS) within this time line, except in case of any force majeure condition, its right for recovery *of costs on account of fuel and power purchase adjustment surcharge shall be forfeited and in such cases, the right to recover the fuel and power purchase adjustment surcharge determined during true-up shall also be forfeited.*

4) The distribution licensee may decide, fuel and power purchase adjustment surcharge or a part thereof, to be carried forward to the subsequent month in order to avoid any tariff shock to the consumers, but the carry forward of fuel and power purchase adjustment surcharge shall not exceed a maximum duration of two months and such carry forward shall only be applicable, if the total fuel and power purchase adjustment surcharge for a billing month, including any carry forward of fuel and power purchase adjustment surcharge over the previous month exceeds twenty per cent of variable component of approved tariff.

5) The power purchase adjustment surcharge shall first be accounted towards the oldest carry forward portion of the fuel and power purchase adjustment surcharge followed by the subsequent month.

6) In case of carry forward of fuel and power purchase adjustment surcharge, the carrying cost at the rate of State Bank of India Marginal cost of Funds-based lending Rate plus one hundred and fifty basis points shall be allowed till the same is recovered through tariff and this carrying cost shall be trued up in the year under consideration.

7) Depending upon quantum of fuel and power purchase adjustment surcharge, the automatic pass through shall be adjusted in such a manner that,

(i) If fuel and power purchase adjustment surcharge≤5%, 100% cost recoverable of computed fuel and power purchase adjustment surcharge by distribution licensee shall be levied automatically using the formula.

(ii) If fuel and power purchase adjustment surcharge>5%, 95% fuel and power purchase adjustment surcharge shall be recoverable automatically using the formula and the differential claim shall be recoverable after approval by the State Commission during true up.

8) The distribution licensees shall file a petition seeking true up of the fuel and power purchase for the year under consideration by 31st May of the next financial year. The Commission shall true up the same by 30th June, after applying the necessary prudence checks.

9) In case of excess revenue recovered for the year against the fuel and power purchase adjustment surcharge, the same shall be recovered from the licensee at the time of true up along with its carrying cost to be charged at 1.20 times of the carrying cost rate approved by the Commission and the under recovery of fuel and power purchase adjustment surcharge shall be allowed during true up, to be billed along with the automatic Fuel and Power Purchase Adjustment Surcharge amount.

Explanation: - For example in the month of July, the automatic pass through component for the power supplied in May and additional Fuel and Power

Purchase Adjustment Surcharge, if any, recoverable after true up for the month of April in the previous financial year, shall be billed.

10) The distribution licensee shall submit details of the variation between expenses incurred and the fuel and power purchase adjustment surcharge recovered, and the detailed computations and supporting documents, along with the true up petition.

(i) "Fuel and Power Purchase Adjustment Surcharge" (FPPAS) shall be calculated only in respect of approved source wise power purchase quantum including short term power, if any, for the relevant year. The discoms may resort to drawl of short term power on TAM, DAM, RTM etc. to meet day to day exigencies provided no other cheaper source of power is available.

(ii) For the purpose of recovery of FPPAS, power purchase cost shall include all invoices raised by the approved suppliers of power and credit received by the distribution licensees during the year irrespective of the period to which these pertain for any change in cost in accordance with tariff approved by the Commission. This shall include arrears/refunds, if any, not settled earlier.

(iii) In case of negative FPPAS, the credit shall be given to the consumers by setting off the minus figure against the positive figure of FPPAS being charged from the consumers. In other words, credit of FPPAS shall be given only against FPPAS being charged so that the base tariff determined by the Commission remains unchanged.

(iv) The allowed percentage of transmission and distribution losses for the relevant year allowed by the Commission in the ARR shall only be considered for working out FPPAS.

(v) Per unit rate of FPPAS (paisa/kWh/kVAh) shall be worked out after rounding off to the nearest paisa;

(vi) The distribution licensee shall submit details relating to FPPAS recovery to the Commission for each year in the following format: -

(i)	*Approved power purchase volume from approved sources (MU)*
(ii)	*Approved power purchase cost (Rs. million)*
(iii)	*Actual power purchase volume (MU)*
(iv)	*Power purchased (MU) from sources not covered under Regulation 66.2 giving source wise details and in case of UI the frequency at which UI drawls were made. (disallowed power purchase).*
(v)	*Actual cost of power purchase from all sources except (iv) (Rs. million)*
(vi)	*Actual cost of disallowed power purchase relating to (iv) (Rs. million).*
(vii)	*Total FSA estimated to be recovered for the quarter (Rs. million).*
(viii)	*FSA per unit (Rs. /kWh) being recovered during the following quarter.*
(ix)	*Actual FSA recovered/estimated to be recovered out of estimated FSA till the end of the following quarter (Rs. million)*
(x)	*Under/ over recovered FSA (vii-ix) (Rs. million).*

(xi)	*Approved sales (Consumer category wise / month wise) for the quarter (MU)*
(xii)	*Actual sales (Consumer category wise / month wise) for the quarter (MU)*
(xiii)	*Estimated sales, consumer category wise, for the following quarter (MU).*

Note: - All the source-wise details should be supported with requisite documentary evidence / invoices raised by the generators / suppliers of the power. Further, actual sales to AP consumers are to be calculated in accordance with the methodology approved by the Commission in the ARR for the relevant year

(vii) *In case Haryana Government decides to provide subsidy on account of FPPAS liability to any consumer category/sub-category, the amount of subsidy equivalent to the FPPAS recoverable from the consumer category concerned, shall be deposited in advance by the Government Otherwise the recovery shall be affected from the consumer through electricity bills. It shall be the responsibility of the distribution licensees to seek prior approval of the State Government in this regard and maintain appropriate record of the same*."

II. Computation of Fuel and Power Purchase Adjustment Surcharge as per MYT Regulations

i) Regulations 66.2 0f the HERC MYT Regulations, 2019 (and its amendments thereof) illustrates the formula for determination of FPPAS. The relevant portion of the HERC MYT Regulations, 2019 is reproduced as under:

$$\text{Monthly FPPAS for nth Month (\%)} = \frac{(A-B) * C + (D-E)}{\{Z * (1 - \text{Distribution losses in \%}/100)\} * ABR}$$

Where:

n^{th} month means the month in which billing of fuel and power purchase adjustment surcharge component is done. This fuel and power purchase adjustment surcharge is due to changes in tariff for the power supplied in $(n-2)^{th}$ month

A is Total units procured in $(n-2)^{th}$ Month (in kWh) from all Sources including Long-term, Medium term and Short-term Power purchases(To be taken from the bills issued to distribution licensees)

B is the bulk sale of power or inter-state sales from all Sources in (n-2)th Month (in kWh) = (to be taken from provisional accounts to be issued by State Load Dispatch Centre by the 10th day of each month)

C is incremental Average Power Purchase Cost= Actual average Power Purchase Cost (PPC) from all Sources in (n-2) month (Rs. / kWh) (computed) - Projected average

Power Purchase Cost (PPC) from all Sources (Rs. / kWh) (from tariff order)

D = Actual inter-state and intra-state Transmission Charges in the (n-2)th Month, (From the bills by Transcos to Discom) (in Rs)

E = Base Cost of Transmission Charges for (n-2)th Month. = (Approved Transmission Charges/12) (in Rs)

Z = [{Actual Power purchased from all the sources outside the State in (n-2) th Month. (in kWh) (1 – Interstate transmission losses in % /100) + Power purchased from all the sources within the State(in kWh)}*(1 – Intra state losses in %/100) – B]/100 in kWh*

ABR = Average Billing Rate for the year (to be taken from the Tariff Order in Rs/kWh)

Distribution Losses (in %) = Target Distribution Losses (from Tariff Order) Inter-state transmission Losses (in %) = As per Tariff Order

Provided that the Power Purchase Cost shall exclude any charges on account of Deviation Settlement Mechanism.

Provided further that other charges which include Ancillary Services, Security Constrained Economic Despatch as well as any prior period adjustments, shall not be included in Fuel and Power Purchase Adjustment Surcharge and will be adjusted through the true-up.

ii) The approach as described above in accordance with the 3rd amendment of HERC MYT Regulations 2019 has been considered to determine FPPAS for the relevant months (April'23, May'23, June'23, July'23) of FY 2023-24.

III. Variation of Month-wise Estimated FPPAS%.

i) The Discoms have averred that in accordance with the Haryana MYT regulation, 3rd Amendment as stated above, it is submitted that the FPPAS for the first quarter (Q1) and the first month of Q2 of FY 2023-24 has been estimated as follows,

Monthly FPPAS for FY 2023-24

Name of the Month	FPPAS%
April 2023	3.28%
May 2023	-5.48%
June 2023	8.33%
July 2023	7.77%

ii) That considering the above estimation of FPPAS, a considerable variation is seen in the amount of monthly FPPAS estimated for the month April' 2023 to July'2023 of FY 2023-2024 (for April 2023 the estimated FPPAS was positive, for May 2023 it was negative & for June and July 2023 it was again positive). The possibility of FPPAS being negative during Nov-March months of FY 2023-24 cannot be ruled out due to the low demand period. Also, the duration of one month for levying the FPPAS to consumers is relatively short to capture the overall trend of FPPAS in a quarter.

iii) In addition, the FSA pertaining to April’22 to Oct’22 @ 47 Paise per unit is already being levied on the consumers for the 5 quarters starting April 2023 as per the old methodology.

iv) Hence, due to the above-explained variation in FPPAS for the current year and already implemented FSA of 47 paise/kWh, the DISCOMs hereby seek relaxation to charge the FPPAS in any suitable month for the current year i.e. FY 2023-24 in line with Regulations 78 & 79 of HERC MYT Regulations 2019 and its amendments thereof. The charging of FPPAS, however, shall be undertaken in line with the relevant regulation of HERC MYT Regulation 2019. This shall also avoid the undue burden of high FPPAS on consumers in a specific month vis-a-vis negative FPPAS in others.

IV. Prayer: The petitioner(s) have prayed as under:

- Petitioner(s) may kindly be allowed relaxation in charging the monthly FPPAS in any suitable month for the current year i.e. FY 2023-24 in line with Regulations 78 & 79 of HERC MYT Regulations 2019;
- Condone any inadvertent omissions/errors/shortcomings and permit the petitioners to add/change/modify/alter this filing and make further submissions as may be required during the proceedings in the matter;
- Pass the necessary order as may be deemed fit for recovery of FPPAS from the Consumers.

Proceedings of the Case

4. The petition(s) filed by the Discoms was taken-up for hearing, on 29.11.2023 in the court room of the Commission.

5. In the first hearing held on 29.11.2023, the Commission observed that during the process of finalizing the 3rd amendment of the HERC MYT Regulations 2019, the Discoms filed their comments vide memo no Ch-56/RA/F-194/Vol IV dated 16.02.2023. However, no reasons for the difficulties that may arise due to monthly recovery was given. Further, UHBVNL, in compliance of the HERC interim order dated 22.02.2023, filed its response on 14.03.2023 and no difficulty, as such, except some minor errors in the formula appended to the draft was pointed out.

Accordingly, the Commission directed the petitioner(s) to file the reasons for not brining to the notice of this Commission, the difficulty, if any, at the time of finalization of the draft amendment in March 2023 and what has changed thereafter.

Further, Director/Finance of UHBVNL and DHBVNL were also directed to appear in person to explain the detailed reasons justifying relaxation, sought for the FY 2023-24.

6. In response to the Interim Order dated 30.11.2023, UHBVNL vide memo No. 43/RA/F-54/Vol-17 dated 06.12.2023, submitted as under:

   a. That the Ministry of Power, Government of India, on 29.12.2022, notified the Electricity (Amendment) Rules, 2022. In view of Rule 14 of the ibid rules, the Commission had issued a draft HERC MYT Regulations, 2019 (3rd Amendment) Regulations, 2023 for discussions and invited comments/ suggestions/objections from the stakeholders.

   b. In line with the Electricity (Amendment) Rules, 2022, the methodology of calculation of "Fuel and Power Purchase Adjustment Surcharge" has been modified in the draft 3rd amendment of HERC MYT Regulation. It had also been mentioned that FPPAS should be calculated on Monthly basis.

   c. With reference to the above, DISCOMs submitted comments on 16.02.2023. Also based on the public hearing, in the Interim Order Dated 22.02.2023, hon'ble Commission directed DISCOMs to study the formulae of recovery of 'Fuel and Power Purchase Adjustment Surcharge'(FPPAS) as proposed in the draft of the 3rd Amendment of HERC MYT Regulation, 2019 by populating the actual data available for the FY 2022-23. In addition to this, Hon'ble Commission had also asked Discoms to suggest any changes in the formula, if required.

   d. Accordingly, the Discoms calculated the FPPAS for the FY 2022-23 using the actual data (of April, 2022 to Jan 2023) and submitted additional observations/ changes in FPPAS formula. The Discoms, as per directions, only undertook an illustrative calculation based on the actual data of FY 2022-23 (available till jan 2023) to get an estimate of FPPAS (%) and corresponding category-wise impact in terms of Rs. kWh. The FPPAS (%) estimated came to 27.79% of the variable cost of the approved tariff for each consumer category. With respect to the condition proposed in the draft amendment, 20% capping had been considered to estimate the per unit FPPAS. Discoms have also pointed out, in the previously submitted comments, that the capping of 20% should be increased to 30% as there has been cases when input fuel cost increased substantially due to mandatory blending of imported coal or any other unforeseen factor. Additionally, it was also submitted that the FSA of Rs. 0.47/kWh for Apr'22 to Oct'22 was calculated and approved to be levied over 5 quarters (implemented from 1st April, 2023).

e. Here, it is relevant to note that Discoms, per se, did not have any major objections with the formula itself and as the directions were to study the formulae and suggest any changes in the formulae after studying the estimation of FPPAS using actual data for FY 2022-23, Discoms submitted the same accordingly. The assessment was only seen in the context of aggregate effect of 10 months and not of month-on-month basis; hence, the negative FPPAS of May'2023 could not foreseen.

f. That during the submission of comments against the draft 3rd Amendment of MYT Regulations, Discoms clearly stated the possible difficulty that may arise while implementing the monthly FSA as significant number of Domestic and Non-Domestic (LT) consumers in Haryana are billed on bi-monthly basis.

g. Regarding the current petition, it has been submitted that Discoms are regularly estimating FPPAS on a monthly basis, however, the challenge emerges with respect to levying the FPPAs on consumers due to the variation (positive and negative) seen in the FPPAS based on actual data of April -July 2023.

h. Further, it is pertinent to note that the second half of the year, especially the period of Nov-Mar, is implicitly a low demand period due to weather conditions. Resultingly, during the said period Discoms are able to meet the demand without the requirement of scheduling costlier power plants. This has a direct effect on the average power purchase cost from the long- term PPA's and hence high probability of marginal to negative FPPAS during this period. In addition, FSA of Rs. 0.47/kWh is already being charged from the consumers.

i. Accordingly, in the current petition, the Discoms have submitted that relaxation is required for FY 2023-24 in levying the FPPAS on the consumers for avoiding the burden on them with additional FPPAS over and above the Rs. 0.47/kwh already being charged. Also, the possibility of FPPAS being negative during Nov- March months of FY 2023-24 cannot be ruled out due to the low demand period. Further, duration of one month, for levying FPPAS to consumers, is relatively short to capture the overall trend of FPPAS.

j. In view of the above, the DISCOMs have sought relaxation in charging monthly FPPAs in any suitable month for the current year i.e., FY 2023-24 in line with Regulations 78 & 79 of the HERC MYT Regulation 2019 and pass necessary order as may be deemed fit for recovery of FPPAs from the Consumers.

Commission's Order

7. The case(s) were taken-up for hearing, on 20.12.2023 in the court room of the Commission.

8. On consideration of the facts placed on record and issues raised by the petitioner(s), the Commission has decided to pass a common order in both the cases i.e. Petition no 56 of 2023 and Petition no 62 of 2023.

9. The petitioner(s) briefed the contents of the petition and submitted that Discoms have preferred the present petition seeking relaxation in levying of FPPAS during FY 2023-24 under Regulation 66,78 & 79 of HERC (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations 2019, for the reasons mentioned in the petition as well as the additional submission made in the matter.

10. The Commission has perused the submissions of the petitioner (s) and Regulation 66 of the MYT Regulations 2019, as amended by 3rd amendment, the relevant extract is as under:

"66. Fuel and Power Purchase Adjustment Methodology

1. Computation of fuel and power purchase adjustment surcharge:

(1) "Fuel and Power Purchase Adjustment Surcharge" (FPPAS) means the increase in cost of power, supplied to consumers, due to change in Fuel cost, power purchase cost and transmission charges with reference to cost of supply approved by the Commission.

(2) Fuel and power purchase adjustment surcharge shall be calculated and billed to consumers, automatically, without going through regulatory approval process, on a monthly basis, according to the formula, prescribed in these regulations, subject to true up, on an annual basis, as may be decided by the Commission: Provided that the automatic pass through shall be adjusted for monthly billing in accordance with these rules.

…."

11. It is observed that as per the provisions of Regulations 66 of the MYT Regulations referred to above, FPPAS shall be calculated and billed to consumers, automatically, without going through the regulatory process, on a monthly basis, according to the formula prescribed in the HERC MYT Regulations 2019 and its amendment thereof, subject to true up on an annual basis. This dispensation was incorporated so that the cost of power and revenue realized from the sale of power remains aligned through FPPAS mechanism in line with Section 62 (4) of the Electricity Act, 2003, as well as clause 5 (11) (h) (4) of the National Tariff Policy cited by the petitioner (s) themselves. Resultantly, admittedly such automatic formulae-based adjustments would have optimized cashflows, working capital requirement and avoidable "carrying cost" while truing up of the FPPAS.

12. The petitioner has prayed that the Commission may exercise its power under Regulation 78 and 79 of the HERC MYT Regulations 2019 in vogue and relax the

provisions of Regulation 66 and thereby allowing charging of the monthly FPPAS in any suitable month for the current year i.e. FY 2023-24.

13. The Commission observes that it is evident from the information furnished by the petitioner(s) that a considerable variation exists in the amount of monthly FPPAS estimated for April' 2023 to July'2023 of FY 2023-2024.

14. The Commission has also taken note of the fact that FSA pertaining to April'22 to Oct'22 @ 47 Paise per unit is already being levied on the consumers and will continue for the 5 quarters starting from April 2023 as per the old methodology.

15. Hence, due to the above-explained variation in FPPAS for the current year and already implemented FSA of 47 paise/kWh, the DISCOMs have sought relaxation in charging FPPAS for the current year i.e. FY 2023-24 in accordance with Regulations 66 of the HERC MYT Regulations 2019 (3rd Amendment) Regulations, 2023. The Commission is of the view that the charging of FPPAS, ought to have been undertaken in line with the relevant regulation in vogue. This would have prevented accumulation of FPPAS, passing of the same would have resulted in tariff shock to the consumers and also widening of the working capital gap for the Discoms.

16. The Commission observes that Regulation 78 and 79 of the MYT Regulations empowers the Commission to remove demonstrated difficulties and to relax any of the provisions of these Regulations. The relevant regulation is reproduced below:-

"78. POWERS TO REMOVE DIFFICULTIES. If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by a general or special order, not being inconsistent with the provisions of these Regulations or the Act, do or undertake to do things or direct the generating company or the licensee to do or undertake such things which appear to be necessary or expedient for the purpose of removing the difficulties.

79. POWER TO RELAX The Commission may in public interest and for reasons to be recorded in writing, relax any of the provision of these Regulations."

The power to relax under the regulations is in general terms and its exercise is discretionary. However, it is a settled law that exercise of a discretion must not be arbitrary, must be exercised reasonably and with circumspection, consistent with justice, equity and good conscience, always in keeping with the given facts and circumstances of a case.

A plain reading of the regulations (supra) established that this Commission in appropriate matter has the power to remove difficulties in implementation of the regulations by relaxing certain provisions. The Commission, after due deliberations, is of the considered view that the electricity consumers of Haryana are already paying 47 paisa per unit over and above the applicable tariff as determined by the Commission for the relevant year. Further, during the financial year 2023-24, non-availability of power from a few big generators under long term PPA as well as due to un-availability of APM gas, Faridabad Gas Power Plant (CCGT) becoming un-dispatchable, forced the Discoms to purchase expensive power in DAM and RTM. Further, due to shortage of domestic coal and directions from the Ministry of Power regarding mandatory blending of expensive imported coal, the electricity rates in the power exchanges have witnessed steep-hike. However, during the winter season (November, 2023 to February, 2024), the Discoms are expected to meet the electricity demand of the consumers from their own tied-up sources, without resorting to purchase of power at high rates from power exchanges. Consequently, the impact of FPPAS (%) is likely to even out in the last quarter of the FY 2023-24 to a certain extent.

Hence, the Commission, in larger interest of the electricity consumers of Haryana and for the reasons mentioned above, has considered it appropriate to relax the provision of Regulation 66 of the HERC MYT Regulations, 2019, as a one-time measure, limited to the FY 2023-24 as prayed for by the petitioner (s) herein. However, the Discoms should gear up its resources so as to implement FPPAS as provided in the regulations in vogue. Further, the Discoms should file a petition seeking true-up of the fuel and power purchase for the FY 2023-24 by 31st May, 2024, in line with Regulation 66 (8) of the MYT Regulations, 2019 (3rd Amendment) Regulations, 2023. It is added that the Commission has allowed the petition, preferred by the Discoms, in effect, this would defer the revenue realization (assuming FPPAS on annual basis is positive) from the electricity consumers, hence, on the FPPAS amount pertaining to the FY 2023-24, no holding cost/carrying cost would be admissible.

Petition no. 56 and Petition no. 62 are disposed of accordingly.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 22.12.2023.

Date: 22.12.2023 **(Naresh Sardana)**
Place: Panchkula **Member**