

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
AT PANCHKULA**

Case No. HERC/PRO-71 of 2020

Date of Hearing : 13.10.2021
Date of Order : 18.10.2021

In the Matter of

Petition under Section 43 of the Electricity Act, 2003 read with Section 46 of the Electricity Act, 2003 along with Clauses 4.2.2, 4.2.3, 4.4.7, 4.12.4, 4.12.5 and 4.14.3 of the Electricity Supply Code, 2014 and Regulation 3.3.4, 4.2 and 4.3 of the Duty to Supply Electricity on Request Regulations, 2005 as superseded by the regulations of 2016 and to declare and hold that the fixing the responsibility of O&M of the line of the petitioner by the respondents as per the tripartite agreement dated 10.06.2020 as incorporated in Clause 2(d) is illegal and in violation of the Regulations and that the respondents are not entitled to claim and /or ask the operation and maintenance from the petitioner of the feeding line; and/ or

For issuance of any other appropriate orders as the Hon'ble Commission may deem fit and appropriate in the facts and circumstances of the case and in the interest of justice and fair play.

Petitioner:

DCM Textiles, Unit of DCM Nouvelle Limited, through Sh. Pratap Bahadur Singh, Authorized signatory.

VERSUS

Respondents:

1. Haryana Vidyut Prasaran Nigam Limited, Shakti Bhawan, Sector 6, Panchkula through its Managing Director.
2. Dakshin Haryana Bijli Vitran Nigam s, Vidyut Sadan, Hisar through its Chairman cum Managing Director
3. The Director (Operations), Dakshin Haryana Bijli Vitran Nigam Vidyut Sadan, Hisar.
4. The Director (Technical), Haryana Vidyut Prasaran Nigam Limited, Shakti Bhawan, Sector 6, Panchkula.
5. The Chief General Manager (Operations), Dakshin Haryana Bijli Vitran Nigam Vidyut Sadan, Hisar.

Present

On behalf of the Petitioner

Shri Vinod Bhardwaj, Advocate

On behalf of the Respondents

Ms. Nikita Chaoukse, Advocate

QUORUM

Shri R.K. Pachnanda, Chairman
Shri Naresh Sardana, Member

ORDER

1. Brief Background of the Case:

The petitioner has submitted as under:

- 1.1 The petitioner, M/s DCM Textiles, is a unit of DCM Nouvelle Ltd. which is a Public Limited Company, constituted under the Companies Act, 2013 having its registered office at 6th Floor, Vikrant Tower, Rajendra Place, New Delhi-110008. It is into the manufacturing of 100% cotton yarn, having its manufacturing unit at Mela Ground, Hisar, Haryana. The petitioner is a Large Industrial Supply Consumer of the respondent no.2 having consumer account No.8667420000 (Old DMH2-0001). The sanction contract demand of the company is 15050 KVA and the sanctioned connected load is 17904 KW. The petitioner is one of the largest HT Industrial Consumer of the respondent no..2
- 1.2 That the petitioner had earlier been granted approval for the demand of 12500 KVA vide letter dated 10.02.2014. The said demand notice, as raised by the distribution licensee consequent upon the approval granted to the extension of load is, however, not being attached for the sake of brevity and unnecessary burdening of the Commission's record. The controversy in the present case arises after the aforesaid events.
- 1.3 That before reverting to the merits of the instant controversy, certain facts as are necessary for just and proper adjudication of the matter and as have led to filing of the instant petition, are being enumerated hereinafter below for the reference and perusal by the Hon'ble Commission:-

- I. That the petitioner submitted an application to the respondent distribution licensee on 27.05.2014. By virtue of the aforesaid letter, the petitioner sought extension of its load from 12500 KVA to 15050 KVA and 17904 KW to 17904 KW at 33 kV to 132 kV on an independent feeder. The petitioner also submitted the necessary A&A form in accordance with the sales manual instructions clause no.1.2.7, being a priority list of applicants under the continuous process industry. The requisite charges for the purposes of submission of the application were also deposited along with the aforesaid application.
- II. That the load of the petitioner at 33 kV was being fed from the 33 kV substation, HTM, Hisar, which was further connected to the 132 kV Beer substation, Hisar
- III. That for the purposes of release of connection to the petitioner at 132 kV level upon increase in the contract demand to 15050 KVA, DHBVN filed petition bearing No. HERC/PRO No.02 of 2015 to seek the necessary approval.
- IV. That the aforesaid PRO 2 of 2015 was decided by the Hon'ble Commission vide its order dated 17.04.2015. By virtue of the aforesaid order, the Hon'ble Commission, after duly noticing the submissions of the DISCOM, allowed the change in the feeding voltage from the existing 33 kV to 132 kV and also approved that as against the existing supply from the 33 kV substation, HTM, Hisar, the connection at 132 kV be released from the 220 kV substation, Industrial Area, Hisar. The Hon'ble Commission allowed permission to provide supply to the petitioner at 132 kV for meeting its contract demand of 15050 KVA subject to the conditions set out thereunder. As per the conditions imposed by the Hon'ble Commission, the substation cost of 132 kV was to be borne by the petitioner and the same was to be constructed on his own land. The full cost of 132 kV line was also to be borne by the petitioner. The expenditure towards erection of 132 kV line and its controlling equipment to be recovered as per the Duty to Supply Regulations, 2005 and the subsequent amendment thereof. It was also directed that the material procured

and the design of installation has to confirm to the standards of the Electricity Supply Code and upon energization, the line and controlling equipment shall become the property of licensee under Regulation 4.7 of the Regulations of 2005.

- V. That vide memo dated 15.05.2015, the respondent DHBVN granted approval to the extension of the contract demand upon the terms and conditions incorporated thereunder. A tripartite agreement was also required to be executed between the parties as per the terms and conditions of the sanction granted.
- VI. That eventually, it transpired that the proposal of the respondents to supply electricity at 132 kV from the 220 kV substation, Industrial Area, Hisar was not possible on account of difficulties in ROW due to the densely populated area and the mandatory requirement from the aviation authorities. Accordingly, the petitioner vide letter dated 16.10.2015 submitted the essential points for consideration of the respondent authorities so that the release of the enhanced load at the requisite voltage is not denied to the petitioner and is not delayed. Needless to mention that much correspondence and deliberation had taken place between the parties before the said letter was sent by the petitioner – DCM. The route survey for 132 kV from 132 kV substation, Beer was also conducted from the expert body and the feasibility as well as methodology was suggested.
- VII. That DHBVN forwarded the proposal to HVPNL and the said proposal was considered by the Whole Time Directors (WTD's) of HVPNL and it accorded to the said proposal. It was decided by the WTD's of HVPNL that a new 132 kV substation at DCM's end shall be constructed at the cost of the petitioner. Further, the cost in respect of augmentation of 220 kV substation, Industrial Area, Hisar was also claimed.
- VIII. That upon the receipt of the information from the HVPNL, the petitioner vide its letter dated 03.06.2016, conveyed that certain provisions in the approval required revision of various provisions related to demand of proportionate cost were objected to along with various demands that were being raised.

- IX. Pending consideration of the said proposal communicated vide memo dated 04.05.2016 and before raising of any demand note by the respondent no.2, the Haryana Electricity Regulatory Commission (Duty to Supply Electricity on request, Power to recover to expenditure incurred in providing supply and Power to require security) Regulations, 2016 came into force on 11.07.2016.
- X. The petitioner vide letter dated 14.10.2016 submitted to the Chief-Engineer of the respondent no.1 that the approval issued by HVPNL (respondent no.1) for providing 132 KV connectivity to the petitioner's sub-station needs revision as the same was raised as per Haryana Electricity Regulatory Commission (Duty to Supply Electricity on request, Power to recover the expenditure incurred in providing supply and Power to require security) Regulations, 2005. However, in view of notification of the new regulations on 11.07.2016, the same is to be revised. The said request of the petitioner was in accordance with the approval which itself stated that the cost is to be paid as per re-enacted regulations i.e. the regulations which came in effect from 11.07.2016.
- XI. That the petitioner vide its letter dated 20.10.2016 requested that HVPNL was required to revise its order dated 05.10.2016 and not to burden the consumer with unnecessary costs, especially the ones that had not been approved by the HERC and a request was made to withdraw the reference sent by HVPNL to DHBVNL and to take further necessary action in accordance with the appropriate governing regulations.
- XII. That vide letter dated 03.11.2016, the HVPNL confirmed to the petitioner about the proposal being taken up with the authorities of DHBVNL.
- XIII. Meanwhile the petitioner initiated the process for execution of the work for erection of 132 kV substation at DCM Textile Mill. The petitioner sought estimated cost and supervision cost for the same on urgent basis so that the work in question is not delayed on account of delay in depositing the estimates.

- XIV. That the petitioner filed PRO No.51 of 2017 before the Hon'ble HERC to seek clarification regarding implementation of the provisions of regulation 4.4 and 4.7 of the Regulations of 2016 dated 11.07.2016.
- XV. That all this while, the petitioner continued to approach authorities for approval of the designs, drawings, communication of the cost estimates, supervision charges etc. so that the release of the enhanced load as sanctioned and approved is not unduly delayed. Needless to mention that already a period of more than three years had elapsed since the passing of the order of the Hon'ble Commission and the sanctioned load was yet to be released to the petitioner. The necessary correspondence made by the petitioner with various authorities is not being attached for the sake of brevity. It is, however, submitted that PRO No.51 of 2017 was finally decided on 22.04.2019. It is significant to point out that the petitioner had sought the following prayers in its aforesaid PRO no.51 of 2017, which are as under:-
- i. To pass appropriate orders directing respondent no.1 or 2 to bear the cost of augmentation for installing 132 KV line to Beer 132 KV Hisar from IA 220 KV Hisar and augmentation of transformers at IA 220 KV Hisar feeding sub-station to Beer 132 KV Hisar.
 - ii. Initiate proceeding U/s 142 against the person responsible for non-compliance of the regulation and not providing the demand estimate as per the regulations passed by the Hon'ble Commission.
 - iii. Inflict exemplary punishment on the erring persons who failed to comply with the valid regulations of Hon'ble Commission dated 11.07.2016 and cost mental and financial harassment to the petitioner.
 - iv. Pass such other orders or relief as may deem just and proper in the facts and circumstances of the case.
- XVI. That the Hon'ble Commission noticed the grievance of the petitioner about the non-implementation of the order passed by the Hon'ble Commission along with the prayer of the petitioner to initiate

proceedings under Section 142 of the Electricity Act, 2003. The Commission noticed that DHBVNL did not issue the demand notice within the time limit and also observed that the respondent is justified in claiming for the shared cost of augmentation of the transformer at the 220 kV substation, Industrial Area, Hisar. The respondents were allowed to charge the proportionate cost of replacement of conductor of one circuit of Industrial Area, Hisar – 132 kV line, Beer with AL59 conductor and proportionate cost for augmentation of the transformer at the 220 kV substation, Industrial Area, Hisar.

- XVII. That it is significant to point out that without prejudice to the rights of the petitioner and subject to the outcome of the aforesaid PRO 51 of 2017, the petitioner had submitted an undertaking to deposit the required payment in terms of the demand and to process the deposit estimate and other approvals for execution of the works. In terms of the aforesaid undertaking submitted by the petitioner – DCM dated 02.04.2018, the Superintending Engineer of HVPNL approved the connectivity and feeding arrangements of 132 kV substation.
- XVIII. It is pertinent to note here that the petitioner has challenged the order dated 22-04-2019 in PRO No.51 of 2017 before the APTEL vide appeal no 237 of 2019, which is still pending.
- XIX. That the petitioner was suffering huge losses on account of the sanctioned load not being released despite expiry of more than four years since the initial approval having been granted by the Hon'ble Commission on 17.04.2015.
- XX. That in compliance to the sanction/ approval dated 15-05-2015 and 04-05-2016 the petitioner was also required to sign a tripartite agreement with HVPNL and DHBVN. The petitioner submitted the draft of the tripartite agreement with the respondent vide letter dated 29.03.2019. A reminder of the said letter for approving the draft of the tripartite agreement, dated 18.04.2019 as well as 04.10.2019 and various emails were also forwarded. However, no decision/action was taken thereupon by the respondent, which further delayed the project of the petitioner resulting into huge financial losses. The

respondent had sent a draft tripartite agreement vetted by its legal department on 14-03-2020. There were certain conditions in the draft tripartite agreement sent by the respondents which were not acceptable to the petitioner and the same were brought to the knowledge of the respondents and resend the same for discussion. The petitioner again submitted the reminder towards approval of the draft of tripartite agreement dated 13.05.2020 and 19.05.2020 and other reminders however, not been attached for the sake of brevity and to avoid unnecessary burdening of the court record.

XXI. That there were various objections to the proposed terms and conditions being forced upon the petitioner by the respondents exercising their dominant position. As there was an economic coercion on the petitioner, it submitted a protest letter dated 08.06.2020, pointing out its serious objection to the clauses being incorporated in the tripartite agreement. But officials of the respondents were reluctant to make the changes and it was made clear to the petitioner that the agreement must be signed as per the decision of the HVPNL. Finding no other alternative considering the energization of the project was getting delayed and causing huge losses to the petitioner, the petitioner signed the tripartite agreement under protest. The petitioner wishes to append the final agreement signed between the parties on dated 10.06.2020.

XXII. That the aforesaid agreement has been signed by the petitioner under the circumstances that clearly fall within the stipulation where it can be safely termed to be an agreement signed under coercion. The economic coercion has been held to be a valid ground for disputing the agreement and the conditions incorporated thereunder.

1.4 That the petitioner wishes to thus refer to various objections pertaining to the arbitrary terms and conditions as imposed in the said tripartite agreement which could not have been imposed by the respondents and are also contrary to the regulations.

1.5 That the provisions of the Electricity Act, 2003 impose a cardinal obligation upon the licensee to supply electricity on the request. The

aforesaid obligation is subject to the limitation of the systematic efficacy and the period in question can be extended only in so far as it requires the creation of the necessary augmentation. For the purposes of ensuring supply, the licensee is entitled to recover the expenditure for ensuring supply of electricity as may be reasonably incurred in providing any electric line in terms of Section 46 of the Electricity Act, 2003. Section 48 empowers the distribution licensee to direct any person to accept the restrictions / terms and conditions in accordance with the regulations. Hence, the distribution licensee is entitled to seek charge as regards expenses reasonably incurred and not an expense that is either not reasonable or has not been incurred. Besides, the expense in question must relate to providing the electric line or electric plant used for the purpose of giving that supply. The Commission, in exercise of its powers under Section 43, 46 and 47 of the Electricity Act, 2003 had framed the HERC Duty to Supply Electricity on Request Regulation, 2005. The aforesaid regulations mandate that the licensee has to release the electric connection to an applicant within a period of 100 days where the electricity is being claimed on extra high tension supply. The Regulation 3.4 mandates that it is the responsibility of the licensee to have necessary commercial arrangement with the respective transmission licensee to ensure that the required supply at EHT about 33 kV is made available within the time framed specified in Regulation 3.3. Para 3 deals with the provisions relating to rights of the licensee to recover expenditure. As per the Regulation 4.2, the licensee is not entitled to recover any expenditure incurred under any scheme approved by the Commission or where the expenditure is allowed to be otherwise recovered through tariff. The Regulation 4.3 prescribes the mode of assessment of service connection charges. The Regulation 4.5 requires the licensee shall issue a demand notice to the applicant informing him details of the service connection charges. The Regulation 4.7 stipulates that all equipments, upon energization shall become the property of the licensee and licensee shall maintain the same without claiming any operation and maintenance expenses, including replacement of defective / damage material / equipment from the consumer. The relevant clauses and provisions are

reproduced hereinafter below for the kind perusal of this Hon'ble Commission as under: -

Electricity Supply Code, 2014

Clause 4.2.2 - *The licensee shall bear the cost for strengthening, augmentation and up-gradation of the system, to meet the demand of general areas, through its annual revenue requirements (ARR) and the licensee shall seek to recover these costs from the consumers by submitting appropriate tariff proposal before the Commission while submitting the ARR. However, for individual consumers, the provisions of Regulations 4.2.3 and 4.2.4 shall apply.*

Clause 4.2.3 - *The cost of extension of distribution main and its up-gradation up to the point of supply for meeting demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer, shall be payable by the consumer or any collective body of such consumers as per the regulations framed by the Commission under Section 46 of the Act.*

Clause 4.4.7, *The timeline for different activities mentioned under Regulations 4.4.3 to 4.4.6, for different voltage level consumers, are tabulated hereunder:-*

Sr. No	Regulation	Activity	Time Allowed (in days) for connections on			
			LT	11 kV	33 kV	Above 33 kV
1.	4.4.3 (1)	To issue the demand notice.	7	14	20	25
2.	4.4.3 (3)	Time limit for complying with the demand notice by the applicant.	As prescribed under Regulation 4.15.2			
3.	4.4.4 (5)	To carry out inspection & testing of consumer's installation by the licensee.	05	15	20	25
4.	4.4.5	To issue service connection order.	05	05	05	10

5.	4.4.6	Time limit for licensee /applicant to complete the work required for providing electric supply.	10	30	45	100
6.	4.4.6	Time limit for release of connection to the applicant after completion of the work.	3	7	7	7

Note:- (i) As given under proviso of Regulation 4.4.4 (5), the time limit may get modified to the extent extra time is taken by the Electrical Inspector in inspection and testing of the consumer installation.

(ii) In case, where the applicant fails to complete the work referred in Regulation 4.4.6 within the prescribed period, connection may be released earlier to the next junior applicant(s), whose work has been already completed by the licensee/applicant.

Provided that where the licensee feels that for reasons beyond its control, the work is not likely to be completed within the given time limits, then the licensee shall:-

- (1) If the delay is upto 15 days from the stated time, inform the Commission giving reasons for the delay.
- (2) If the delay is expected to be more than 15 days from the time limit, seek prior approval of the Commission at least 15 days before the expiry of the above stated time limits.

Clause 4.12.4 - If the demand notice is accepted by the consumer, then he shall:

- 1) Pay the cost and charges as per the demand notice within the time limit specified in the demand notice.
- 2) Execute a revised Agreement.

Clause 4.12.5 - Supply to enhanced load shall be provided as per the timeline specified in regulation 4.4.7.

Clause 4.14.3 - The agreement shall include the following:

- (1) Name and address of the consumer/applicant;
- (2) Address of the premises for which electricity supply has been requisitioned and for which the agreement is being executed;
- (3) Load applied/sanctioned load/ contract demand;
- (4) Purpose of usage of electricity;

- (5) Declaration by the applicant/consumer including the following:-
- (i) To abide by provisions of the Act and these Regulations.
 - (ii) To pay for the supply of electricity based on the prevailing tariff rates;
 - (iii) To pay for all other charges payable in accordance with these Regulations and the Schedule of Miscellaneous Charges of the licensee approved by the Commission from time to time;
 - (iv) To deposit such security money as the licensee may be entitled to recover from him under the Act and these Regulations.
- (6) The agreement in the prescribed format shall be exercised on non judicial stamp paper of value as prescribed by law for such agreement.

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Duty to Supply Electricity on Request Regulations, 2005 as superseded by the regulations of 2016

Regulation 3.3.4 - It shall be the responsibility of the licensee to have necessary arrangements with the respective transmission licensee(s) to ensure that the required supply at High Tension above 33 KV is made available within the timeframe specified under Regulation 4 of the Electricity Supply Code.

Regulation 4.2 - The licensee shall prominently display on its website and in its offices, details of various charges / security amount to be deposited by the applicant alongwith the application, in accordance with the stipulation in these Regulations.

Regulation 4.3 - The licensee shall be responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply including future growth of such demand.

Regulation 4.7 - All equipment's except the meter (if supplied by the applicant), upon energisation, shall become the property of the Licensee & the Licensee shall maintain the same without claiming any operation & maintenance expenses, including replacement of defective/damaged material/equipment from the consumer.

- 1.6 That a perusal of the aforesaid provisions clearly shows that the respondents are bent upon taking undue advantage of their monopolistic status and are fully aware of the dependency of the applicant on the restoration of the supply at the sanctioned/approved connected Demand of 15050 KV at 132 KV level . It is on account of the economic duress being faced by the petitioner due to indefinite delay on the part of the respondents enhancing the sanctioned load of the petitioner that the petitioner had to execute the tripartite agreement in question forcefully. The same squarely falls within the circumstances as would fall in the domain of economic coercion. Even the Hon'ble Supreme Court accepted the aforesaid principle and agreed that the NOC may be signed by a person for seeking the release of his property and that he is required to show existence of duress and coercion which is prima facie. Invariably, the petitioner company had made huge investment in increasing the total number of spindles and necessarily had to cater to various buyers (International and National). The indefinite period being taken by the respondents in release of the increased load rendered serious difficulties for the petitioner. It was on account of the aforesaid tell-tale circumstances that the petitioner was compelled to sign the tripartite agreement but after having submitted his protest petition. Needless to mention that the release of electricity connection has always been the most prime requirement for the operations of the Government and petitioner had been awaiting expansion in the load since 2014 when the application was submitted and positively after 2015, when the Hon'ble Commission allowed the release of connection to the petitioner at 132 kV.
- 1.7 That respondents have dominated their position and forced the petitioner to agree for the terms which are illegal and not as per the provision of the supply code. Respondents have exploited their dominated position to include the arbitrary and unlawful term 2 (c) of making the petitioner bear any liability at any stage even after handing over the equipment's free from all encumbrances is totally arbitrary and in violation of the provision of the law, once the equipment's becomes the property of the respondent no 1 it is the responsibility of the respondent no 1 to bear any future cost and liability and petitioner cannot be held liable for the same .

1.8 That fixing the responsibility of O&M of the line upon the petitioner in the tripartite agreement by the respondent clearly proves the abuse and misuse of the dominant position exercised by the respondents, the term of the agreement is in violation of the Duty to Supply Electricity on Request Regulations, 2005 as well as against the mandate of law. A conjoint reading of the order dated 17.04.2015 along with the approvals dated 15-5-2015 and 4-5-2016 shows that the direction was issued to the respondents to release the connection on 132 kV level. As per the order dated 17.04.2015 passed by the Hon'ble Commission, it was only required to bear the cost of 132 kV substation to be erected at its own land and the cost of erection of the 132 kV line and its controlling equipment in accordance with the provision of the Regulation of 2005. Further the applicability of Regulation 4.7 of the Regulation of 2005 was also reiterated and the petitioner was obligated to ensure that the existing 33 kV substation in its premises would continue as such. The tripartite agreement dated 10.06.2020 provides for the general conditions for the release of the connection pertaining to the cost which the licensee claimed as recoverable from the petitioner. The aforesaid conditions as incorporated in condition no.1 of the tripartite agreement pertains to the cost recoverable in terms of Section 46 of the Electricity Act, 2003. The same shows that the connection at 132 kV was to be released from the 132 kV substation, Beer. The same also shows that the installation, operation and maintenance of 132 kV substation at the premises of the petitioner would be carried out by it as per the norms of HVPNL at its own cost. It was in light of the aforesaid that in condition no.2(c), all other equipment except consumer substation at DCM land was to be handed over to HVPNL. The condition incorporated as 2(d) has to be read in light of the aforesaid conditions where the operation and maintenance of the consumer's substation and line was to be maintained by the consumer. The aforesaid line is the local distribution line from the consumers substation to its operational premises etc. and the O&M of the line mentioned in condition no.2(d) cannot be extended to include the O&M of the line from the 132 kV substation, Beer to the 132 kV substation to be constructed in petitioner premises. It is significant to mention herein that

in terms of regulation 4.7 of the Regulations of 2005, the O&M of such energized lines / equipment had to be borne by the licensee itself. The licensee cannot claim any operation and maintenance expenses for the said line / equipment. It is thus an interpretation which is in conflict with the statute.

- 1.9 That the law is well settled that where any term of contract is in conflict with the statute / statutory regulations, the same have to be read in light of the statutory provision and the provisions of statute prevail over and above the clause as may be incorporated in the agreement. It is submitted that the clause 2(d), on a plain reading does not suggest to empower the licensee to recover O&M charges towards the supply from 132 kV substation, Beer to 132 kV substation at the premises of the consumer and restricts itself only to the local distribution network from the substation of the consumer to its premises since the aforesaid substation has not been vested in the licensee as per the conditions of the tripartite agreement.
- 1.10 That the respondents are deliberately misinterpreting and applying the provisions of the tripartite agreement in order to impose illegal and unnecessary obligation of O&M of the line which is not contemplated under the provisions of Section 46 as well as the regulations framed in exercise of the powers thereunder.
- 1.11 That it is also significant to point out that even the approval dated 04.05.2016 granted by the respondents did not create any liability for maintenance of the 132 kV line from the 132 kV substation, Beer to 132 kV substation of the petitioner.
- 1.12 That the aforesaid tripartite agreement also incorporates that the order dated 22.04.2019 passed by the Hon'ble Commission may also be read as part of the tripartite agreement. Even as per the aforesaid agreement, the respondents were allowed to charge the proportionate cost of the augmentation of the transformer at the 220 kV substation, Industrial Area, Hisar. Hence, neither under the order dated 17.04.2015 nor under the order dated 22.04.2019, the Commission allowed the respondents to claim operation and maintenance of the supply line from 132 kV substation, Beer to the 132 kV substation at the DCM land. Hence, even

the aforesaid orders do not empower the respondent to claim such charges.

- 1.13 That the suggested interpretation being applied by the respondents is neither borne out from the plain reading of the contract nor approved in terms of the provisions contained in the approval dated 04.05.2016 or the orders passed by the Commission dated 17.04.2015 and/or 22.04.2019 and is also not in conformity with the provisions as contained in the regulations of 2005 and the provisions of Section 46 of the Electricity Act, 2005. Clearly, the action of the respondents is in breach of law as well as the provisions of contract and is intended to derive wrongful gain by abusing its dominant position being the sole distribution licensee of electricity.
- 1.14 That the respondents are abusing their position and status to fix the illegal condition of O&M of line upon the petitioner which neither the responsibility of the petitioner nor due either under the contract or under the governing statute and thus wrongly empowers themselves at the cost of the consumer by raising demands that have no sanctity of law.
- 1.15 That the regulation 10.2 of the Regulations of 2005 empower the Hon'ble Commission to adjudicate upon such issues. The respondents are claiming justification of their action under Regulations of 2005 which, however, do not support or supplement the claim of the petitioner and rather suggest a gross abuse of the authority empowered on the part of the respondents and establish a clear misreading of the statutory provisions.
- 1.16 That the petitioner has not filed any other such or similar petition in this Hon'ble Commission or before any other court for the said cause of action.
- 1.17 That the dispute is within the domain of this Hon'ble Commission also with the provisions of the Electricity Act, 2003 as well as under the provisions of various Regulations, hence the same is within the jurisdiction of this Hon'ble Commission. The project in question is situated at Hisar.
- 1.18 It is therefore, most respectfully prayed that the present petition be allowed and it be clarified that the respondents are not entitled to claim and made the petitioner liable for any cost under condition 2 (c) and the

O&M expenses under Condition No.2(d) of the tripartite agreement dated 10.06.2020 of the 132 kV line from 132 kV substation, Beer to the 132 kV substation at DCM, Hisar and that the O&M expenses towards the same and any future cost etc. are to be borne by the respondents in terms of Regulation 4.7 of the Regulations of 2005 and other provision of law; and/or appropriate such other orders as the Hon'ble Commission may deem fit and appropriate in the facts and circumstances of the case and in the interest of justice and fair play be issued in favour of the petitioner.

2. Reply dated 23.03.2021 from Respondents No. 1 to 5:-

- 2.1 The present reply is being filed on behalf of respondent no.1 to 5 to the petition filed by the petitioner under Section 43 and Section 46 of the Electricity Act 2003 ("Act") read with Clause 4.2.2, 4.2.3, 4.4.7, 4.12.4, 4.12.5 and 4.14.3 of the Electricity Supply Code, 2014 and regulations 3.3.4, 4.2 and 4.3 of the Duty to Supply Electricity on Request Regulations, 2005 as superseded by the Regulation of 2016 seeking declaration that fixing the responsibility of O&M of the line of the petitioner by the respondents as per the Clause 2 (d) of the Tripartite Agreement dated 10.06.2020 is illegal and in violation of the Regulations.
- 2.2 At the outset it is submitted that the present petition is devoid of any merits. It is submitted that all allegations made by petitioner which are contrary to the submissions made herein below are denied in their entirety and the same may be treated as a denial in seriatim. All contentions and arguments have been taken in the alternative without prejudice to each other. It is submitted that the respondent is giving an issue wise response instead of a para-wise response to the petition for the sake of brevity and prolixity. Therefore, nothing shall be deemed to be admitted for the sake of specific denial unless specifically admitted hereinbelow.
- 2.3 The brief facts leading to the present petition is discussed as under:
 - I. The petitioner is an Industrial Consumer of DHBVN. Vide letter dated 10.02.2014, the petitioner had been granted approval for the demand of 12500KVA.
 - II. On 27.05.2014, the petitioner had applied for enhancement of contract demand from 12500 kVA to 15050 kVA along with up

gradation of supply voltage level from 33 kV to 132 on an independent feeder.

- III. On 20.01.2015, DHBVN filed petition bearing case no. HERC/ PRO -02 of 2015 before the Hon'ble Commission seeking necessary approval to provide supply at 132 KV level to the petitioner for contract demand to be extended from 12500 KVA to 15050KVA with change in feeding voltage level from existing 33 KV level to proposed 132 KV level. The said petition was filed in terms of regulation 3.2 of the 2005 Regulations.
- IV. Vide Order dated 17.04.2015, this Hon'ble Commission granted the permission for load extension for the petitioner at 132 KV supply voltage subject to the condition that the consumer i.e. the petitioner has to erect 132 kV substation at his own cost and in his own land while bearing the full cost of erection of 132kV line and its controlling equipment.
- V. Vide letter dated 15.05.2015, DHBVN conveyed the sanction for enhancement of load and up gradation of voltage level to the petitioner explicitly stating that the Petitioner will be liable to bear the share cost for the upgradation in terms of the Commissions' Order dated 17.04.2015 and as per the 2005 Regulations. The letter further stated that the petitioner was required to execute a tripartite agreement with HVPNL and DHBVN.
- VI. Vide letter dated 03.11.2015, the petitioner requested the respondents for changing the feeding of the proposed 132 KV substation DCM from 132 KV substation Beer (Hisar) instead of the 220 KV substation Industrial Area (Hisar) due to non-availability of the Right of Way. The petitioner has further undertaken in this letter to bear the cost of replacement of the conductor.
- VII. Considering the non-availability of the Right of Way (ROW) and the request made by the petitioner, the respondents vide letter dated 04.05.2016 shared a detailed connectivity plan with the petitioner in light of regulation 4.3 of the 2005 Regulations. As per the proposed plan, petitioner had to erect a new 132kV substation at M/s DCM Hisar, laydown 132 kV feeder line from 132 kV substation Beer to

132kV substation at M/s DCM Hisar, develop 132kV line bay at 132kV substation Beer, replacement of conductor from 220 kV substation Industrial Area, Hisar to 132kV substation Beer and augmentation of 1x50MVA 220/132kV transformer with 1x100MVA 220/132kV transformer at 220kV substation Industrial Area, Hisar at its own cost.

- VIII. It is noteworthy that this letter dated 04.05.2016 specifically stated that in respect of the 132 KV feeder line, the petitioner will be required to comply with the detailed guidelines for self-execution of the deposit works circulated by Deputy Secretary Operation memo No. Ch-17/DSO-214/L-154/L-II dated 25.04.2012 (“Memo dated 25.04.2012”). Relevant portion of Letter dated 04.05.2016 is as under:

“Creation of 132 Kv line on underground/ overhead (with XLPE single core 400Sq mm cable & 0.2 ACSR conductor) from 132 kV substation Beer to proposed 132 kV S/Stn DCM Hisar(Approx Length 2.5 Km) by line with the specifications and design requirements of HVPNL complying the detailed guidelines for self-execution of the deposit works circulated by Deputy Secretary Operation Memo No. Ch-17/DSO-214/L-154/L-II dated 25.04.2012”

- IX. The Memo dated 25.04.2012 categorically states that if a consumer opts for self-execution of the underground cable, the responsibility of maintenance as per norms of HVPNL will lie with the Consumer. Relevant portion of Memo dated 25.04.2012 is as under:

“h) In case the consumer opts for self-execution of the underground cable the responsibility of maintenance as per norms of HVPNL will also be of the Consumer.”

Hence, it is submitted that it was made clear to the petitioner way back in 2016 that they would be responsible for the maintenance of the 132 Kv feeder line. Most importantly, the Petitioner did not raise any objection in respect of the maintenance cost at that time. It is further pertinent to state that this was a special arrangement entered into for the petitioner because of the ROW problem.

- X. Subsequently, petitioner had undertaken the erection work according to the connectivity plan, shared by the HVPNL.
- XI. Vide letter dated 14.10.2016, the petitioner, giving reference of the 2016 Regulations, requested DHBVN to review and revise the approval accorded to the petitioner for providing 132 KV connectivity.
- XII. Subsequently, the petitioner filed Case No. 51 of 2017 before this Hon'ble Commission seeking clarification and implementation of the provisions of 4.4 & 4.7 of the 2016 Regulation. The petitioner had sought directions against respondents to bear the cost of augmentation for installing 132 KV line to 132 KV substation Beer Hisar from 220 KV substation Industrial Area Hisar and augmentation of transformers at 220 KV substation Industrial Area Hisar feeding sub-station to 132 KV substation Beer Hisar. It is imperative to state that the Petitioner in this petition did not challenge the condition relating to maintenance of the 132 KV feeder line in terms of the Memo dated 25.04.2012.
- XIII. On 22.04.2019, this Hon'ble Commission passed the Order in PRO 51 of 2017 dismissing the petition filed by the petitioner by rightly holding that the petitioner's request for enhancement of demand from existing 12.5 MVA to 15.05 MVA at 132 KV voltage level submitted vide his application dated 27/05/2014 is prior to the issuance of the 2016 Regulations and therefore, the matter has to be dealt and decided as per the various provisions laid down in the 2005 Regulations which require that the petitioner is liable to pay the share cost for the substation and line augmentation.
- XIV. Aggrieved by the findings of the Hon'ble Commission vide order dated 22.04.2019, the petitioner filed an appeal before the Hon'ble Appellate Tribunal which is pending adjudication. The respondents have also filed an appeal before the Hon'ble Appellate Tribunal in reference to partial findings of the Hon'ble Commission given in Order dated 22.04.2019 qua sharing of proportionate cost of replacement of conductor.
- XV. On 14.03.2020, the respondent sent a draft of the Tripartite Agreement to the petitioner in terms of the letter dated 04.05.2016.

- XVI. On 10.06.2020, the Tripartite Agreement was finally executed between the parties.
- XVII. On 09.11.2020, i.e. five months after signing the Tripartite Agreement, the petitioner belatedly filed the present petition challenging the clauses of the Tripartite Agreement pertaining to operation and maintenance cost of the 132 KV feeder line. It is difficult to fathom why the petitioner had not approached the Hon'ble Commission before signing the Tripartite Agreement or subsequently thereafter.
- 2.4 It is submitted that the primary issue raised by the Petitioner in the present Petition is that the Petitioner allegedly cannot be made liable to bear the O&M expense or any other cost in relation to the line from 132 KV substation Beer to the 132 KV substation to be constructed in Petitioner's premises after handing over the said line to HVPNL. Therefore, to this extent the condition 2(c) and 2 (d) incorporated in the Tripartite Agreement dated 10.06.2020 which was allegedly signed under protest by the Petitioner is illegal and contrary to the provisions of the HERC Duty to Supply Regulations.
- 2.5 In support of the said averment, the Petitioner mainly places reliance on Regulation 4.7 of the 2005 Regulations now superseded by Regulation 4.10 of the 2016 Regulations which states as under:
"All equipment except the meter (if supplied by the applicant), notwithstanding that whole or a portion thereof has been paid by the consumer, upon energisation, shall become the property of the licensee and the licensee shall maintain the same without claiming any operation and maintenance expenses, including replacement of defective/damaged material/equipment from the consumer".
- 2.6 The petitioner further contends that the approval dated 04.05.2016 granted by the respondent did not create any liability for maintenance of the 132 KV line from 132 KV substation, Beer to 132 KV substation of the petitioner (refer para 11 of the petition). The petitioner further claims that the Order dated 22.04.2019 also did not provide for the petitioner to bear the maintenance of the 132 KV Feeder line.
- 2.7 It is submitted that the said contention is wrong and misleading. As stated

in the preceding paragraphs, it was clearly stipulated in the approval dated 04.05.2016 that the petitioner will be required to comply with the memo dated 25.04.2012 which provides that the consumer will be responsible for the maintenance of the underground cable constructed under self-execution scheme. The petitioner has failed to place on record any document protesting or objecting to this condition being incorporated in approval dated 04.05.2016. Moreover, the petitioner never raised any objection to this condition even in case no. 51 of 2017 wherein the petitioner had sought directions against respondents to bear the cost of augmentation for installing 132 KV line to 132 KV substation Beer Hisar from 220 KV substation Industrial Area Hisar and augmentation of transformers at 220 KV substation Industrial Area Hisar feeding substation to 132 KV substation Beer Hisar. Therefore, there was never any occasion for the Hon'ble Commission to deliberate on the issue of operation and maintenance of the 132 KV feeder line while passing order dated 22.04.2019 in case no 51 of 2017. Hence, the petitioner is estopped from raising this issue belatedly after agreeing to the same on numerous occasions.

2.8 It is further pertinent to state that the subject 132 KV feeder line is an independent feeder which is being used dedicatedly by the petitioner. This present arrangement of supply through an independent feeder was a special arrangement only for the petitioner in view of the right of way problem. No other consumer is being fed by the said feeder.

2.9 Thus, considering that the petitioner had agreed to the condition relating to maintenance of this 132 kV Independent feeder incorporated in letter dated 04.05.2016, it is submitted that the Petitioner is liable for the same.

2.10 In light of the foregoing facts and circumstances, it is submitted that the Petition is devoid of any merit and ought to be rejected.

2.11 The Respondents crave leave of this Hon'ble Commission for altering/ amending/ modifying the present submissions or filing further submissions, if required, at the appropriate stage of the proceedings.

3. Replication dated: 20.09.2021 from Petitioner to the reply filed by

Respondents:

3.1. That the contents of para no. 1 are admitted.

- 3.2. That the contents of para no. 2 are false to the extent that they deal with the facts in question and prescribed law. The averments as stated in the petition are reiterated.
- 3.3. That the contents of sub paras (i), (ii), (iii) of para no. 3 are a matter of record.
- 3.4. That the contents of para (iv) are a matter of record, although the respondent has failed to highlight a relevant paragraph of the order dated 17.04.2015, the Commission vide order dated 17.04.2015 stated that:-

“Permission is hereby granted to provide supply at 132 KV of M/s DCM Textiles Hisar for meeting with their extended contract demand of 15.050 MVA. The supply at 132 KV voltage would, however, be allowed subject to the following conditions:-

- I. Provided 132 KV sub-station shall be erected by the consumer its own cost and in his own land.
- II. The consumer shall bear full cost of erection of 132 KV line and its controlling equipment. The expenditure would be recovered as per provision under Regulation No. HERC/12/2012 called as the Haryana
- III. Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply & Power to require security) Regulations, 2005 and subsequent amendments thereof or its re-enactment.
- IV. The material procured and the design of the installation shall conform to the standards and specifications of the distribution/transmission licensee as per provision under Regulation 4.4.3 (2) (c) of the Electricity Supply Code notified by the Commission.
- V. **The line and controlling equipment after energization, would become the property of the licensee of the area as per provision under Regulation 4.7 of the Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply & Power to require security) Regulations, 2005 and subsequent amendments thereof or its re-enactment.**

VI. The existing 33 KV sub-station, HTM in the premises of the consumer would continue as such.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 17th April, 2015.”

Pertinent is to mention that respondent HVPNL in its letter dated 15.05.2015 acknowledged and reiterated the order of the Hon'ble Commission, reliance is being placed upon that regulation 4.7 of 2005 Regulation states that “All equipments except the meter (if supplied by the applicant), upon energisation, shall become the property of the Licensee & the Licensee shall maintain the same without claiming any operation & maintenance expenses, including replacement of defective/damaged material/equipment from the consumer.” The order was only to the extent of bearing the proportionate share cost and the same does not relate to cost towards Operations and Maintenance. The interpretation adopted by the respondent is misconceived and is liable to be rejected.

- 3.5. That the contents of sub para (v) of para 3 is a matter of record.
- 3.6. That the contents of sub para (vi) of para 3 are misleading, it is evident from a bare perusal of the letter dated 16.10.2015 that the petitioner categorically and unequivocally stated that *“it is further pointed out that to overcome the loading condition of existing 132 KV D/C line from 220 KV S/S IA Hisar to 132 KV S/S Beer, arising out of feeding our line from 132 KV S/S/ Beer, the conductor of 1 circuit of this line can be augmented with high current carrying capacity conductor on the existing towers, we are agreed to share the cost of change of conductor with HVPNL. This will also help HVPNL in strengthening the feeding at 132 KV S/S Beer for its future planning also.”* The understanding between the parties was to share the cost of change of conductor. The same was thus not an undertaking to discharge the complete liability towards the conductor but was rather on the proportionate sharing principles as are recoverable expenditure. The Discom cannot create the infrastructure at the cost of the applicant, rather, the expenses incurred to provide the connection can be recovered in terms of the provisions contained in the Electricity act, 2003 and the regulations framed thereunder.
- 3.7. That the contents of sub para (vii) of para 3 is a matter of record.

- 3.8. That the contents of sub para (viii) of para 3 is a matter of record. It is however submitted that the document in question was never sent to the petitioner and as such the contents thereof are not known to the petitioner. In any case, the respondent cannot prescribe any condition which is contrary to the mandate of Act and cannot claim its entitlement that is not approved under the regulatory framework. It is further important to note that the alleged guidelines/ circular dated 25-04-2012 is not only in ultra-vires to the regulations but also in contravention to the HERC order dated 17-04-2015. Respondents cannot ask the petitioner to do something at their whims and fancies which petitioner is under no obligation to do as per the regulatory framework.
- 3.9. That the contents of sub para (ix) of para 3 are denied, it is denied that internal guidelines of the respondent HVPNL will subsist especially in view of Regulation of 2005 as superseded by Regulation of 2016 as well as order dated 17.04.2015 passed by the Hon'ble Commission. The order dated 17.04.2015 has now attained finality and is in terms and consonance with regulation 2005 as superseded by Regulation of 2016. The respondent HVPNL is misguiding this Hon'ble Commission by bringing in internal departmental guidelines which have not seen the light of the day till the filing of the reply by the respondent HVPNL. It is submitted that from the day one of the approval accorded by the HERC vide order dated 17-04-2015, the 132 KV substation at the petitioner end was supposed to be fed from the independent feeder from 220 KV substation Industrial Area Hisar. Change of feeding substation from 220 KV Industrial Area, Hisar to 132 KV substation Beer, Hisar due to ROW had no impact, in either case the 132 KV substation at petitioner's is to be fed through independent feeder line. Therefore, the respondent's contention that it was a special arrangement due to the Right of the way problem has no factual, technical and legal sanctity. Respondents cannot pass on their responsibility to maintain the feeding line upon the petitioner on the basis of some internal circular, which has no legal sanctity. Internal circular of the HVPNL cannot surpass the statutory regulations
- 3.10. That the contents of sub para (x) of para 3 are a matter of record, pertinent is to mention that the petitioner had agreed to work according to the

connectivity plan shared by HVPNL and the same was subject to the Regulation 2005 as superseded by Regulation 2016.

- 3.11. That the contents of sub para (xi) of para 3 are a matter of record.
- 3.12. That the contents of sub para (xii), (xiii) & (xiv) of para 3 are misconceived and the respondent HVPNL is misleading this Hon'ble Commission. At the cost of repetition it is reiterated that, that in PRO 51 of 2017, the Hon'ble Commission noticed the grievance of the petitioner about the non-implementation of the order passed by the Hon'ble Commission along with the prayer of the petitioner to initiate proceedings under Section 142 of the Electricity Act, 2003. The Commission noticed that DHBVNL did not issue the demand notice within a time limit and also observed that the respondent is justified in claiming for the shared cost of augmentation of the transformer at the 220 KV substation, Industrial Area, Hisar. The Respondents were allowed to charge the proportionate cost of replacement of conductor of one circuit of Industrial Area, Hisar -132 KV line, Beer with AL59 conductor and proportionate cost for augmentation of the transformer at the 220 KV substation, Industrial Area, Hisar. Contents of relevant paras of the petition are relied upon and are not being repeated herein for the sake of brevity. The said averments should be read as a part of the averments contained in the instant para.
- 3.13. That the contents of sub para (xv), (xvi) & (xvii) of para 3 are admitted to the extent that the same are a matter of record. That the contents of relevant paras of the petition are being relied upon and not being repeated herein for the sake of brevity. At the cost of repetition it is submitted that there were various objections to the proposed terms and conditions in the tripartite agreement which were being forced upon the petitioner in view of the respondents HVPNL dominant position and in view thereof a protest letter dated 08.06.2020 was submitted by the petitioner. The respondent HVPNL did not make the changes and it was made clear that the agreement must be signed as per the decision of HVPNL. Finding no other alternative and while considering that energization of the project was getting delayed and causing huge loss to the petitioner, the petitioner signed the tripartite agreement under protest. Any agreement signed under economic duress cannot be considered as binding between the

parties. It cannot be considered as a waiver or acquiescence of any right vested in the party and to oust the rights of the petitioner to challenge the arbitrary and unconscionable terms of a contract. The petitioner thereafter approached this Hon'ble Commission impugning the tripartite agreement and yielding regulation 4.7 of Regulation 2005 as superseded by Regulation 2016.

3.14. That the contents of para 4, 5 & 6 are a matter of record.

3.15. That the contents of para 7 are wrong, misconceived & misleading hence denied. It is denied that the petitioner was responsible for maintenance of the underground cable constructed under the self-execution scheme. It is denied that the petitioner has failed to place on record any document protesting or objecting to the said condition. It is respectfully submitted that the Commission vide order dated 17.04.2015 categorically & unequivocally stated that **The line and controlling equipment after energization, would become the property of the licensee of the area as per provision under Regulation 4.7 of the Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply & Power to require security) Regulations, 2005 and subsequent amendments thereof or its re-enactment.** Pertinent is to mention that respondent HVPNL in its letter dated 15.05.2015 acknowledged and reiterated the order of the Hon'ble Commission, reliance is being placed that regulation 4.7 of 2005 Regulation states that "All equipments except the meter (if supplied by the applicant), upon energisation, shall become the property of the Licensee & the Licensee shall maintain the same without claiming any operation & maintenance expenses, including replacement of defective/damaged material/ equipment from the consumer." The order dated 17.04.2015 having attained finality, the respondent HVPNL is in fact estopped from raising any issue with respect to the same. It is respectfully submitted that the tripartite agreement entered into by the petitioner was signed under protest and the present petition was filed subsequently thereafter. It is respectfully submitted that in the case of Haryana Vidyut Prasaran Nigam Limited Vs. Haryana Electricity Regulatory Commission, Appellate Tribunal for Electricity, New Delhi, the appellate authority was

of the view that, “We agree with the view of the State Commission that the O&M cost of the said works which are taken over by the Appellant is duly taken care of in the Annual Revenue Requirements (ARR) of the Appellant and hence levying O&M charges by the Appellant on Respondent No. 3, in our view is not in order. On this aspect the Impugned Order of the State Commission is upheld.”

- 3.16. That the contents of para 8 are false, fabricated and presented in the most concocted manner by the respondent, hence denied. Contents of the para no. 9 of the present replication be read in part and parcel to the reply of present para which are not repeated here for the sake of brevity..
- 3.17. That the contents of para 9 are wrong, misconceived & misleading hence denied.
- 3.18. That the contents of para 10 are wrong, hence denied.
- 3.19. That the contents are wrong, hence denied. The respondent are put to strict proof of it.

4. Proceedings:

- 4.1 The case was initially heard by the Commission on 09.03.2021, as scheduled, through video conferencing in view of the Covid-19 pandemic. Sh. Ajay Singh, advocate, appeared on behalf of the counsel of the petitioner and submitted that the main counsel in the present case i.e. Sh. Vinod Bhardwaj could not appear in the matter due to some unavoidable exigency and requested for short adjournment.
The Commission observed that the respondents have not filed their reply in the matter till date, despite the notice of hearing stands issued to parties on 05.01.2021. The respondents sought time to file their reply. As a last opportunity the Commission directed the respondents to file the reply within fifteen days with an advance copy to the petitioner, failing which Commission may be constrained to impose suitable penalty for non-compliance.
- 4.2 The case again came for hearing on 22.07.2021 wherein, the counsel for the petitioner sought time for filing the rejoinder in the matter. Acceding to the request of the petitioner, the Commission granted 15 days’ time for filing the rejoinder with an advance copy to the respondent.
- 4.3 The case again came up for hearing on 22.09.2021 wherein the counsel

for the petitioner presented his arguments at length to justify as to why operational & maintenance expenses of the line are not payable by the petitioner as per the tripartite agreement dated 10.06.2020, which is illegal and in violation of the Regulations since the licensee is not entitled to claim O&M expenses of the feeding line from the petitioner. However, the arguing counsel for respondent was unable to present his argument during the hearing due to medical exigency of the main arguing counsel, therefore the Commission decided to grant one opportunity to the respondents for arguing their matter.

- 4.4 The case was again heard by the Commission on 13.10.2021. At the outset, the counsel of the respondents has argued that the 132 kV feeder is dedicatedly being used by the petitioner. The present arrangement of supply through an independent feeder at 132 kV level was a special arrangement for the petitioner only in view of the right of way problem. No other consumer is being fed from the said feeder. It was clearly stipulated in the approval dated 04.05.2016 that the petitioner will be responsible for the maintenance of the underground cable being laid under self-execution scheme. Accordingly, it was clearly provided in the tripartite agreement that the consumer will be responsible for the maintenance of the underground cable laid under self-execution scheme. Moreover, the petitioner never raised any objection to this condition even in PRO 51 of 2017 wherein the petitioner had sought directions against the respondents to bear the cost of augmentation of 132 KV line from 220 KV substation Industrial Area Hisar to 132 KV substation Beer. Hence, the petitioner is estopped from raising this issue belatedly after agreeing to the arrangement at various occasions.

5. Commission's Order:

- 5.1. The case was heard by the Commission on 13.10.2021, as scheduled, through video conferencing in view of the Covid-19 pandemic.
- 5.2. As per clause 4.10 of the HERC (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply & Power to require security) Regulations, 2016 in vogue states as under:

"All equipment except the meter (if supplied by the applicant),

notwithstanding that whole or a portion thereof has been paid by the consumer, upon energisation, shall become the property of the Licensee & the Licensee shall maintain the same without claiming any operation & maintenance expenses, including replacement of defective/damaged material/ equipment from the consumer. The distribution licensee shall have the right to use it for the supply of electricity to any other person by tapping or otherwise except if such supply is detrimental to the supply to the consumer already connected therewith and subject to the provision under Regulation 4.8.2 (iii).”

Also, clause 4.7 of the HERC (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply & Power to require security) Regulations, 2005 states as under:

“All equipment except the meter (if supplied by the applicant), upon energisation, shall become the property of the Licensee & the Licensee shall maintain the same without claiming any operation & maintenance expenses, including replacement of defective/damaged material/ equipment from the consumer.”

- 5.3. After going through the foregoing facts and discussions above, the Commission observes that the HERC regulations have the force of law and hence, any condition in an agreement in violation of the rules and regulations cannot be held valid. Therefore, the condition 2(d) incorporated in the tripartite agreement dated 10.06.2020, as the operation and maintenance of the consumer’s substation and line is to be maintained by the consumer, is contrary to the Regulations and hence is hereby declared null and void. However, the licensee shall have the right to use this feeder for the supply of electricity to any other consumer by tapping or otherwise as per the provision of the clause 4.10 of the HERC (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply & Power to require security) Regulations, 2016 in vogue.

The petition is disposed of accordingly.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 18.10.2021.

Date: 18.10.2021
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman

HERC