

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

Date of Hearing : 28.07.2022

Date of Order : 30.08.2022

IN THE MATTER OF:

Haryana Electricity Regulation, Commission (Fee) Regulations, 2005, 6th Amendment Regulations, 2022. (Suo Motu)

Intervenors

1. Haryana Power Generation Corporation Limited (HPGCL)
2. Haryana Power Purchase Centre (HPPC)
3. M/s Saini Power Transactor

Present on behalf of Intervenors

1. Ms. Sonia Madan, Counsel, HPPC
2. Sh. Gaurav Gupta, XEN, HPPC
3. Sh. Vijay Jindal, XEN, HPGCL

Quorum

**Shri R.K. Pachnanda
Shri Naresh Sardana**

**Chairman
Member**

ORDER

Statement of Objects and Reasons

1. The Haryana Electricity Regulatory Commission, in exercise of the powers conferred on it by section 86 (1) (g) read with section 181 of the Electricity Act 2003 (Act 36 of 2003) and all other powers enabling it in this behalf and after previous publication, had notified the Haryana Electricity Regulatory Commission (Fee) Regulations, 2005 i.e. the Principal Regulations.
2. The following amendments were made to the Principal Regulations 2005, after following the due process:
 - i. 1st Amendment vide Haryana Government Gazette Notification dated 14.11.2013
 - ii. 2nd Amendment vide Haryana Government Gazette Notification dated 28.04.2017
 - iii. 3rd Amendment vide Haryana Government Gazette Notification dated 30.10.2017
 - iv. 4th Amendment vide Haryana Government Gazette Notification dated 11.01.2021
 - v. 5th Amendment vide Haryana Government Gazette Notification dated 01.10.2021
3. The Commission, in quite a few cases before it, had observed that the parties do not adhere to the time schedule for filing a petition (in case directed by the Hon'ble Commission), reply, rejoinder etc.

in the proceedings before the Hon'ble Commission. At times, the replies/rejoinders are filed on the day of hearing or just a day ahead, causing avoidable delays in disposing of the cases.

4. Accordingly, the Commission prepared a draft, Haryana Electricity Regulatory Commission (Fee) Regulations, 2005, 6th Amendment Regulations, 2022, for inserting Regulation 21, and invited objections/comments on the proposed amendment to the Principal Regulations, 2005.
5. The proposed amendment is reproduced below:

"21. In case any party, in any proceedings, before this Commission fails to file reply, rejoinder, replication etc. in the Commission at least three days, or as may be directed by the Commission, prior to the scheduled date of hearing, the defaulting party(ies) shall be liable for the following penalty:

First default : Rs. 5,000/- (Five Thousand)

Second default : Rs. 10,000/- (Ten Thousand)

Third default : Rs. 15,000/- (Fifteen Thousand)

Provided, in any case of continued default, it shall be construed as non-compliance of the Commission's order and liable for penal action as per the provisions of Section 142 and Section 146 of the Electricity Act, 2003."

Public Proceedings

6. The draft Regulation was hosted on the website of the Commission for inviting comments/objections from the stakeholders/general public and a notice to this effect was published in two newspapers having wide circulation in Haryana i.e. Indian Express (English) and Dainik Jagran (Hindi) on 10.06.2022 .
7. In response to the public notice inviting comments/objections from the stakeholders/general public, comments/objections from the following were received in the Commission:-
 - i) Haryana Power Generation Corporation Limited (HPGCL)
 - ii) Haryana Power Purchase Centre (HPPC)
 - iii) Sh. Gaurav Saini, CEO, Saini Power Transactor

8. Comments/Objections filed by Sh. Gaurav Saini, CEO, Saini Power Transactor

Vide letter dated 04.07.2022, Sh. Gaurav Saini filed the following suggestions/comments:

- i. Clause 2 Sub Clause 2 (a) (iii) annual fees for Intra State Trading Licensee

2. Annual fee for Transmission/Distribution/Trading Licensees			
(iii)	Intra-State Trading Licensee		0.05% of the value of power traded during the previous year subject to minimum of Rs. 25 Lakh and maximum of Rs. 3.5 crore.

Annual fee for trading licensee as per the above-mentioned clause is very high for any applicant. It is unjustified against trading licensee. Also, in the Electricity Act, 2003, CERC in exercise of the powers conferred under Section 178, provides that the annual license fee of their respective category license under the Trading License Regulations, 2020 is based on applicant Net-Worth and volume of electricity trade. The above-mentioned methodology fits perfectly for transmission and distribution licensee because the infrastructure, geographical area, manpower, net-worth and volume handled by transmission and distribution licensees is quite large as compared to trading licensee. Keeping the same methodology for transmission licensee, distribution licensee and trading licensee is totally unfair.

Kindly refer to the HERC (licensing of trading, eligibility criteria for grant of trading license, the duties and the term and conditions of trading license) Regulation, 2005 clause 23(1) where the Hon'ble commission has proposed six categories based on net worth of the applicant, but as per payment of the fee regulation, 2005 the Hon'ble commission has proposed one fees for all the categories.

The CERC payment of fee (Second Amendment) Regulations,2020 Clause 7 (iii) states that (3) Any person who has been granted or is deemed to have been license by the Commission for inter-State trading in electricity in accordance with Trading Licence Regulations, 2020 shall pay the annual license fee at the rates specified hereunder:

Sr. no.	Category of license	Volume of Electricity proposed to be traded in a financial year	Annual licence fee (Rs. in Lakh)
1	Category I	No limit	40
2	Category II	Up to 7000 MUs	15
3	Category III	Up to 4000 MUs	6
4	Category IV	Up to 2000 MUs	3
5	Category V	Up to 500 MUs	2

It is, therefore, requested to kindly charge annual fee from the trading based on net worth criteria/category as mentioned in the HERC (licensing of trading, eligibility criteria for grant of trading license, the duties and the term and conditions of trading license) Regulation 2005 states that:

"The Commission may grant licence to any person (s) as an electricity trader to trade in electricity in the same area as that of the Licensee or any other area in the state of Haryana. The licensee shall not claim any exclusivity"

Section 86(1)(g) read with section 181 of the Electricity Act 2003 mentions levy of fee for the purpose of the Act. Please refer to section 86(1)(d) which states that-

"issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State"

Here emphasis needs to be added on the word "operations within the state" and the HERC is only limited to operations within the state of Haryana as per the Electricity Act 2003.

The Hon'ble HERC has power conferred on it by Section 181 (2) (b) read with Section 15(1), Section 181 (2) (c) read with Section 15 (2), Section 181 (2) (d) read with Section 16, Section 181(2) (e) read with Section 18 (2) (a) and Section 181 (2) (f) read with Section 18 (2) (c), Section 181 (2) (z) read with section 52 and Section 181 (2) (zp) of the Electricity Act, 2003 (36 of 2003), and all other powers enabling in this behalf, to issue intra-state trading license to an applicant and levy fee. Clause(1)(ii) of the Haryana Electricity Regulatory commission (Licensing of trading, Eligibility Criteria for Grant of Trading Licence, the Duties and the Terms and Conditions of Trading Licence) Regulation, 2005.

Clause 1(ii) of HERC (licensing of trading, eligibility criteria for grant of trading license, the duties and the term and conditions of trading license) regulation 2005 states that:

"These Regulations shall apply to any person undertaking infra-state trading of electricity in the State of Haryana"

It is further clarified that the provisions of the Electricity Act 2003 in case of the State Commissions shall be within their respective states. And as such the HERC can charge fee from the Intra-state Trading Licenses but not from the Inter -State Trading Licenses.

The annual fee for Inter-State Trading Licenses is charged by the Hon'ble CERC vide its Regulation (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2020.

Request is made to kindly remove/omit this clause for the HERC Fee Regulations 2005, 6th amendment 2022.

Commission's Observations:

The Commission has considered the aforesaid objections/suggestions filed by the Intervenor. It is observed that the intervenor has not filed any objections/suggestions/comments etc. on the proposed amendment on which the present proceeding was initiated. Hence, at this stage, the objections/suggestions filed on various aspects such as annual fee for transmission/distribution/trading licensees etc. cannot be considered as the same was neither proposed by this Commission nor are the comments of other stakeholders available on the same.

9. Comments/Objections filed by HPPC:

Vide letter dated 04.07.2022 , HPPC filed the following suggestions/comments:

- i. That the Hon'ble Commission has issued a draft discussion paper inviting comments/suggestions/objections of all concerned on the draft notification Regulation No. HERC/10/2005/6th Amendment /2022 proposed to amend the Haryana Electricity Regulatory

Commission (Fee) Regulations, 2005 ('Draft Regulations' for brevity) wherein the existing schedule of fees appended to the amendment notified on 1st October 2021 has been proposed to be substituted.

- ii. That the HPPC requests the Hon'ble Commission to consider the following comments on the Draft regulations in the interest of justice –
- iii. S. no. 21 of Schedule of Fee under the Draft Regulations, i.e. The Haryana Electricity Regulatory Commission (Fee) Regulations, 2005, 6th Amendment Regulations, 2022 reads as under –

"21. In case any party, in any proceedings, before this Commission fails to file reply, rejoinder, replication etc. in the Commission at least three days, or as may be directed by the Commission, prior to the scheduled date of hearing, the defaulting party(ies) shall be liable for the following penalty.

First lapse: Rs. 5,000/- (Five Thousand)

Second lapse: Rs. 10,000/- (Ten Thousand)

Third lapse: Rs. 15,000/- (Fifteen Thousand)

Provided, in any case of continued default, it shall be construed as non-compliance of the Commission's order and liable for penal action as per the provisions of Section 142 and Section 146 of the Electricity Act, 2003. The cost of advertisement of public notices by the Commission in the newspapers in petition(s) where comments/objections of general public/ Stakeholders are required shall be borne by the parties concerned if so ordered by the Commission."

- iv. At the outset, it is submitted that the Hon'ble Commission has ample powers to pass appropriate orders/ impose penalty in the event the Hon'ble Commission is of the opinion that the delay in filing of reply/replication etc. is intentional or owing to negligence of the party. Considering the object and intent of incorporating above referred provision which is to discourage or deter the party from delayed filing of reply, the provision to this respect may not be included in the schedule of fees which is meant to specify the 'fees' which is paid purportedly to cover the administrative costs. The expression 'penalty' however, is in the nature of 'punishment cost/ fine. If, at all, any provision with respect to the imposition of penalty for delay in filing of reply/ replication etc. is to be included, the same shall form part of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019.
- v. The Hon'ble Commission shall also appreciate that the provision with respect to filing of replies/replication etc. is a matter of procedure, for which the appropriate regulations have to be specified in the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations. The imposition of penalty would only flow from the provision that specifies a

reasonable time may first be afforded to the party to file reply/replication etc. Such reasonable time has to be considered in line with the provisions contained in the Civil Procedure Code, 1908, which is a procedural law related to the administration of civil proceedings in India. The provisions contained in the Civil Procedure Code, 1908 may not be binding on the Hon'ble Commission but are definitely a guiding factor for setting up the procedure for conduct of proceedings before the Hon'ble Commission. Any procedure which is at variance with the provisions of Civil Procedure Code, 1908 has to be backed with adequate reasoning, which is lacking in incorporation of provision for imposition of penalty in delayed filing of replies etc. contained in the Draft Regulations.

- vi. Order VIII Rule 1 of the Code of Civil Procedure, 1908 provides for a time limit for filing of written statements. The said provisions read as under –

“1. Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

- vii. Without prejudice to foregoing, it is submitted that the aforesaid proposed provision, insofar as it incorporates levy of penalty for non-filing of reply, rejoinder, replication, etc. without affording an opportunity of hearing or without affording an opportunity to explain the reasons for the delay is against the well-settled principles of law which provides that any penal provision having statutory flavor cannot be included without affording an opportunity of hearing the affected party.
- viii. To elaborate on the above-stated legal position, it is submitted that the Indian Constitution mandates that statutory provisions which deny a procedure that is just, fair and reasonable are violative of Article 14 of the Constitution, destructive of Article 19(1)(g) and negate Article 21 of the Constitution. The provisions contained in the Code of Civil Procedure are an example of what is a just, fair, and reasonable procedure. The requirement to afford an opportunity to the affected party emanates from the broad doctrine of fairness and is a part of “due process”.
- ix. In *Institute of Chartered Accountants of India v. L. K. Ratna*, AIR 1987 SC 71, *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613: (AIR 1990 SC 1480), (*Bhopal Gas Leak Disaster Case*) and *C. B. Gautam v. Union of India*, (1993) 1 SCC 78, the well-settled law that the principles of natural justice must be applied in the unoccupied interstices of the statute was reiterated.

- x. Reliance is further placed upon the decision of the Hon'ble Supreme Court in Sangram Singh v. Election Tribunal, Kotah, [1955] 2 SCR 1(enclosed herewith marked as J-1) wherein it was affirmed that our laws of procedure are grounded on the principle of natural justice. In the said judgment, Justice Bose observed as under:
- "But that a law of natural justice exists in the sense that a party must be heard in a Court of law, or at any rate be afforded an opportunity to appear and defend himself, unless there is express provision to the contrary, is, we think, beyond dispute. See the observations of the Privy Council in Balakrishna Udayar v. Vasudeva Ayyar(3), and especially in T. M. Barret v. African Products Ltd.(1) where Lord Buckmaster said "Do forms or procedure should ever be permitted to exclude the presentation of a litigant's defence"*
- xi. It is worthwhile here to refer to the judgment of Kesar Enterprises Limited Vs. State of Uttar Pradesh & Ors. reported in (2011) 13 SCC 733(enclosed herewith marked as J-2), wherein the Hon'ble Supreme Court has held as under:
- "30. Having considered the issue, framed in para 16, on the touchstone of the aforementioned legal principles in regard to the applicability of the principles of natural justice, we are of the opinion that keeping in view the nature, scope and consequences of direction under sub-rule (7) of Rule 633 of the Excise Manual, the principles of natural justice demand that a show-cause notice should be issued and an opportunity of hearing should be afforded to the person concerned before an order under the said Rule is made, notwithstanding the fact that the said Rule does not contain any express provision for the affected party being given an opportunity of being heard.*
- 32. In our view, therefore, if the requirement of an opportunity to show cause is not read into the said Rule, an action thereunder would be open to challenge as violative of Article 14 of the Constitution of India on the ground that the power conferred on the competent authority under the provision is arbitrary"*
- xii. Also, the Hon'ble Supreme Court in a judgment titled as M/S Daffodills Pharmaceuticals Ltd. & Anr. Vs. State of U.P. & Anr., Civil Appeal No. 9417 of 2019 (Arising out of Special Leave Petition (C) No. 4074 of 2018) delivered on December 13, 2019(enclosed herewith marked as J-3), has once again reiterated the time-tested adage and a fundamental legal principle that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing.
- xiii. The well settled judicial precedents have further recognized that the right of hearing, even if not provided under a specific statute, the principles of natural justice shall so demand and the same if not afforded strikes at the very validity of the action taken against the affected

party. It is more so when the exercise of authority is likely to vest the person with consequences of civil nature.

- xiv. In view of the foregoing submissions, it is most humbly prayed that S. no. 21 of Schedule of Fee under 6th Amendment Regulations, 2022 should be deleted from the HERC draft Fee Regulations (6th amendment),2022.
- xv. That it is further submitted that the Hon'ble Commission may include in the Schedule of Fee a distinct category for 'Application / Petition for approval of Short Term and Medium-Term Power Purchase Agreement / Power Sale Agreement / Transmission Service Agreement including in-principle approval'. The fee for such category shall be specified as a 'lumpsum fee' lower than the fees stipulated under Sr. no. 13 of the Schedule of Fee i.e. Application / Petition for approval of Power Purchase Agreement / Power Sale Agreement / Transmission Service Agreement including in-principle approval for all categories of power source. The fee for short-term and medium-term power approval may be fixed depending upon the tenure of the power purchase agreement as the existing fee structure in multiples of the MW capacity has considerable financial implications for DISCOMs and ultimately to the consumers of the State in the event power is being procured for a shorter duration. The foregoing submission is being made in view of the difficulty experienced by the HPPC where in some cases cost price in Rs. /kWh of the power purchased for a short duration say three months was found much less than the corresponding fees per MW. Therefore, specifying separate lumpsum fee for short-term and medium-term power approval is necessary to ensure that the imposition of fee is not onerous.

In view of the foregoing submissions, HPPC prayed that the Hon'ble Commission may consider making necessary modifications/amendments in the Draft regulations in line with the foregoing comments of the HPPC.

Commission's Observations:

The Commission has carefully perused the ibid objections/comments filed by the intervenor. At the onset, it is observed that the intervenor i.e. HPPC has cited statutes and case laws including the fact that any such penalty ought to be part of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 and not Fee Regulations. The intervenor may note that as per section 94 (1) of the Electricity Act 2003, The Code of Civil Procedure, 1908 (Act no 5 of 1908) is applicable in a limited way i.e. for any inquiry proceedings. Hence, for ensuring timely justice to the aggrieved parties/consumers, it is essential that all the loopholes leading to delays are plugged.

It is the argument of the petitioner that the Commission has ample power to pass orders and impose penalty in the event of delay in filing reply/replication being intentional or owing negligence of party and the expression penalty in the nature of punishment cost/fine and if, at all, any provision with respect to imposition of penalty for delay is to be included, the same shall form part of the HERC (Conduct of Business) Regulations, 2019. Also, reasonable time be considered in line with Order VIII Rule 1 of the Code of Civil procedure, 1908 for filing of written statement. The Commission, in this regard has considered to address the fine as a late filing fee and has to be the part of the Fee Regulations only and not in the Conduct of Business Regulations, as the said regulations specify the manner for conducting the business proceedings of the Commission and describe the duties, manner, format and do not deal with the levy of fees/payments, which is dealt under the Fee regulations only. Therefore, exercising the power conferred under section 181 of the Electricity Act, 2003, the Commission has framed Regulations concerning every issue and for the same, the provisions of the Code of Civil Procedure are guidelines which are to be taken into account. So, imposition of charge for late filing is not a procedure which is at variance with the Code of Civil Procedure. Rather it is a well-reasoned amendment made in the Fee Regulation for smoothening the proceedings being conducted before the Commission, as also preventing delay/hinderance in the administration of justice: As is the well-known adage - Justice delayed is justice denied.

Also, Order VIII Rule 1 of the Civil Procedure Code, 1908, is a procedural provision which provides appropriate time to the defendant for filing the written statement, which ensures that defendant cannot harass the plaintiff by using this provision and is the first timeline for filing the written statement; however, the amendment proposed herein relates to the documents which are the part of pleadings i.e. reply, replication, sur- rejoinder, written submissions and also relates to documents which are necessary to be submitted for enabling the Commission to conclude the matters like reports, sanctions, data, information etc. and are not always the first time written statement(s) to be filed and therefore, the time line of Order VIII Rule 1 is directory and not always mandatory and depends upon the nature of subject matter of the case and document involved.

As to the contentions regarding the opportunity of not being heard to explain the reasons for delay is against the principles of natural justice and is violative of Article 14, 19(1)(g) and 21 of the Constitution of India, the Commission explains that affording an opportunity for explaining delay has to be seen and recognised that the legislature has provided consequences for late filing unlike Order 8 Rule 1 of CPC and there are many examples of courts respecting the statutory timeline and hence, incorporating late filing fee is not derogatory to the principles of natural justice and violative of Article 14, 19(i)(g) & 21 of the Constitution. Therefore, enforcing consequences by

way of late fee/fine/penalty for adhering to timelines has to be there which can be treated as a remedy to hope that delays will become a relic.

The counsel for the HPPC, intervenor stated that at times the delay could be caused due to administrative reasons. The Commission, during the hearing, showed her a table as to the numerous times, HPPC has violated the orders of the Commission and omitted to supply the documents in time and had also inordinately delayed, in their replies. This reasoning of HPPC is thus a lame excuse. It is further observed that the intervenor has suggested for a lumpsum fee instead of the fee specified for the purpose and has suggested a distinct category for 'application/petition for approval of Short Term and Medium-Term Power Purchase Agreement/Power Sale Agreement/Transmission Service Agreement including in-principle approval'. The Commission is of the view that the objections/suggestions filed on various other aspects cannot be considered in the present proceedings as the same was nor proposed by this Commission and is not the subject matter of the present hearing/amendment.

10. Comments filed by HPGCL:

Vide memo no. 136/HPGCL/Reg-200 dated 04.07.2022, HPGCL filed the following suggestions/comments:

- i. HPGCL would like to make the reliance on Section 142 of the Electricity Act,2003 for making the comments as under:

" Section 142 of Electricity Act,2003: Punishment for non-compliance of directions by Appropriate Commission:

In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any directions issued by the Commission, Appropriate Commission may after giving such person an opportunity of being heard in the matter by order in writing, direct that without prejudice to any other penalty to which he may be liable under this Act,

- ii. In the above section, it has been clearly mentioned that "Appropriate Commission may after giving such person an opportunity of being heard in the matter" clearly establish the right of the party needs to be heard first.
- iii. Thus, in case the penalty has directly be enforced, without giving an opportunity to heard, is the clear violation of the principle of natural justice to the affected party or person.
- iv. The reference is invited to Manohar, S/o Manik Rao Anchule Vs State of Maharashtra and Anr. Reported in (2012)13 SCCI4, the Hon'ble Supreme Court has held as under:

" 17.The Adjudicatory process essentially has to be in consonance with the principles of natural justice, including the doctrine of audi alteram partem. Hearing the parties, application of mind and recording of reasoned decision are the basic elements of natural justice. It is not expected of the Commission to breach any of these principles, particularly when its orders are open to judicial review. Much less to a tribunal or such Commission, the courts have even made compliance with the principles of natural justice obligatory in the class of administrative matters as well.

25. Thus, the principle is clear and settled that the right of hearing, even if not provided under a specific statute, the principle of natural justice shall so demand, unless by specific law, it is extended. It is more so when the exercise of authority is likely to vest the person with consequences of civil nature.'

- v. The reference is also invited to *Mukesh Kumar Shukta @Pintu Shukla versus The State of Jharkhand, WP.(C)No 2040 of 2021* as under:
- " In light of above decisions, it is clear that a prior show cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision making. If the statute conferring the power is silent with regard to giving a pre-decisional hearing to the person affected and the administrative decision taken by the authority involve civil consequences of a grave nature. the administrative or quasi-judicial authority are bound to observe the principles of natural justice unless the same is specifically excluded by law.'*
- vi. Thus, it is the clear settled principle that natural justice needs to be provided and same should be captured in the regulations. Therefore, the imposition of fine in delay in filing as part of regulation clearly violates the principle of natural justice as settled by the Hon'ble Supreme Court as cited above.
- vii. Further, the Commission is aware about the approval procedures, which some time needs intervention of the Government, the filing an appropriate reply may get delayed due to procedural delays on account of number of channels involved in the matter, thus the onus of delay cannot be levied in the matter. Therefore, an opportunity of hearing should be there for a person or party in the matter.
- viii. The other aspect may also be seen that any party who wish to delay the proceedings and may have vested interest, is happy to pay the penalty for creating delay in the matter. Thus, the proposed regulation may become a tool for them, the same needs to be avoided to create the misuse of the law in the matter.

- ix. The Hon'ble Commission is aware that all expenses, thus levied by the Commission on account of penalty generally booked under O&M expenses under ARR, thus, the same may be recovered from the Consumers, by way of ARR.
- x. Thus, as per Section 61 (d) of the Act, wherein it has been categorically mentioned that "safeguarding of consumer's interest and at the same time, recovery of the cost of electricity in the reasonable manner". The said objective in the Act may be defied.
- xi. In view of the above, HPGCL would like to submit humbly that S. No 21 of the proposed amendment is the violation of principle of natural justice, as the right of opportunity of hearing is denied in the matter, thus the same may not be incorporated; and needs to be dropped, please.

Commission's Observations:

The Commission has considered the aforesaid objections/suggestions filed by the intervenor and observes that the intervenor has relied on couple of judgements and Section 142 of the Electricity Act, 2003 elaborating the significance of affording an opportunity of hearing to the affected party. The inventor needs to note that the Commission has considered to amend the regulation to the effect that no party should cause avoidable delays, leading to loss of time and delayed justice. The late filing fee will be recovered from the defaulting officers and will not be allowed under O&M expenses at the time of determination of ARR.

Commission's Order:

11. In order to afford an opportunity to the interveners/general public to present their views in person, the Commission held a public hearing in the court room on 28.07.2022.
12. The Commission has considered the written as well as oral objections raised by the interveners and observes that the statements of objects and reasons clearly brings out the need/reason for amending the Principal Regulation by inserting Sr No 21 thereto in Schedule of Fee Regulations in vogue.
13. Ms. Sonia Madan, learned counsel for HPPC, re-iterated the contents of the written submission filed by HPPC. The learned counsel made the following proposal:

"Each party, in any proceedings, before this Commission shall ensure that the reply, rejoinder, replication etc. in the Commission shall be filed at least three days prior to the scheduled date of hearing or as may be directed by the Commission. In the event, the party is unable to file a reply, rejoinder, replication, etc. three days prior to the scheduled date of hearing or as may be directed by the Commission for any genuine or bonafide reasons, an application may be filed in the

Commission seeking extension of time/ condonation of delay stating explanatory reasons for the delay. In the event, the defaulting party(ies) fails to justify delay with a plausible explanation and coherent reason, the Commission may impose an appropriate penalty on the defaulting party(ies)."

14. Sh. Vijay Jindal, putting in appearance for HPGCL, submitted that in case of delay in filing reply, rejoinder, replication etc, the Hon'ble Commission may issue notice to the Managing Director under section 142 of the Electricity Act, 2003.

15. The Commission heard the intervenors at length and observes that the power utilities in general and the Discoms/HPPC in particular, as a matter of routine, delay the filing of reply, rejoinder, etc. Hence, there is a need to place a deterrence for ensuring timely action by the parties to further ensure that the proceedings before this Commission are not held up. Needless to say, that the additional cost of delayed filing will not be a pass through in ARR and Tariff of the power utilities but shall be recovered from the officer/official concerned.

16. In view of above, the Commission orders that the following clause shall be inserted by way of 6th Amendment to the Haryana Electricity Regulatory Commission (Fee) Regulations, 2005:

"21. Late Filing Fee: In case any party, in any proceedings, before this Commission fails to file reply, rejoinder, replication etc. in the Commission at least three days, or as may be directed by the Commission, prior to the scheduled date of hearing, the defaulting party(ies) shall be liable for the following late filing fee:

First default : Rs. 5,000/- (Five Thousand)

Second default : Rs. 10,000/- (Ten Thousand)

Third default : Rs. 15,000/- (Fifteen Thousand)

Provided, in any case of continued default, it shall be construed as non-compliance of the Commission's order and liable for penal action as per the provisions of Section 142 and Section 146 of the Electricity Act, 2003."

17. Accordingly, the Commission approves the Haryana Electricity Regulatory Commission (Fee) Regulations, 2005, 6th Amendment Regulations, 2022 as per annexure "A" attached to the present order. The same be sent for Gazette Notification and shall be effective from the date of publication in the Haryana Government Gazette.

18. In terms of the above order, the present Suo – Motu proceeding is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 30th August, 2022.

Date: 30.08.2022
Place: Panchkula

(Naresh Sardana)
Member

(R.K Pachnanda)
Chairman

HERC

HARYANA ELECTRICITY REGULATORY COMMISSION

Notification

The ***, 2022**

Regulation No. HERC/10/2005/6th Amendment/2022: - In exercise of the powers conferred on it by section 86(1)(g) read with section 181 of the Electricity Act 2003 (Act 36 of 2003) and all other powers enabling it in this behalf and after previous publication, the Haryana Electricity Regulatory Commission makes the following regulations to amend the Haryana Electricity Regulatory Commission (Fee) Regulations, 2005 as under:-

1. Short title, commencement, and interpretation.

- (1) These Regulations may be called the Haryana Electricity Regulatory Commission (Fee) Regulations, 2005, 6th Amendment Regulations, 2022.
- (2) These Regulations shall come into force from the date of their publication in the Haryana Government Gazette.
- (3) These Regulations shall extend to whole of the State of Haryana.

2. A new category 21 shall be added to the existing regulation of Schedule of Fee of the Haryana Electricity Regulatory Commission (Fee) Regulations, 2005, 5th Amendment Regulation 2021, as under:

“21. Late Filing Fee: In case any party, in any proceedings before this Commission, fails to file reply, rejoinder, replication etc. in the Commission at least three days, or as may be directed by the Commission, prior to the scheduled date of hearing, the defaulting party(ies) shall be liable for the following late filing fee:

First default	:	Rs. 5,000/- (Five Thousand)
Second default	:	Rs. 10,000/- (Ten Thousand)
Third default	:	Rs. 15,000/- (Fifteen Thousand)

Provided, in any case of continued default, it shall be construed as non-compliance of the Commission's order and liable for penal action as per the provisions of Section 142 and Section 146 of the Electricity Act, 2003.”

By Order of the Commission

**Director/Tariff
HERC**