

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

Case No. HERC/Petition No. 05 of 2023

Date of Hearing : 03.05.2023

Date of Order : 10.05.2023

In the Matter of

Petition in terms of Section 43 & 86 of the Electricity Act, 2003 (as amended up to date), and HERC (Electricity Supply Code) Regulations, 1st Amendment, 2014, and 2nd Amendment, 2019 for issuance of directions to the respondent DHBVNL to the effect that since, the ultimate load requirement of the petitioner no. 1 as per the approved electrification plan dated 04.09.2013 was 4499 KW/4500 KVA and the entire load stands released at 11 KV level way back in 2014, the Nigam cannot at this belated stage, direct the petitioner no. 1 to create 33 KV infrastructure for its Group Housing Project and for issuance of the requisite no-objection certificate in favour of the petitioners to the respondent No.5, DTCP, Haryana in order to enable it to get the Completion Certificate of its project.

Petitioner:

1. M/s Standard Farms Pvt. Ltd, a company duly incorporated under the Companies Act, 1956 and having its Registered Office at W4D, 204/5, Keshav Kunj Cariappa Marg, Western Avenue, Sainik Farm New Delhi 110062.
2. TATA Housing Development Company Ltd., a company duly incorporated under the Companies Act, 1956 and having its Registered Office at E Block, Voltas Premises, T.B. Kadam Marg, Chinchpokli, Mumbai-400033.

Vs.

Respondents:

1. Dakshin Haryana Bijli Vitran Nigam Ltd., Vidyut Nagar, Hisar through its Managing Director.
2. Chief Engineer/Commercial, DHBVNL, Hisar-125005.
3. Chief Engineer/Operation, DHBVNL, Power House, Rohtak Road, Punjabi Bagh, Delhi-110035.
4. Superintending Engineer/Operation, Circle-II, DHBVNL, Gurugram.
5. Director, Town and Country Planning, Haryana, Nagar Yojna Bhawan, Plot No.3, Block-A, Sector-18-A, Madhya Marg, Chandigarh.
6. Superintending Engineer/Planning, HVPNL, Shakti Bhawan, Plot No. C-4, Sector-6, Panchkula-134109.

Present:

On behalf of the Petitioner(s):

Sh. Ashwani Talwar, Advocate

On behalf of the Respondents:

- 1 Ms. Nikita Chaukse, Advocate, DHBVN.
2. Ms. Ekksha Kashyap, Advocate, DHBVN
3. Ms. Aerika Singh, Advocate for HVPNL

QUORUM

Shri R.K. Pachnanda, Chairman

Shri Naresh Sardana, Member

Order

1. Background of the Petition:

The instant petition has been filed by M/s Standard Farms Pvt. Ltd. and TATA Housing Development Company Ltd. in terms of Section 43 and 86 of the Electricity Act, 2003, and Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations 2014 as amended from time to time for issuance of directions to the respondent Dakshin Haryana Bijli Vitran Nigam Limited (“DHBVNL” and also referred to as “Nigam”) to the effect that since, the ultimate load requirement of the petitioner as per the approved electrification plan dated 04.09.2013 was 4499 KW/4500 KVA and the entire load stands released at 11 KV level way back in 2014, the Nigam cannot at this belated stage, direct the petitioner to create 33 KV infrastructure for its Group Housing Project and for issuance of the requisite No-Objection Certificate in favour of the petitioners. Even otherwise, as per the HERC Supply Code Regulations, dated 17.11.2014, the normal voltage level for load up to 5000 KW has been specified by the Commission to be at 11 K Voltage level. Hence the instant petition.

2. Submissions of the Petitioner are as under:

- 2.1 That the petitioners are constrained to approach the Commission by way of instant petition challenging the arbitrary and illegal stand of the respondent Nigam, whereby, despite the fact that the ultimate load requirement as sanctioned by the Nigam for the Group Housing Project of the petitioners is 4499 KW/4500 KVA and the entire load stands released in favor of the petitioner no. 1 by the Nigam at 11 KV voltage level way back in 2013 and there is no further requirement of any augmentation of the load but still, the Nigam is coercing the petitioners to comply with the provisions of ‘Sale Circular D-14 of 2018’ and switch over to 33 KV voltage level. It is the positive case of the petitioner that the HERC (Supply Code) Regulations provides for supply of power at 11 KV voltage level up to a load of 5000 KW and since, the regulations

framed by the Commission are superior, the Nigam is estopped from insisting to have supply at a voltage level higher than the one, which is permitted/provided by the HERC.

It is, further the case of the petitioner that any notification including Sale Circular by the Nigam shall be prospective in nature unless otherwise specifically mentioned to be retrospective in nature. The 'Sale Circular D-14 of 2018' can only have a prospective effect and in as much as, the Nigam has released electricity connection for the entire sanctioned load of 4499 KW at 11 KV level, the same cannot be re-opened/reviewed afresh at this belated stage, therefore, the insistence of the Nigam for having a connection at 33 KV voltage level is untenable in the eyes of law.

2.2 That the facts of the case in brief are that the respondent no.5 issued a license no.201 of 2007 as per the provisions of '*The Haryana Development and Regulations of Urban Areas Act, 1975 (hereinafter called as the 1975 Act)*' in favor of the Standard Farm Pvt. Ltd., an associate company of M/s. Raheja Developers Pvt. Ltd. for setting up of a Group Housing Colony at village Ullahwas in District Gurugram-Manaser. The project was to be developed over a land measuring 11.73 Acers.

2.3 That the Group Housing Project known as 'Raisina Residency' is being developed by petitioner No. 2 i.e., Tata Housing Development Company Ltd. under a Joint Development Agreement dated 13th January 2007 executed between Tata Housing Development Co. Ltd. (petitioner no. 2), Raheja Developers Pvt. Ltd. and Standard Farms Private Ltd. (petitioner no. 1)

The project comprises of several high-rise residential buildings, nine towers, four villas, convenient shopping units for economically weaker section and a community building (club house). The building plans of the project were approved by the respondent no.5 and the occupation certificates were issued by the respondent no.5 in phases vide certificates dated 29.03.2012, 12.12.2013 and 01.07.2014.

2.4 That in order to cater the electricity requirements, the respondent no.3, vide order dated 04.09.2013, sanctioned the load for the project of 4499 KW with contract demand of 4500 KVA on its 11 KV supply voltage and on bulk supply domestic tariff through independent 11 KV Feeder emanating from 66 KV sub-station, Sector-56, Gurugram. The application acceptance form and demand notice with regard to the above load was issued by the concerned SDO Operation on 17.09.2013 and the connection for the entire demanded/sanctioned load of 4499 KW (4500 KVA) was issued thereafter.

It is the positive case of the petitioners that the entire load requirement of the project is met with, and the project is also complete in terms of the plans as approved by the respondent no.5.

Subsequently, vide memo dated 02.06.2017, a connection was released to another developer "M/s. High Responsible Realtors Pvt. Ltd." Sector 60, Gurugram from the said independent 11 KV feeder erected at the

cost of the petitioners and in view of above, the cost of the feeder was to be shared between the petitioner and the said other developer having connection from this feeder, as per the commercial norms of the Nigam.

- 2.5 That it is the positive case of the petitioners that, the ultimate sanctioned load as per the approved electrification plan sanctioned by the competent authority of the Nigam was 4499 KW/4500 KVA and the said load stands commissioned by the respondent Nigam and the petitioner no. 1 is utilizing the said electricity load for the said Group Housing Project, which stands completed.
- 2.6 That vide orders dated 02.11.2021, the respondent no.5 permitted the change in developer in terms of DTCP policy No. PF-51A/2015/2708 dated 18.02.2015 for the said Group Housing Project from M/s. Standard Farming Ltd., an associate company of Raheja Developers Pvt. Ltd. to Tata Housing Development Company Ltd. (petitioner no. 2) and it was provided that petitioner no. 1 shall comply with all the terms and conditions of the license.
- 2.7 That petitioner no. 2, being the developer of the said Group Housing project, applied for issuance of the completion certificate of the said project to the respondent no.5, DTCP vide letter dated 04.04.2022 and the District Town Planner posted in the office of respondent no.5, vide its memo dated 21.04.2022 sought the comments/no-objection certificate from various departments including communication addressed to Haryana Vidyut Prasaran Nigam with regard to the electricity utilities of the said Project.

The respondent had not issued the completion certificate and queries by the petitioners revealed that some objections have been raised by the respondent Nigam. Faced with this situation, information was sought under the Right to Information (RTI) Act, 2005 on behest of the petitioners with regard to response by the respondent no. 1 vide letter dated 21.04.2022 issued by respondent no. 5, information to which was supplied vide letter dated 28.09.2022. It transpires from the said response under the Right to Information Act, 2005 that the Chief Engineer Commercial, DHBVNL, Hisar (respondent No.2) furnished his comments dated 26.05.2022 to the HVPNL Authorities and the Superintending Engineer, HVPNL, forwarded the said comments to the respondent No.5 vide letter dated 27.05.2022.

From a perusal of the said comments, it is evident that although it is admitted that the electrification plan of the petitioner was approved on 04.09.2013, ultimate sanctioned load is 4499 KV/4500 KVA and the said entire load stands released but it is further mentioned that in terms of the approved plan dated 04.09.2013 and the Sale Circular D-14 of 2018, the petitioner has to offer 500 Sq. Yards of land to construct a 33 KV switching station and to erect a 33 KV feeding line from switching station to the premises of the petitioner all these conditions have not been complied with.

It has further been wrongly submitted that as per the approved electrification plan dated 04.09.2013 and 'Sale Circular D-14 of 2018', the instant developer has to install electrical infrastructure of 5625

KVA load and it has been mentioned that the total installed capacity of the transformers at the project on 11/0.4 KV Voltage Level is 5700 KVA (2 X 1600 + 2 X 1250 KVA). That load has been sanctioned on 11 KV but, as per Sale Circular No. D-14 of 2018, the petitioner has not provided the land for construction of 33 KV switching station individually or in a group of builders.

- 2.8 That it is the respectful submission of the petitioners that in the sanctioned plan dated 04.09.2013, there was absolutely no such stipulation with regard to the petitioner being called upon to have supply at 33/0.4 KV level and all the above said provisions were circulated for the first time by the respondent Nigam vide Sale Circular No. D-14 of 2018, which was promulgated only in the year 2018, and such circular could only have prospective effect and thus, could not be made applicable to the project of the petitioner.
- 2.9 That the petitioners issued a legal notice dated 04.10.2022 to the Nigam, and the respondent no. 2 issued a letter dated 28.10.2022 to respondent no. 4 forwarding a copy of the said notice requiring the office of respondent no. 4 to examine the same and provide the following details:
- I. Whether the sanctioned load of 4499 KW or 4500 KVA vide CE/Op. Delhi Memo no. Ch-04/WO/Drg-1647/GGN dated 04.09.2013 is the Ultimate Load of the scheme, of the builder / developer approved by DTCP, calculated as per the applicable load norms at that time or not?*
- II. Whether any dispute/ liability/inadequacy pending against the subject cited builder or not?"*
- 2.10 That there has been no response from the Nigam to the said notice. Faced with this situation, the petitioners are approaching this Hon'ble Commission by way of instant petition.
- 2.11 That the relevant regulations i.e., HERC (1st amendment) Regulations 2014 as notified on 17.11.2014 and the (2nd amendments) regulations, 2019 dated 08.01.2020 are appended for ready reference. It is further relevant to point out that the Hon'ble Commission in PRO No.25 of 2021 in the case of "APEX Build well Pvt. Ltd. Vs. DHBVNL" has struck down the sale circular D -14 of 2018 (P-17) and a copy of the said order dated 30.11.2021 is attached. The Nigam, after passing of the said order, filed a review petition No.1 of 2022,. and also filed a separate PRO No.04 of 2022.
- 2.12 That the review petition no 1 of 2022 and PRO-04 of 2022 was decided by the Commission vide separate orders dated 28.03.2022.
- 2.13 That from the above sequence of events, the factual position, which emerges is as follows: -
- i. That the petitioner no.1, being the landowning Company, was granted a license by DTCP for setting up of a Group Housing Residential Colony over land measuring 11.73 Acres.
 - ii. That the respondent Nigam sanctioned the electricity plan for the project with ultimate load requirement of 4499 KW and sanctioned

load of 4500 KVA, which was to be fed on 11 KV feeder to emanate from 66/11 KV sub-station, Sector-56, Gurugram.

- iii. The external as well as internal electrification plan is complete, and the petitioner is utilizing the said load of 4499 KW/4500 KVA for its project ever since.
- iv. That there is no additional requirement as the entire project stands completed and the respondent no. 5 DTCP has granted the requisite occupation certificates way back in 2014. The only requirement which is left is grant of completion certificate of the project by the respondent no.5 DTCP and with regard to that also, the only objection is by the respondent Nigam i.e. to switch over to 33 KV voltage.
- v. That it is the electrification sanction plan, which is the document on the basis of which, the compliances are to be made by the petitioner no. 1 and the Nigam is also bound by the same. The respondent Nigam have wrongly mentioned that as per the electrification plan, the petitioner no. 1 was required to create 33 KV infrastructure. In fact, the said requirement was notified only on 27.03.2018, when the 'Sale Circular D-14 of 2018' was promulgated. It is a settled proposition of law that the sale circulars being in a nature of administrative/quasi-judicial orders, have to be prospective in nature unless otherwise stated as retrospective and thus, the instructions issued on 27.03.2018 vide, cannot under any circumstances, be construed to be applicable on the projects which were sanctioned way back in 2013 and, were implemented immediately thereafter and for which Occupation Certificates were received way back in 2013-14. As already submitted, there is no additional requirement of load and in as much as, the total load requirement of 4499 KW has already been provided by the Nigam and in that way, the contract with regard to supply of 4499 KW of power already stands complied with by the Nigam, and at this belated stage, the respondent Nigam cannot insist that the petitioners now switch over to 33 KV voltage level.
- vi. That the respondent Nigam has wrongly mentioned about non-compliance of the provisions of the electrification plan dated 04.09.2013. The concerned respondents be put to strict proof to show as to where in the entire approved electrification plan, there is even a whisper of switching over to 33 KV level or that sanction at 11 KV level is temporary in nature as has been wrongly projected in the objections dated 26.05.2022.
- vii. That even the relevant HERC Regulations specifically provide that for the load requirement of upto 5000 KVA, the voltage level shall be 11 KV. The instructions of the Nigam cannot supersede the HERC Regulations. As has already been submitted, the HERC had initially struck down the Sale Circular vide orders dated 30.11.2021. However, subsequently, vide orders, these orders were recalled on 28.03.2022 whereby, the Nigam was permitted to have the system of 220/33/0.4 KV voltage level in the newly coming up Sectors 58 to

115 of Gurugram. However, this instruction or voltage level cannot be made applicable retrospectively even in respect of connections which have been released way back in 2013-2014, i.e., prior to the promulgation of the Sale Circular D-14 of 2018.

- viii. That the Commission vide its order dated 28.03.2022 passed in PRO-04 of 2022 has held that the respondents can release connections and additional/extended load in 33/0.4 KV belt in configuration of 33/0.4 KV and recover costs from the applicants as per the provisions of law as may be applicable. However, it is the case of the petitioners that the approval of electrification plan has been done on 04.09.2013 and the connection at 11 KV level for the entire load of 4499 KW has been released in 2013-2014. There is no future requirement of load and no fresh connection is required to be released for the project and neither any extension in the load is contemplated.

Thus, as far as, the petitioner is concerned, the entire process stands completed in 2014 and the same cannot be started de novo at this stage.

- ix. That the orders dated 28.03.2022 in PRO-04 of 2022, shall have applicability only in case, where there is some future requirement with regard to extension of load or release of connection.
- x. That in pursuance to the orders dated 28.03.2022, the Hon'ble Commission has not yet notified any further regulations, which are in the nature of subordinate legislation. It is further a settled proposition of law that any such subordinate legislation, as and when notified, shall only have prospective effect and thus, even otherwise, the said regulations shall not have any impact over the electricity supply connection, which has already been released at 11 KV level in favor of the petitioner No. 1.
- xi. That every norm, resolution, instruction, and planning is based upon the total load requirement vis-à-vis requirement of the individual customer. The Sale circular D-14 of 2018 has been made for regulating the grant of electricity connections to the builders in the belt of Sector 58 to 115 of Gurugram and new Sectors of Faridabad, etc. Thus, the other connections i.e., the domestic, non-domestic, agriculture, small power, medium supply as well as LS connections shall continue to be released on LT or 11 KV supply at least in terms of the Sale circular D-14 of 2018. If the contention of the Nigam with regard to the development of the system at 220/33/0.4 KV level is accepted, then how will the fresh electricity connections of above mentioned consumers shall be released and whether all such existing consumers, who have already been provided with the connections shall also be asked to switch over to the 220/33/0.4 KV system has not been explained. The petitioners have not been able to find out any sale circular or instructions or regulations of this Hon'ble Commission issued in this regard. Discrimination and arbitrariness thus, writ large in the action of the Nigam in this case and this is further accentuated on account of the fact that the Nigam

is the sole distribution licensee of the area and the petitioners have no other option but either to succumb to their demands or to approach this Hon'ble Commission for redressal of their grievances.

- xii. That there is another aspect of the matter. As already submitted, the petitioner is getting power supply from 66 KV sub-station, Sector 56 Gurugram. This sub-station is already installed, and commissioned and the load requirement of the petitioners is being already catered to. There cannot be any total compartmentalization while planning the electricity supplies/load requirement.
 - xiii. That even otherwise, the load requirement of the petitioners for the said Group Housing Project is minimal being less than 5 MW and, in the system, planning of the Nigam it is a very miniscule load.
 - xiv. That the Occupation Certificates of the project have already been issued by respondent no. 5 by the year 2014, possession and registration of almost all units have been completed and proportionate right in common areas have been transferred as per the plans approved by the Authority.
 - xv. That RWA for the said Group Housing Condominium has been formed and operations and management of the said project already stands handed over to them.
 - xvi. That even otherwise there is no scope for earmarking the 33 KV switching station in the Layout Plan of the Project approved by the respondent no.5.
- 2.14 That no such or similar petition has been filed by the petitioner either in this Hon'ble Commission or in any other superior Tribunal or Court.

PRAYER:

It is therefore, respectfully prayed that the Commission may be pleased to;

- i) Hold that the respondent Nigam cannot insist upon the petitioners to create fresh infrastructure at 33 KV level in accordance with the Sale Circular D-14 of 2018 and that the petitioner No. 1 shall continue to be given supply at 11 KV level in respect of its load requirement of 4499 KW/4500 KVA.
- ii) Direct the respondents no.1 to 4 and 6 to issue the requisite No Objection Certificate / compliance report in favour of the petitioner No. 1 to the respondent no.5 in order to enable it, to get the Completion Certificate of the said group housing project "Raisina Residency" at village Ullahwas, Gurugram-Manaseer.
- iii) Pass any other orders or directions deemed appropriate in the facts and circumstances of the present case.

It is further respectfully prayed that during the pendency of the instant petition, this Hon'ble Commission may be pleased to pass ad interim order directing the said respondents No. 1 to 4 and 6 to issue NOC/Report to DTCP (respondent no. 5) with regard to the said group housing project of the petitioners.

- 3. Short reply dated 14.02.2023 on behalf of respondent no. 6 (i.e. Haryana Vidyut Prasaran Nigam Ltd):** The respondent- HVPNL has submitted as under:
- 3.1 That the present reply is being filed through Shri Subhash Chand Executive Engineer/ Planning Haryana Vidyut Prasaran Nigam Limited (for brevity 'HVPNL'), who is fully conversant with the facts and circumstances of the case on the basis of knowledge derived from the record.
 - 3.2 That the present petition has been filed by the petitioners praying for directions as against the respondents to issue the requisite No-Objection Certificate/ compliance report so as to enable the petitioner to get the Completion Certificate for its group-housing project- "Raisina Residency" at village Ullahwas, Gurugram-Manesar.
 - 3.3 That at this stage, the present short reply is being filed as the answering respondent has no role to play in grant of No-Objection Certificate/ compliance report/ completion certificate in the favour of the petitioner. The answering respondent reserves the right to file a detailed reply, if deem fit, or as and when directed by the Hon'ble Commission.
 - 3.4 That by way of the present short reply, it is brought to the notice of the Hon'ble Commission that the answering respondent-HVPNL acts as an intermediary for supplying the information received from DHBVNL (respondent nos. 1 to 4) to the Directorate of Town and Country Planning (DTCP) and vice-versa. The information received has been timely forwarded to the respective departments as under:
 - a. The DTCP vide memo dated 21.04.2022 forwarded the request for the grant of completion certificate for the group housing project developed by M/s TataHousing Development Ltd. The said letter of DTCP was forwarded to DHBVNL vide memo dated 25.04.2022 for seeking DHBVNL's comments/report on the completion certificate.
 - b. Thereafter, DHBVNL vide its memo dated 26.05.2022 submitted its comments on erection and commissioning of the electrical infrastructure of the project.
 - 3.5 That a bare perusal of the above shows that the answering respondent has timely conveyed the comments received from DHBVNL to DTCP. As a faciliatory, HVPNL has been ensuring timely exchange of information and proper coordination. It is pertinent to mention here that the answering respondent had recently vide memo dated Ch-163/SE/PUG/Gen/File dated 17.01.2023 has requested DTCP to use the online portal developed by DHBVNL for seeking NOC directly from DHBVNL w.r.t. to the completion certificate cases of the builders/ developers. The same would not only reduce the processing time but would also expedite the process of issuance of NOCs.
 - 3.6 That apart from the same, the answering respondent has no role to play in the grant of NOC, delay etc. as have been alleged by the petitioner. Thus, it is humbly submitted that the present petition may kindly be dismissed qua the answering respondent.

In view of the peculiar facts and circumstances stated above, the Hon'ble Commission may kindly dismiss the present petition qua the answering respondent, in the interest of justice.

4. Proceedings:

- 4.1 The case initially came-up for hearing before the Commission on 22.02.2023, as scheduled, in the court room of the Commission.
- 4.2 Sh. Sehaj Mahajan, counsel for the petitioner submitted that the CE Commercial DHBVN Hisar vide letter dated 26.05.2022, addressed to the SE Planning HVPNL Panchkula, has wrongly mentioned about non-compliance of the provisions of the electrification plan dated 04.09.2013 and Sale circular D-14 of 2018, whereas, the electricity connection of the petitioner has already been released for the entire ultimate load of 4499 KW/4500 KVA and DTCP has granted the requisite occupation certificates way back in 2014. There is no additional requirement of load by the petitioner, as the entire project stands completed. The respondent Nigam has wrongly mentioned that as per the electrification plan, the petitioner was required to create the 33 KV infrastructure, however the said requirement was notified by DHBVN only on 27.03.2018, vide Sale Circular D-14 of 2018.
- 4.3 Sh. Mahajan further submitted that in a similar matter in P.No.69 of 2022, the Commission vide order dated 17.02.2023 quashed such notice dated 01.09.2022 issued by DHBVN and requested the Commission to hold that the respondent Nigam cannot insist upon the petitioners to create fresh infrastructure at 33 KV level in accordance with Sale Circular D-14 of 2018 and that the petitioner shall continue to be given supply at 11 KV level in respect of its load requirement of 4499 KW/4500 KVA.
- 4.4 Ms. Aerika Singh counsel for HVPN submitted that they have filed a short reply in the matter and submitted that HVPNL has no direct role to play in grant of no objection certificate/ completion certificate in the favour of the petitioner.
- 4.5 The Commission asked the respondents that under what regulations the existing consumer, who has already created 11 KV infrastructure as per norms, can be asked to create the 33KV infrastructure. The counsel for the respondents stated that they have taken approval of the Commission to convert 220/33 KV belt in a specific area. The Commission pointed out that the approval was for a pilot project and regulations for its modality is yet to be framed. The counsel requested for grant of time to file written submissions in the matter.
- 4.6 In view of the foregoing discussions, the Commission prima-facie observed that the Chief Engineer Commercial/DHBVN issued a letter dated 26.05.2022 showing pendency of creating 33 KV infrastructure by the petitioner without the force of regulations, whereas the petitioner has already created the 11 KV infrastructure as per norms. Therefore, the Commission directed to issue the notice under Section 142 r/w S.146 of the Electricity Act to CE/Commercial, DHBVN to be

replied within two weeks.

- 4.7 The case again came-up for hearing on 06.04.2023, as scheduled wherein Sh. Samir Malik, counsel for DHBVN submitted that some irregularity has been observed due to which the NOC was not issued to the developer. However, DHBVN is in the process of resolving the matter by issuing the NOC.
- 4.8 The Commission observed that Discom is at liberty to take any action for any irregularity on the part of officers/officials but the consumer cannot be made to suffer for irregularity on their part. Sh. Samir Malik submitted that DHBVN has already initiated disciplinary action against the delinquent officials.
- 4.9 After hearing the counsel for the respondent, the Commission directed DHBVN to issue the NOC within a week's time and to submit a report.

5. Reply dated 10.03.2023 to the Show Cause Notice by the Chief Engineer, Commercial/DHBVN: vide ibid reply CE Commercial DHBVN submitted as under:

- 5.1 That the Commission vide its order dated 23.02.2023 had issued notice to CE/Commercial, DHBVN under Section 142 and 146 of the Electricity Act, 2003 for submitting a report recommending non-release of NOC to the petitioner- M/s Standard Farms Pvt. Ltd on the ground that the created infrastructure is not in compliance with the instructions of the Nigam.
- 5.2 That there is no willful disobedience on the part of the respondents in seeking creation of adequate infrastructure or compliance of the directions contained in Circular of the respondent as affirmed in various orders of the Hon'ble Commission discussed in subsequent paragraphs. The intent and object of the report of this office is only to adhere to the instructions of the respondent issued from time to time, which is the bounden duty of this office. An order from this Hon'ble Commission is an article of faith and the respondent has highest regards for the orders passed by the Hon'ble Commission. The respondents and this office cannot think of ignoring or disobeying any directions of the Hon'ble Commission. Notwithstanding the same, this office unconditionally apologizes for any inconvenience caused.
- 5.3 That before adverting to the merits of the case, it is significant to set out here the brief background that would elucidate the validity of the decision of the respondents for non-issuance of the completion certificate -
 - a. That Director, Town and Country Planning (respondent no.5) issued a license dated 06.08.2007 in favor of the petitioners for setting up of Group Housing Colony "Raisina Residency" at village Ullahwas, Gurugram-Manesar("Project"). The project was to be developed over land measuring 11.73 acres.

- b. That the partial load of the project was sanctioned by respondent no.3 vide letter dated 26.04.2011 in the name of M/s Standard Farms Pvt. Ltd. for the load of 1999 kW/1990 kVA from 66kV substation Sector-56, Gurugram through proposed 11kV independent feeder on 11kV supply pressure and Bulk Domestic Supply (BDS) tariff.
- c. That the petitioner sought extension of load from 1999 to 4499 kW/1990 to 4500 kVA, which was sanctioned by the respondent no. 3. Vide letter dated 04.09.2013 on BS/DS tariff supply through 11kV independent feeder emanating from 66kV Sub Station Sector-56 Gurugram. The extension of load was released on 29.10.2013 on 11kV level. At this juncture, it is pertinent to state that this letter dated 04.09.2013 merely sanctioned for the extension of load of the petitioner. It does not approve the electrification plan of the petitioner.
- d. That a meeting of the Board of Directors of the respondent was held on 15.12.2014 wherein it was decided to adopt 220/33/0.4 kV system instead of the conventional 220/66/11 kV system in the new sectors of Gurugram i.e., Sector-58 to Sector-115 and Faridabad. Accordingly, the instructions were issued in circular no. D-14/2018 dated 27.03.2018.
- e. That considering the aforesaid requirement, numerous requests were made by respondent no.3 vide letters dated 13.03.2019; 04.05.2019, 06.05.2019 and 14.02.2020 to the petitioner to shift their load on 33kV as the partial load released at 11KV supply level was an interim stop gap arrangement to give power supply till commissioning of the main source substation of 220/33KV capacity. However, the petitioners did not act pursuant to any of these requests and also did not even attend the meeting scheduled for the said purposes.
- f. That it was specifically brought to the notice of the petitioner in the various notices issued by the respondent that after the introduction of the 33kV level of the distribution network in the new sectors of Gurugram and Faridabad, the creation of 33kV switching station has become imperative to enable release of load at 33kV level. The creation of infrastructure at the 33kVA system is significant owing to the limited availability of 33kV bays at the existing/planned 220/33kV substations for catering to loads of these areas.
- g. Thereafter vide memo dated 17.05.2022, XEN/OP and SE/OP, in their report have not recommended for grant of NOC to the petitioner on the ground that the electrical infrastructure created is not as per the Sale Circular D-14/2018 which requires the builder to erect a 33 KV infrastructure and provide land for construction of 33 KV switching station. This report of XEN and SE was forwarded by this office vide its letter dated 26.05.2022 to HVPNL and DTCP not recommending for the grant of NOC to the petitioner.

5.4 Thus, it is submitted that there are two aspects to the non-grant of the requisite NOC to the petitioner, which are stated as under:

A. Petitioner never got the electrification plan for their Project approved by DHBVN:

- i. It is submitted that on receipt of the show cause notice issued by this Hon'ble Commission, this office of Chief Engineer Commercial wing of DHBVN had initiated an enquiry to verify and ascertain the correct facts. On enquiry, it was revealed that the petitioner never got the electrification plan for their Project approved by DHBVN. In this regard, it is submitted that DHBVN vide Sale Circular No. D23/2020 dated 06.10.2020 notified the procedure and guidelines to be followed to provide the progress/status of inadequacies in electrical infrastructures being created by the developers. The said circular requires "all officers to maintain record of the approved electrification plan, details of Bank Guarantee and status / progress of creation of electrification infrastructure as per approved plan." Para 8 (e) and (h) of the said circular clearly stipulates the duty of XEN/OP to approve the inspection reports only after cross checking all the documents. After cross checking, the report is required to be submitted by XEN/OP to SE (OP) who is thereafter required to submit the same to the office of Chief Engineer Commercial for further forwarding the report to SE(Planning), HVPNL and DTCP.
- ii. In furtherance of the Sale Circular No. D-23/2020, DHBVN issued Sale Circular no. D-45/2021 dated 15.12.2021, wherein it substituted para (a) of the prior circular to impose the duty on XEN/OP to personally ensure that Bank Guarantees are extended from time to time till the completion of external infrastructure being commissioned by the developers. Subsequently, Sale Circular D- 11/2023 had been issued in furtherance of the abovementioned circulars, casting a duty upon SE/OPs to verify and examine the creation of electrical infrastructure therein as per the approved plan.
- iii. However, during enquiry it emanated that the concerned officials in the present case i.e. the SDO/Op, Badshahpur, XEN/OP, Sohna and SE/OP, Circle-II, Gurugram have wrongly submitted in their report, furnished to this office vide memo dated 20.05.2022, that the electrification plan for the Project has been approved vide letter dated 04.09.2013. As stated above, the memo dated 04.09.2013 merely sanctions the extension of load for petitioner. It does not approve the electrification plan. For this error, DHBVN shall be initiating disciplinary action against the responsible officials, who shall be dealt with as per the HR Regulations of DHBVN.
- iv. Notwithstanding the same, as on date as per the records of DHBVN, there is no approved electrification plan for the

petitioner against which the adequacy of the electrical infrastructure created by petitioner can be measured. Grant of NOC without an approved electrification plan may eventually lead to crisis of similar magnitude and proportion like inadequacy in electricity infrastructure left behind by some developers/builders.

- v. This Hon'ble Commission in its order dated 01.04.2021 passed in PRO- 68 of 2020 has upheld the provisions of Sale Circular D-21/ 2020 which stipulates that the connection in the project site shall be allowed only on submission of approved electrification plan. The Commission has also acknowledged the impact of the inadequacies existing in 36 projects of different developers.
- vi. In view of the foregoing facts and circumstances, it is submitted that the petitioner may be directed to get the electrification plan approved by the Nigam or provide the copy of the said approved plan if available with them so as to process the NOC for occupation certificate.

B. NOC has not been recommended by concerned SDO, XEN and SE due to Electrical infrastructure not being created as per the Sale Circular D-14/2018.

- vii. In the report dated 17.05.2022, SDO/OP, XEN/OP and SE/OP have not recommended for grant of NOC to the petitioner on the ground that the electrical infrastructure created is not as per the Sale Circular D-14/2018 which requires the builder to erect a 33 KV infrastructure and provide land for construction of 33 KV switching station. vide its letter dated 26.05.2022, this Office merely forwarded the report submitted by the XEN/OP and SE/OP to SE HVPNL and DTCP not recommending for the grant of NOC to the petitioner.
- viii. In this regard, it is pertinent that the arrangement at 11kV level was an interim stop-gap arrangement till the commissioning of the main source substation of 220/33kV capacity. It was duly intimated to the petitioner that releasing heavy load at 11kV shall create a tremendous burden on the existing 65/11kV system causing overloading of the substation and 11kV feeders. Furthermore, the load would be augmented exponentially during the peak summer seasons. Consequently, the conventional system at 11kV will be overloaded. Thus, it would be difficult to provide a continuous power supply at the current partial load of 11kVA supply pressure.
- ix. DHBVN had initiated a pilot project for development of the 33 KV belt in the area where the Project of the petitioner is situated. In Review Petition bearing No. 1 of 2022 filed by the respondents (DHBVN) against the order dated 30.11.2021

passed by this Hon'ble Commission in PRO -25 of 2021, the Commission expressly allowed the pilot project for development of a 33kV belt. The Commission also upheld that the discretion to decide that whether a connection of a load between 2000 kVA to 5000 kVA can be released at 11 kV or 33 kV voltage in terms of Regulation 3.2.1 does in fact vests in the Licensee. The consumers are not legally entitled to make this decision for the licensee as it would amount to interfering with the business plan and management of the licensee which is not permitted under the mandate of the Electricity Act.

- x. Thus, applying the said principle in the present facts and circumstances, it is submitted that the discretion to decide whether the connection of a load of 4499KW/ 4500 kVA of the petitioner (that falls between 2000 kVA to 5000 kVA) is to be released at 11 kV or 33 kV voltage in terms of Regulation 3.2.1 vests in the respondents. Accordingly, the respondent has rightly exercised the said discretion in terms of the Commission's order dated 28.03.2023 and considering various factors inter alia including the overall planning, availability of infrastructure and its capacity to serve, the best interests of the consumer, etc.

Re: Need for existing consumers (who have been granted connections at 11 KV as an interim measure) to switch over to a 33 kV network:

- 5.5 That the need for existing consumers (who have been granted connections at 11 KV as an interim measure) to switch over to a 33 kV network has already been elaborately explained by the respondent in Petition No. 4 of 2022 and the Review Petition. It has been stated therein that the existing 66/11 KV peripheral infrastructure was created not for catering to the load within the sectors located in 33/0.4 KV belt. This infrastructure was created between 1979 and 2009 for catering to load requirement of the area outside 33/0.4 KV Belt. Most of these substations have attained their full capacity (including augmentable capacity). There is no scope at all for permanently connecting heavy load(s) of builders/developers within the aforesaid belt. Grant of permanent regular connection(s) to these builder(s)/developer(s) from these 66/11 KV substation will overload the system and consume entire capacity that would have been available for small consumers within the areas for which the said 66/11 KV was originally planned and constructed.
- 5.6 Further DHBVN has already released connections in configuration of 33/0.4 kV in 33/0.4 KV belt where switching stations have already been commissioned. In case, these builders/developers are granted permanent connection at 11 kV level, it will lead to mixing of voltage levels. This is a safety hazard as the same may lead to fatal accidents in maintenance and operation of the distribution system in case of back flow of current on account of non-switching of other voltage level of power supply, which is being fed from another source. Thus, all

standard distributions systems across the world are designed and installed at a single voltage level and no mixing of different voltage level for distribution is done within the same area.

- 5.7 In view of the foregoing facts and circumstances, it is submitted that if the prayers of the petitioner are allowed, it would not only stifle respondent no.3 planning to develop a robust and efficient system but it will also open a pandora's box of litigations as all other similarly placed consumers would seek parity with the petitioner by misleading and misinterpreting orders of this Hon'ble Commission.
- 5.8 That notwithstanding the foregoing submissions, if the Hon'ble Commission is of the view that the petitioner shall not be called upon to bear cost of conversion from 11 KV to 33 kV, this Hon'ble Commission is requested to allow the respondents to issue NOC to the petitioner on 'As-Is Where-Is' basis subject to the petitioner getting the Electrification Plan approved from the respondent. Subsequently, to avoid mixing of voltage levels, the entire cost of such conversion from 11KV to 33KV shall have to be borne by the respondent. In this scenario, it is prayed that cost of such conversion in all such cases may be considered and allowed by this Hon'ble Commission as pass through in the ARR.
- 5.9 In view of the foregoing submissions, it is submitted that no action under Section 142 read with Section 146 of the Electricity Act, 2003 is tenable against the undersigned considering that there is no willful disobedience of the order of this Hon'ble Commission on the part of the respondents. In Ashok Paper Kamgar Union v. Dharam Godha and Ors., (2003) 11 SCC 1, (Para 17), the Hon'ble Apex Court analyzed the concept of willful disobedience of the order of the Court and it was held that element of willingness is an indispensable requirement for holding a person guilty of contempt. Para 17 of the said judgment is extracted hereunder:
"17. Section 2(b) of Contempt of Courts Act defines 'civil contempt' and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of undertaking given to a Court. 'Wilful' means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the Court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extra ordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case."
- 5.10 That the current Chief Engineer Commercial wing was not holding

this post at the time of furnishing of the report dated 26.05.2022. However, as stated above that in compliance of this Hon'ble Commission's directions, this office had initiated the enquiry and found out about the discrepancy in the report submitted by the concerned SDO, XEN/OP and SE/ OP office. Further, appropriate action is being initiated against the delinquent officials who have submitted that report wrongly stating that the electrification plan has been approved for the petitioner. This office undertakes to submit a copy of the final enquiry report to this Hon'ble Commission upon completion of the departmental proceedings.

In the given facts and circumstances, it is prayed that the notice issued to this office under Section 142 r/w Section 146 of the Act shall kindly be dropped as the element of willfulness to abide by any law on the part of this Office is missing. Further, the Hon'ble Commission may pass suitable directions regarding the grant of NOC as per the submissions made in this reply.

6. Reply dated 27.03.2023 by Respondent-DHBVN to the petition:

DHBVN through ibid reply submitted as under:

- 6.1 That the petitioners have alleged in the present petition that the respondents have wrongly withheld completion certificate for its group-housing project- "Raisina Residency" at village Ullahwas, Gurugram-Manesar for want of erection of 33 KV infrastructure/land measuring 500 Sq yard in terms of the Sale Circular no. D-14/2018.
- 6.2 That the captioned petition is completely baseless, fallacious, flawed, misconceived and untenable. DHBVN denies each and every contention and averment raised by the petitioner, save and except what has been specifically admitted by the DHBVN hereinafter. It is most respectfully admitted that any omission on the part of DHBVN to deal with any contention or allegation raised by the petitioner should not be construed as admission/acceptance of the same by the respondent. It is further submitted that DHBVN is not providing a paragraph-wise reply to the petition filed by the petitioner (for the sake of brevity) and is setting out its issue-wise submissions hereinbelow:

I. Brief Background:

- 6.3 Before advertng to the merits of the case, it is significant to set out here under the brief background that would elucidate the necessity with regard to the creation of infrastructure at 33 KV level and the validity of the decision of the answering respondents for non-issuance of completion certificate -
 - a. Director, Town and Country Planning (respondent no.5) issued a license dated 06.08.2007 in favor of the petitioners for setting up of Group Housing Colony at village Ullahwas in District Gurugram-Manesar. The project was to be developed over land measuring 11.73 acres.
 - b. Vide letter dated 26.04.2011, the interim/partial load of the project was sanctioned by respondent no.3 in the name of M/s Standard

Farms Pvt. Ltd. for the load of 1999 kW/1990 kVA from 66kV substation Sector-56, Gurugram through proposed 11kV Independent feeder on 11kV supply pressure and Bulk Supply (DS) tariff.

- c. Subsequent to the same, the connection was released to the petitioner on 26.05.2012 on 11kV independent feeder.
- d. The petitioner sought extension of load from 1999 to 4499 kW/1990 to 4500 kVA, which was sanctioned by the respondent no. 3 vide letter dated 04.09.2013 on BS/DS tariff supply through 11kV Independent feeder emanating from 66kV Sub Station Sector-56 Gurugram. Extension of load was released on 29.10.2013 on 11kV level. At this juncture, it is pertinent to state that this letter dated 04.09.2013 merely sanctioned for the extension of load of the petitioner. It does not approve the electrification plan of the petitioner.
- e. A meeting of the Board of Directors of the respondent was held on 15.12.2014 wherein it was decided to adopt 220/33/0.4 kV system instead of the conventional 220/66/11 kV system in the new sectors of Gurugram i.e., Sector-58 to Sector-115 and Faridabad. Accordingly, the instructions were issued through circular no. D-14/2018 dated 27.03.2018.
- f. Considering the aforesaid requirement, numerous requests were made by respondent no.3 vide letters dated 13.03.2019; 04.05.2019, and 06.05.2019 to the petitioner to shift their load on 33kV as the partial load released at 11KV supply level was an interim stop gap arrangement to give power supply till commissioning of main source substation of 220/33KV capacity. However, the petitioners did not act pursuant to any of these requests and also did not even attend the meeting scheduled for the said purposes.
- g. It was specifically brought to the notice of the petitioner in the various notices issued by the respondent that after the introduction of the 33kV level of the distribution network in the new sectors of Gurugram and Faridabad, the creation of 33kV switching station has become imperative to enable release of load at 33kV level. The creation of infrastructure at the 33kVA system is significant owing to the limited availability of 33kV bays at the existing/planned 220/33kV substations for catering to loads of these areas.
- h. DHBVN filed a petition before the Commission bearing HERC/ PRO No. 4 of 2022 seeking approval for development of transmission/ distribution system and release of connections in the exclusive configuration of 220/33/0.4 kV in the new sectors of Gurugram (i.e. Sector - 58 to Sector-115) as well as Sector 37 C and Sector 37 D of Gurugram; New sectors of Faridabad (Nehar paar area); Areas falling on the left side of Delhi - Jaipur highway in Dharuhera ("**33/0.4 KV Belt**") and/or amendment/relaxation in HERC (Electricity Supply Code) Regulations, 2014 and HERC (Duty to

Supply Electricity on Request, Power to Recover Expenditure Incurred in providing Supply and Power to Require Security) Regulations, 2016 (“**33KV Petition**”).

- i. Vide order dated 28.03.2022 passed in petition 4 of 2022, the Commission had appreciated and allowed DHBVN’s pilot project for development of 33 KV belt in following terms:
 - “(a) Release connections and additional/ extended load in 33/0.4 KV Belt in configuration of 33/0.4 KV and recover the costs for installation and development of transmission / distribution system of 220/33/0.4 kV from the applicants for grant of electricity connections for the above system as per the provisions of law as may be applicable for issuing connections at 33/0.4 KV level.
 - (b) Develop 220/33/0.4 kV system in the 33/0.4 KV Belt, subject to the regulations that shall be framed by the Commission on the issue.”
- j. Thereafter vide memo dated 17.05.2022, XEN/OP and SE/OP, DHBVN have submitted their report recommending not to grant NOC to the petitioner on the ground that the electrical infrastructure created is not as per Sale Circular D-14/2018 which requires the builder to erect a 33 KV infrastructure and provide land for construction of 33 KV switching station. This report also stated that the electrification plan of the petitioner was approved vide memo dated 04.09.2013. This report of XEN and SE was forwarded to HVPNL and DTCP vide letter dated 26.05.2022.
- k. Aggrieved by the non-grant of NOC, the petitioner filed the present petition. The Hon’ble Commission vide its Order dated 23.02.2023 had issued notice to the CE/Commercial, DHBVN under Section 142 and 146 of the Electricity Act, 2003 for submitting a report recommending non-release of NOC to the petitioner on the ground that the created infrastructure is not in compliance with the instructions of the Nigam. It is respectfully submitted that DHBVN holds this Hon’ble Commission in highest respect and regard. DHBVN has always abided by and shall continue to abide by the orders that are passed by this Hon’ble Commission from time to time. It is submitted that there is no willful disobedience on the part of the respondents in seeking creation of adequate infrastructure or compliance of the directions contained in Circular of the respondent as affirmed in various orders of the Hon’ble Commission discussed in subsequent paragraphs.

II. Submissions on Merits

6.4 It is submitted that there are two aspects to the non-grant of the requisite NOC to the petitioner which are stated as under:

A. Petitioner never got the electrification plan for their Project approved by DHBVN

- i. It is submitted that approval of the electrification is an essential pre-requisite for grant of the NOC by DHBVN to the petitioner. Issuance of NOC without an approved electrification plan and

without ensuring creation of adequate electrical infrastructure by the builder/developer may have devastating consequences which have been faced in the recent past in many parts of Haryana.

- ii. In this regard, it is submitted that vide Sale Circular No. D-23/2020 dated 06.10.2020 DHBVN notified detailed procedure and guidelines to be followed to provide the progress/status of inadequacies in electrical infrastructures being created by the developers. The said circular requires all officers to maintain record of the approved electrification plan, details of the Bank Guarantee and status / progress of creation of electrification infrastructure as per approved plan. Para 8 (e) and (h) of the said circular clearly stipulates the duty of XEN/OP and SE/OP to approve the inspection reports only after cross checking all the documents. After cross checking, the report is required to be submitted by SE (OP) to the office of Chief Engineer Commercial for further forwarding the report to SE(Planning), HVPNL and further to DTCP.
- iii. On receipt of the Show Cause Notice (SCN) issued by this Hon'ble Commission, DHBVN had initiated an enquiry to verify and ascertain the correct facts of this case. On enquiry, it was revealed that the petitioner never got the electrification plan for their Project approved by DHBVN till date. It further emanated that the concerned officials in the present case i.e. the XEN/OP Sohna and SE/OP Circle II Gurugram have wrongly submitted in their report dated 17.05.2022 that the electrification plan for the Project has been approved by DHBVN vide memo dated 04.09.2013.
- iv. It is submitted that the memo dated 04.09.2013 merely sanctions the extension of load for petitioner. It does not approve the electrification plan. The electrification plan gets approved in a particular format.
- v. For this error on the part of the officials, DHBVN has also initiated disciplinary proceedings against the responsible officials, who shall be dealt with as per the HR Regulations of DHBVN.
- vi. Notwithstanding the same, as on date there is no approved electrification plan for the petitioner against which the adequacy of the electrical infrastructure created by petitioner can be measured. The petitioner in the petition has wrongly relied upon the Chief Engineer Commercial's letter dated 26.05.2022 to contend that the Electrification plan (EP) of the project was approved. The petitioner has failed to place on record any material on record to show that the EP has been approved. Grant of NOC without an approved EP may eventually lead to crisis of similar magnitude and proportion like inadequacy in electricity infrastructure left behind by some developers/builders.

- vii. The Commission in its order dated 01.04.2021 passed in PRO-68 of 2020 has upheld the provisions of Sale Circular D 21 / 2020 which stipulates that the connection in the project site shall be allowed only on submission of approved electrification plan. The Commission has also acknowledged the impact of the inadequacies existing in 36 projects of different developers.

In view of the foregoing facts and circumstances, it is submitted that the petitioner may be directed to get the electrification plan approved by the Nigam or provide the copy of the said approved plan if available with them so as to process the NOC for occupation certificate.

B. NOC has not been recommended by concerned SDO, XEN and SE due to Electrical infrastructure not being created as per the Sale Circular D-14/2018.

- viii. In the report dated 17.05.2022, XEN/OP and SE/OP, DHBVN have not recommended for grant of NOC to the petitioner on the ground that the electrical infrastructure created is not as per the Sale Circular D-14/2018 which requires the builder to erect a 33 KV infrastructure and provide land for construction of 33 KV switching station. Based on the report submitted by the XEN/OP and SE/OP, NOC was not recommended to the petitioner vide letter dated 26.05.2022.
- ix. In this regard, it is pertinent that the arrangement at 11kV level was, an interim measure and stop-gap arrangement till the commissioning of the main source substation of 220/33kV capacity. It was duly intimated to the petitioner that releasing of heavy load at 11kV shall create a tremendous burden on the existing 65/11kV system causing overloading of the substation and 11kV feeders. Furthermore, the load would be augmented exponentially during peak the summer seasons. Consequently, the conventional system at 11kV will be overloaded. Thus, it would be difficult to provide a continuous power supply at the current partial load of 11kVA supply pressure.
- x. DHBVN had initiated a pilot project for development of the 33 KV belt in the area where the Project of the petitioner is situated. In Review Petition bearing No. 1 of 2022 filed by the respondents (DHBVN) against the order dated 30.11.2021 passed by this Hon'ble Commission in PRO -25 of 2021, the Hon'ble Commission expressly allowed the pilot project for development of a 33kV belt. This Hon'ble Commission also upheld that the discretion to decide that whether a connection of a load between 2000 kVA to 5000 kVA can be released at 11 kV or 33 kV voltage in terms of Regulation 3.2.1 does in fact vests in the Licensee. The consumers are not legally entitled to make this decision for the licensee as it would amount to interfering with

the business plan and management of the licensee which is not permitted under the mandate of the Electricity Act.

- xi. Thus, applying the said principle in the present facts and circumstances, it is submitted that the discretion to decide whether the connection of a load of 4499KW/ 4500 kVA of the petitioner (that falls between 2000 kVA to 5000 kVA) is to be released at 11 kV or 33 kV voltage in terms of Regulation 3.2.1 vests in the respondents. Accordingly, the respondent has rightly exercised the said discretion in terms of the Commission's order dated 28.03.2023 and considering various factors, inter alia, including the overall planning, availability of infrastructure and its capacity to serve, the best interests of the consumer, etc.

Re: Need for existing consumers (who have been granted connections at 11 KV as an interim measure) to switch over to a 33 kV network:

- 6.5 It is further submitted that the need for existing consumers (who have been granted connections at 11 KV as an interim measure) to switch over to a 33 kV network has already been elaborately explained by the respondent in Petition No. 4 of 2022 and the Review Petition. It has been stated therein that the existing 66/11 KV peripheral infrastructure was not created for catering to the load within the sectors located in 33/0.4 KV belt. This infrastructure was created between 1979 and 2009 for catering to load requirement of the area outside 33/0.4 KV Belt. Most of these substations have attained their full capacity (including augmentable capacity). There is no scope at all for permanently connecting heavy load(s) of builders/developers within the aforesaid belt. Grant of permanent regular connection(s) to these builder(s)/developer(s) from these 66/11 KV substation will overload the system and consume entire capacity that would have been available for small consumers within the areas for which the said 66/11 KV was originally planned and constructed.
- 6.6 Further DHBVN has already released connections in configuration of 33/0.4 kV in 33/0.4 KV belt where switching stations have already been commissioned. In case, these builders/developers are granted permanent connection at 11 kV level, it will lead to mixing of voltage levels. This is a safety hazard as the same may lead to fatal accidents in maintenance and operation of the distribution system in case of back flow of current on account of non-switching of other voltage level of power supply, which is being fed from another source. Thus, all standard distributions systems across the world are designed and installed at a single voltage level and no mixing of different voltage level for distribution is done within the same area.
- 6.7 In view of the foregoing facts and circumstances, it is submitted that if the prayers of the petitioners are allowed, it would not only stifle respondent no.3 planning to develop a robust and efficient system but it will also open a pandora's box of litigations as all other similarly

placed consumers would seek parity with the petitioner by misleading and misinterpreting orders of this Hon'ble Commission.

- 6.8 It is submitted that notwithstanding the foregoing submissions, if the Hon'ble Commission is of the view that the petitioner shall not be called upon to bear cost of conversion from 11 KV to 33 kV, this Hon'ble Commission is requested to allow the answering respondents to issue NOC to the petitioner on 'As-Is Where-Is' basis subject to the petitioner getting the Electrification Plan approved from the answering respondents and consequently the ultimate load of the project area remains well within the existing sanctioned/released load of the petitioner. Subsequently, to avoid mixing of voltage levels, the entire cost of such conversion from 11KV to 33KV shall have to be borne by the answering respondent. In this scenario, it is prayed that cost of such conversion in all such cases may be considered and allowed by this Hon'ble Commission as pass through in the ARR.
- 6.9 The answering respondent crave leave of this Hon'ble Commission to furnish additional submissions/ documents, if required at any stage for better assistance during the course of hearing.

7. Rejoinder dated 04.04.2023 by the Petitioner to Reply of Respondents-DHBVN: the petitioner has submitted as under:

- 7.1 That the respondents in their reply have made submissions, which are without any factual basis and wherever, it has been found that they are not able to rebut the contentions of the petitioners, it has conveniently submitted that the concerned officials of the Nigam have submitted wrong facts and for this error/omission, departmental action have been initiated against them. The message is loud and clear. Rather than acting as a responsible sole distribution licensee for the region and an Electricity Supply Company setup by the Government, the respondents are adopting a big brother attitude with only motive to coerce and force the existing consumers, who have been released with the entire sanctioned/approved demand of 4499 KW long back in terms of the orders dated 04.09.2013 and neither has any application been moved thereafter by the petitioners for additional load nor any demand is envisaged presently. Thus, in as far as, the instant petition is concerned, the entire load requirement of 4499 KW with contract demand of 4500 KVA at 11 KV Voltage Level stands completed by the Nigam way back in 2013 and the contract is thus concluded.
- 7.2 That as per the own averments made by the respondents in the written statement, the petitioner, who was granted license for setting up a group housing colony at village Uhlawas (Manaser) in District Gurugram on 06.08.2007, was sanctioned a load of 1999 to be fed from 66 KV Sub-station Sector 56, Gurugram on 11 KV supply through an independent 11 KV feeder at the cost of the petitioner. After this load got sanctioned, in view of additional requirement, the petitioner moved an application for grant of extension of load of 4499 KW with contract demand of 4500 KVA on 11.01.2013. This load was sanctioned by the Chief General Manager of the Nigam, i.e., competent

authority vide orders dated 04.09.2013, and it was a condition that full advance consumption security and other applicable charges shall be recovered from the applicant petitioner in terms of sale circular No.D-26 of 2011.

It is the positive case of the petitioner that whatever was asked for, was duly deposited with the Nigam. The connection has been released as a regular connection and not as a temporary connection and the petitioner is regularly paying the bills. The demand notice was issued by the concerned SDO Operation on 17.09.2013 and the connection was released thereafter on compliance of the requisite payments/submission of documents on BS-DS basis.

It is the case of the petitioner, that the ultimate load requirement stands met, Thus, irrespective of the fact whether the document dated 04/09/2013 is a sanctioned letter for extension of load or electrification plan, the fact remains that the competent authority of the respondents has approved the enhancement of load of up to 4499 KW. Whatever was demanded stands paid and the connection stands released and it is a regular connection and not a temporary connection and further, there is no additional requirement. Thus, at this stage, after release of load way back in 2013, raising objection with regard to non-erection of the requisite infrastructure in terms of sale circular D-14 of 2018, which was issued only on 12.04.2017 is totally untenable in the eyes of law.

- 7.3 That all the requests calling upon the petitioner to switch over to a 33 KV voltage level as made in the year 2019 can be made in case the petitioner applies for any additional load as the sale circular also has prospective effect and cannot be made applicable to the already concluded contracts.
- 7.4 That in as far as, the orders dated 28.03.2022, passed by this Hon'ble Commission in petition No.4 of 2022 are concerned, the same also have prospective effect.
- 7.5 That in the reply on merits, the respondents have taken an objection that the electrification plan was never got approved from the DHBVNL by the petitioner. It is the case of the petitioner that the load was sanctioned on 04.09.2013 and whatever was required or asked for at that stage was duly complied with. Even the XEN OP Sohna and SE Operation Circle have mentioned in the report that the electrification plan stands approved and in the present reply, the respondents have tried to do face saving by mentioning that disciplinary proceedings have been initiated by the Nigam against the concerned officials. The respondents, have to stick to the stand taken by its senior officers or let the orders be passed only by the board of directors, so that no such eventuality arises in future.
- 7.6 That equally untenable is the averment, wherein, it is mentioned that grant of NOC without approval of electrification plan may eventually lead to crisis of magnitude and proportion like inadequacy in electricity infrastructure left behind by some developers. The document is also not applicable to the facts of the present case because in that case, the

load requirement is 1,76,183 KVA, whereas the load requirement of the petitioner is only 4499 KW, which stands installed way back in 2013.

- 7.7 That it has been mentioned in the reply that since the compliance of the sale circular, D-14 of 2018 has not been made, the grant of NOC has not been recommended. It is once again submitted that the said sale circular has prospective effect and thus, does not have any applicability to the case of the petitioner, where entire load stood released in 2013 itself.
- 7.8 That the other contents of the reply are totally untenable because in the case of the petitioner the entire load requirement stands released and sanctioned way back in 2013 and now, under the garb of system improvement, the petitioner cannot be asked to create new infrastructure, which is applicable only to fresh/future demands/projects.
- 7.9 That in the part of the reply, the respondents have tried to raise more of an emotional issue rather than a legal/technical one. It is the emphatic assertion of the petitioner that even the first amendment of the HERC (the Electricity Supply Code) Regulations provide that in respect of contracted load exceeding 15 KW and up to 5000 KVA, the supply on 3 phases at 11 KV shall be made and this is what has been done in the case of the petitioner.
- 7.10 That this Hon'ble Commission has also observed in its order dated 23.02.2023 that

“the Commission *prima-facie* observes that the Chief Engineer Commercial/DHBVN issue a letter dated 26.05.2022 showing pendency of creating 33 KV infrastructure by the petitioner without the force of regulations, whereas the petitioner has already created the 11 KV infrastructure as per norms”.

Despite the above said observations/findings of the Hon'ble Commission, the respondents have failed to issue the requisite NOC making it liable to be proceeded against under section 142/146 of the Electricity Act, 2003 and they may further be directed to release NOC forthwith to the respondent No.5 i.e., Director Town and Country Planning.

8. Commission's Order:

- 8.1 The case finally came for hearing before the Commission on 03.05.2023, as scheduled, in the court room of the Commission.
- 8.2 At the outset, Ms. Nikita Chaukse, counsel for the respondent- DHBVN submitted that the NOC has been issued to the petitioner on 13.04.2023 as per the Commission's direction in order dated 10.04.2023. She submitted that the connection may have to be shifted on 33 KV after finalization of the relevant Regulations by the

- Commission, the cost incurred by the licensee for such conversion should be pass through and allowed in the ARR of the relevant year.
- 8.3 Sh. Ashwani Talwar, counsel for the petitioner submitted that they have not yet received the NOC. The counsel for the respondent-DHBVN handed over a copy of the NOC to the petitioner during the hearing only.
- 8.4 Sh. Talwar stated that, since NOC has been issued by the respondent, hence, nothing further remains for adjudication as far as petitioner is concerned.
- 8.5 In view of the above, the Commission observes that as the requisite NOC has been issued by the respondent-DHBVN as prayed for by the petitioner. Therefore, nothing further survives for adjudication. Accordingly, the instant petition is disposed-off.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 10/05/2023.

Date: 10.05.2023
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman