

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

**Case No. HERC/RA No. 03 of 2023**

**Date of Hearing : 22.06.2023**  
**Date of Order : 05.07.2023**

**In the Matter of**

**Application under Section 94(1)(f) of the Electricity Act, 2003 read with Regulations 57 to 59 and 65 to 70 of the HERC (Conduct of Business) Regulations, 2019 and Regulation 81 of the HERC (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2019 seeking review of the order dated 30.01.2023 passed by the Hon'ble Commission in HERC/Petition No. 63 of 2022 with respect to the True up for FY 2021-22, Annual Performance Review of FY 2022-23 and Aggregate Revenue Requirement and Tariff Petition for FY 2023-24. (HERC/Review Petition No 03 of 2023 in case no 63 of 2022).**

**Petitioner**

Haryana Vidyut Prasaran Nigam Ltd. (HVPNL)

**Present on behalf of the petitioner**

M/s Aerika Singh, Advocate for HVPNL  
Mr. Rohtash Bansal, Director (Finance), HVPNL  
Ms. Jyoti Gupta, Chief Financial Officer, HVPNL  
Mr. Sunil Sharma XEN, HVPNL

**Quorum**

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

**Chairman**  
**Member**

**ORDER**

**Brief background of the Case**

1. The Commission's had passed an order dated 30.01.2023 (HERC/Petition No. 63 of 2022), in the matter of true up of Aggregate Revenue Requirement (ARR) of Transmission Business & State Load Dispatch Centre (SLDC) for FY 2021-22, Annual (Mid-Year) Performance Review for FY 2022-23 and determination of Transmission Tariff and SLDC Charges for the FY 2023-24. The transmission licensee, i.e. HVPNL also notified as SLDC by the State Government has preferred the instant petition seeking review of a few dispensation including inadvertent error, in the transmission

and SLDC order passed by the HERC.

2.1 **RETURN ON EQUITY (ROE): -**

The petitioner has submitted as under: -

The petitioner has submitted that RoE @10% has been allowed by the Hon'ble Commission as against the RoE proposed @14%. The relevant provisions of HERC MYT Regulations, 2019, in vogue, at the time of passing of the order under review, provides as under:-

*“20.1 The rate of return on equity shall be decided by the Commission keeping in view the incentives and penalties and on the basis of overall performance subject to **a ceiling of 14%** provided that the ROE shall not be less than the net amount of incentive and penalty.”*

It has been argued by the petitioner herein that though the aforesaid Regulations were subsequently amended vide order dated 31.01.2022 passed in PRO-45 of 2021. However, the amendment can be made applicable only prospectively. The same cannot be made applicable in case of True-up for FY 2021-22 i.e. retrospectively.

The petitioner has accordingly prayed to the Commission to allow the Return on Equity at a higher i.e. @14% for the FY 2021-22.

2.2 **NON-TARIFF INCOME (NTF): -**

On the issue of NTF the petitioner has submitted that the Non-tariff income @ Rs.543.38 million for the FY 2021-22, was approved by the Commission. However, the petitioner herein is aggrieved by the inclusion of the interest received on Corporate Social Responsibility (CSR) Bank under the head of 'Non-Tariff Income'. It is submitted that the interest on CSR cannot be termed as 'income' as the same is required to be utilised in the CSR activities only. Attention in this behalf is brought towards the General Circular No. 14/2021 of the Ministry of Corporate Affairs wherein certain Frequently Asked Questions (FAQs) have been answered by the Ministry. The relevant part/FAQ of the Circular is reproduced below:

3.4	<i>What is the meaning of surplus arising from CSR activities? How can this surplus be utilised?</i>	<i>Surplus refers to income generated from the spend on CSR activities, e.g., <b><u>interest income earned</u></b> by the implementing agency on funds provided under CSR, revenue received from the CSR projects, disposal/sale of materials used in CSR projects, and other similar income sources.</i>  <b><u>The surplus arising out of CSR activities shall be utilised only for CSR purposes.</u></b>
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Accordingly, the petitioner has prayed that interest on Corporate Social Responsibility of Rs.1.15 million may not be included in the calculation of Non-Tariff Income.

### 2.3 **SHARING OF BENEFIT @ 60% OF INTEREST ON WORKING CAPITAL: -**

On this issue the petitioner has submitted that the relevant provision of the HERC MYT Regulations, 2019 are as under:

#### ***“12. INCENTIVE AND PENALTY FRAMEWORK (Sharing of gains & losses)***

##### ***12.4 In case of gain***

*The item wise gain shall be shared between the generating company or the licensee, as the case may be, and their respective beneficiaries in the ratio of 50:50. However, the sharing ratio of 50:50 may be revised to a maximum of 60:40 at the time of true-up during mid-year performance review / true-up. The manner of utilization of the additional 10% gain shall be specified by the Commission from time to time.”*

However, this Hon'ble Commission, in its Order dated 30.01.2023, on the issue of sharing of gains @60% of the Interest on Working Capital (IoWC), has observed as under: -

*The sharing of 60% of the gains amounting to Rs. 329.95 Million (Rs.373.03 – Rs. 43.08 million) for FY 2021-22 on account of Interest on Working Capital proposed by HVPNL is tabulated below:*

<b><i>Sharing of Gains of Interest on Working Capital (Rs. Million) Particulars</i></b>	<b><i>Actual</i></b>	<b><i>Normative</i></b>	<b><i># 60% to be Retained</i></b>
<i>Gains on Interest on working capital</i>	<i>43.08</i>	<i>373.03</i>	<i>197.98</i>

***The Commission, after due deliberations, approves the interest on working capital as per actual i.e. in line with the Audited Accounts. Hence, for the purpose of 'True-up' the same shall be pegged at Rs 43.08 Million.***

***The Commission observes that there is a large gap between normative working capital computation and the actual working capital requirement of HVPNL. The licensee is directed to explain the large variation supported by lead and lag analysis for the year. The analysis should be submitted within three months from the date of the present order.”***

In reference to above, the petitioner has submitted that the main reason for lower utilisation of working capital limit available to them was that during the FY 2021–22, HVPNL received certain amounts, which, inter alia, included income tax refund amounting to Rs. 21.62 Crores.

Additionally, a sum of Rs. 62.73 Crores was received from Open Access consumers during the FY 2021-22. Besides these certain internal accruals had also occurred as debtors of HVPNL had made payments within the stipulated time during the FY 2021-22. Consequently, lower working capital requirement and hence lower draw down of

the available limit vis-à-vis w/c computed on a normative basis as per the relevant regulations. Moreover, HVPNL had utilised the Working Capital limits available from various Banks during the FY 2021-22 at an average interest rate of 6.40% as against the average interest rate of 8.50% considered by the Hon'ble Commission, which has caused decline in the interest cost. The said fact was also brought to the notice of the Hon'ble Commission recently vide memo No. 225/SAO/RAU dated 14.03.2023.

The Commission in its last tariff order dated 09.03.2021 (HERC/PRO-75 of 2020), had appreciated that the petitioner was able to reduce its working capital requirement, while observing as under:

*“On the petitioner’s claim of sharing of gains on lower interest on working capital, the Commission has examined the relevant provisions of the MYT regulations and observes that as per regulation 12.2(a) (iii), the incentive shall be available when the interest rate falls below the level specified by the Commission. **In the present case, the licensee is not claiming incentive on lower rate of interest due to better operational efficiency, but that it was able to manage its financial operations in a manner that it was able to reduce its working capital requirement. The Commission appreciates the better cash management of the licensee which has enabled it to save Rs. 163 million in finance cost. ... ..**”*

Accordingly, HVPNL has submitted that the sharing of benefit @ 60% of IoWC may be allowed at normative value.

#### 2.4 **REPAIR AND MAINTENANCE (R&M) EXPENSES:**

The petitioner has submitted that the Hon'ble Commission has approved true-up of Repairs and Maintenance Expenses (R&M) of Rs. 516.16 million for the FY 2021-22 as against the actual expense of Rs. 543.61 million, after considering the average of opening and closing GFA, less consumers contribution, for the FY 2021-22 i.e. 0.5% (as per Regulation) X (101411.99 Opening GFA + 105051.48 Closing GFA /2).

The Petitioner has submitted that the main reason for increase in the R&M Expenses for FY 2021-22 was due to release of payment to PGCIL on account of receipt of bills of the previous year's payment of O&M charges to PGCIL towards the interstate transmission lines maintained by PGCIL relating to current year and against bills related to previous years which has not been raised by PGCIL during the relevant years.

As per clause (a) of regulation 45.3 of MYT Regulations, 2019, the formula prescribed for calculation of R&M expenses is as under: -

“ (a)  $R\&M_n = K * GFA * (INDX_n / INDX_{n-1})$

Where,

- ‘K’ is a constant (expressed in %) governing the relationship between R&M costs and Gross Fixed Assets (GFA) for the nth year. The value of K will be 0.50% for the entire control period;
- GFA is the average value of gross fixed assets for the nth year;
- INDX<sub>n</sub> means the inflation factor for the nth year as defined herein after:
- $INDX_n = 0.55 * CPI_n + 0.45 * WPI_n$

Note: As and when any material price index specific to power sector or a more relevant Index becomes available, the same shall replace the Index used for working out R&M cost.

Note: Source for CPI and WPI calculation are as under:

Wholesale Price Index as per Office of Economic Advisor of Government of India in the previous year;

Consumer Price Index for Industrial Workers (all India) as per Labour Bureau, Government of India in the previous year.”

The petitioner has submitted that during true-up of R&M for the FY 2021-22, the impact of inflation factor has not been considered. After considering the actual GFA for the FY 2021-22 and the inflation factor for the FY 2021-22 worked out as per the prescribed formula of MYT Regulations, 2019, the actual R&M expenses is within the prescribed limits. In view of the above submissions, the petitioner has requested the Commission to approve the actual R&M expenses of Rs 543.61 million for the FY 2021-22.

#### **REVIEW OF AGGREGATE REVENUE REQUIREMENT DETERMINED FOR THE FY 2023-24**

It has been submitted that the Commission had approved Annual Revenue Requirement (ARR) for the FY 2023-24 amounting to Rs. 22653.21 Million as against Rs. 24923.17 Million proposed by the petitioner. As such, an amount of Rs. 2269.96 Million has been disallowed by the Hon'ble Commission. The Petitioner is aggrieved with respect to disallowance of the amount under the following heads:

#### **2.5 EMPLOYEE EXPENSES:**

The petitioner herein is aggrieved by the disallowance of the proposed cost of Rs. 48 Million towards employees to be engaged at the new sub-station. The Hon'ble Commission, vide Tariff Order dated 30.01.2023, had observed as under:

*“It has been submitted that the terminal liability for the FY 2023-24 has been claimed by HVPNL based on the projection made by the actuary and may change at time of actual valuation due to change in assumptions/other parameters. The terminal liability of Rs. 2814.80 million including Rs. 2010 million pertains to the segregated liability for the FY 2021-22. Accordingly, the petitioner has prayed that this Hon'ble Commission may approve the terminal liability for the FY 2023-24 as per the actuarial computations subject to true up based on the audited accounts. The Commission has examined the*

computations filed by the petitioner, as the same is in line with the HERC MYT Regulations in vogue and also previous order(s) of this Commission, approves the same. **The aberration is on account of disallowance of Rs. 48 Million proposed by the petitioner towards employees to be engaged at new sub-stations. The Commission has not considered the same in the absence of details and justifications.**”

The petitioner has now submitted that it would be incorrect to state that “*The terminal liability of Rs. 2814.80 million including Rs. 2010 million pertains to the segregated liability for the FY 2021-22.*” Further, it is incorrect to state that there was absence of details or justifications with respect to the employee cost. HVPNL has clarified that Rs.2010 Million is not included in the terminal liability of Rs. 2814.80. HVPNL has further submitted that projected cost for the employees to be engaged in the new sub-stations was calculated keeping in view the factual aspect that three new sub-stations of the Petitioner are likely to be commissioned in the year 2023-24. The petitioner had taken into account the projected number of employees (i.e. Group C employees) who would be employed in the said sub-stations. The table giving details of substations as well as the calculation, which was also submitted before the Hon’ble Commission is as under:

**Details of the sub-stations likely to be commissioned in FY 2023-24:**

- i) 220 kV S/Stn., Gurugram
- ii) 220 kV S/Stn., Rai
- iii) 220 kV S/Stn., Manesar
- iv) 132 kV S/Stn., Hansi
- v) 66 kV S/Stn., Sector- 37, Faridabad
- vi) 66 kV S/Stn., Sector- 16, Jagadhari
- vii) 66 kV S/Stn., Sector- 58, Faridabad
- viii) 66 kV S/Stn., Sector- 46, Gurugram
- ix) 66 kV S/Stn., Sector- 21, Gurugram
- x) 66 kV S/Stn., Nanakpur

Voltage Level of S/St	Number of S/Stns likely to be commissioned in FY 2023-24	Number of Employees as per Norms	Total Employees
220 KV	3	14	42
132 KV	1	12	12
66 KvS/Stn	6	11	66
Total Employees			120
<b>Average Employee Cost (Group-C) Million</b>	0.40		48 (120 *.40)

HVPNL has submitted that detailed justification has been provided for calculation of ‘*Employee cost for employees to be engaged in New S/Stn.*’, as such, the Hon’ble Commission may kindly allow the amount of Rs. 48 million towards the same.

2.6 **INTEREST ON WORKING CAPITAL:**

The Petitioner has submitted that Operation and Maintenance (O&M) expenses is one of the components to be included for calculating Working Capital. Further, Employee Cost is also the component to be considered for the calculation of O&M expenses. Therefore, it has been prayed that, in case, this Hon'ble Commission is pleased to allow the 'Employee cost for employees to be engaged in New S/Stn' amounting to Rs.48.0 Million, in such an eventuality, the working capital and in turn the interest on working capital may be adjusted.

2.7 **RETURN ON EQUITY (RoE):**

The petitioner has submitted that Hon'ble Commission, vide Tariff Order dated 30.01.2023 had allowed RoE @ 10.67% as under:

*"The Commission has considered the submissions made by the licensee and observes that as per the MYT Regulations, 2019, ROE up to 14% can be allowed; the same was amended vide 2nd Amendment to Bank Rate + 4.5% with a ceiling of 11%, on the eligible equity capital deployed in the transmission business. Accordingly, the Commission, taking a holistic view of the financial burden that may be passed on to the electricity consumers of Haryana, approves the rate of Return on Equity at 10.67% computed on average equity utilized in the transmission business during the FY 2023-24 as per MYT Regulation, 2019."*

While seeking review of the same, HVPNL has submitted that the calculation of RoE @ 10.67% is unclear. The petitioner has prayed to provide the basis of grant of RoE @10.67%. HVPNL has further prayed that in view of the submissions with respect to the RoE made earlier, the RoE may be allowed @11% being the ceiling RoE, in terms of the MYT Regulations, 2019 amended upto date.

2.8 **CARRYING COST:**

The petitioner has submitted that the Hon'ble Commission had disallowed the carrying cost of Rs. 68 Crores while observing as under:

*"The Commission has considered the submissions of the petitioner and in accordance with the audited accounts, approves Rs. 5,062.04 million towards terminal benefits for the FY 2021-22. It is observed that the terminal benefits approved and the actual amount incurred are poles apart. The Commission, for the FY 2021-22, had approved aforesaid amount as proposed by the licensee but the actual amount exceeds the amount proposed and approval thereof. This casts serious doubt on the ability of the licensee to estimate or get the same done by the actuary in a reasonable manner. The tolerable error in projection / estimates ought not to exceed 5% on such issues.*

Consequently, the licensee, irrespective of the ex-post-facto reasoning/ explanation, advised to gear-up its methodology so that they are able to estimate/project with at least 95% confidence level. The Commission, as a onetime measure, allows true-up in line with the audited accounts of the FY 2021-22 as the same also include Rs. 2010 million brought forward from the FY 2020-21 i.e. recovery of Rs. 6030.10 has staggered over three years. While allowing the true-up based on Audited Accounts it is observed that the actual amount now claimed also includes a substantial amount on account of past liabilities, recovery of which was staggered over a period of three years so as to cushion any sudden spike in the revenue requirement and tariff for transmission business and SLDC.

The Commission reiterates the directive on payment to pension trust issued vide order dated 07.03.2019 as under:

“The Commission directs the licensee to seek prior approval of the Commission for contribution to the pension trust in excess of that proposed by it in the ARR in future in view of the fact that there is no legal hitch in deferring the payment to the trust funds as demonstrated by the proposal of the licensee for the FY 2016-17. The Commission further directs the Licensee to ensure that any payment approved by the Commission in its order towards terminal benefits is duly paid within time and before the close of the relevant financial year.”

Accordingly, the Commission observes that **though the terminal benefits cost actually incurred by the licensee is approved for true up, no carrying cost shall be allowed on the difference between the approved cost and the pass-through cost in the light of the ibid directive issued by the Commission to pay only the approved cost during the year.** Needless to add that any contribution to the pension trust in excess of the amount approved, has to be with prior approval of the Commission.”

In this regard, the petitioner has submitted that the carrying cost also known as holding costs are the costs that business pays for holding the inventory in stock or items deals with the transmission activity. A business can incur a variety of carrying cost including taxes, insurance, employee cost, depreciation, the cost of keeping items in the storage and the cost of replacing perishable items. Even the cost of capital that helps to generate income for the business is the carrying cost. HVPNL has submitted that HVPNL will be deprived of the carrying cost and we suffer in case the same is not allowed. As such, HPVNL has prayed that the issue of carrying cost may be reviewed and the same may be allowed to the petitioner, in the interest of equity and fairness.

### **Proceedings in the Case**

2. The case was heard on 22.06.2023, as scheduled, in the court room of the Commission. Ms. Aerika Singh, the learned counsel appearing on behalf of the petitioner, reiterated the contents of the review petition which are not being reproduced herein for the sake of brevity and to avoid prolixity.

3. **Additionally, in response to the public notice the Commission received objections from Sh. Pankaj Bhalotia, R/o Imperial Tower, Sector-82, Faridabad.**

The issues raised by the above intervener, and Commission's view are as follows: -

- a) It has been submitted that my comment, suggestion, objection on share cost demand of Rs. 27.30 Lakhs from DHBVN consumer having Electricity Account No. 2202690000, the HVPNL replied to me vide its Memo No. Ch-62/XEN/RAU/F-173 dated: 09.01.2023 that they have already withdrawn Memo No. Ch-40/DSO-434/Vol.III/RAU/F-136 dated 04.09.2014, when the same was rescinded by the HERC vide its decision in Appeal No. HERC/PRO 8, 10 & 11 of 2015, and after its withdrawal, no demand whatsoever can be made under the Memo No. Ch-40/DSO-434/Vol.III/RAU/F-136 dated 04.09.2014 but the share cost demand of Rs. 27.30 Lakhs from DHBVN consumer having Electricity Account No. 2202690000 is still ON and the same is not withdrawn by HVPNL yet and my sincere request to HVPNL is to please look into this and get the said demand of Rs. 27.30 Lakhs cancelled and withdraw immediately.
- b) It appears that the left hand of HVPNL is not talking with right hand of it because the left hand had withdrawn the controversial Memo No. Ch-40/DSO-434/Vol.III/RAU/F-136 dated 04.09.2014, but the right hand is still considering the said controversial Memo as a valid Memo despite of its withdrawal by left hand and still demanding share cost of Rs. 27.30 Lakhs and neither cancelling nor withdrawing the said demand of share cost. I wrote multiple emails to HVPNL in this regard to cancel and withdraw the demand in terms of their Memo No. Ch-62/XEN/RAU/F-173 dated: 09.01.2023 but so far no luck on it.
- c) As per me, the Tariff petition is not only for determination of Tariff, but it also covers overall functioning of the Power Utilities including consumer satisfaction level and one should be encouraged to bring any comments, suggestions, objections related to functioning of Power Utilities and the Commission as well as Power Utilities are duty bound to improve on consumer satisfaction. Isn't legal battle a last recourse available, and when the matter is already a settled matter, is there a need to go for a legal battle to get the matter heard? Isn't both the complainant and Respondent shall incur money, time and resources on it and can be saved by both since the matter is already a settled matter.

### **Commission's view:**

The Commission has considered the issues raised by the intervener. This issue is not relevant for determination of transmission ARR / tariff and SLDC charges under consideration of the Commission. However, if certain Regulations / orders of this Commission is not being followed or violated the aggrieved person / party can always approach this Commission as per the procedure prescribed in the HERC (Conduct of Business), Regulation, 2004 including its subsequent amendment(s). The intervener seem to have lost sight of the fact the scope of ARR/Tariff petition and the narrow compass in which a review preferred against the same lies.

### **Commission's Analysis and Order**

4. The commission heard the petitioner at length on the issue and grounds of seeking review against the same. The Commission considered it appropriate to examine the issue of maintainability of the present review petition, before deliberating on the merits of the case. Accordingly, the Commission has perused the scope of review jurisdiction, as per the provision of Regulation 57 & 58 of the HERC (Conduct of Business) Regulations, 2019. The relevant Regulation is extracted below: -

#### ***“REVIEW OF THE DECISIONS, DIRECTIONS, AND ORDERS:***

*57 (1) All relevant provisions relating to review of the decisions, directions and orders as provided in the Code of Civil Procedure 1908, as amended from time to time, shall apply mutatis mutandis for review of the decisions, directions and order of the Commission.*

*Provided that the Commission may on the application of any party or person concerned, filed within a period of 45 days of the receipt of such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission may deem fit.*

*(2) No application for review shall be considered unless an undertaking has been given by the applicant that he has not preferred appeal against the decision, direction, or order, sought to be reviewed, in any Court of Law.*

*(3) No application for review shall be admitted/ considered unless an undertaking has been given by the applicant that in case he files an appeal of the decision, direction or order of which review is pending adjudication, he shall immediately inform the Commission regarding the fact of filing the appeal.*

*58 The Commission may on its own motion or on the application of any party correct any clerical or arithmetical errors in any order passed by the Commission.”*

Additionally, the relevant clause of Order no. XLVII of Code of Civil Procedure 1908, has also been examined. The same is reproduced below: -

*“1. Application for review of judgment-*

*(1) Any person considering himself aggrieved—*

*(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.*

*(b) by a decree or order from which no appeal is allowed, or*

*(c) by a decision on a reference from a Court of Small Causes.*

*and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.*

*(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.*

*[Explanation - The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]”*

Further, the Commission has perused the judgment of Hon'ble Delhi High Court in Aizaz Alam Versus Union of India & Others (2006 (130) DLT 63: 2006(5) AD (Delhi) 297. The relevant extract from the aforesaid judgment is reproduced below:-

*“We may also gainfully extract the following passage from the decision of the Supreme Court in Meera Bhanja V. Nirmala Kumari Choudhury, where the Court, while dealing with the scope of review, has observed:*

*The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. The review petition has to be entertained on the ground of error apparent on the face of record and not on any other ground (emphasis added). An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivable be two*

opinions. The limitation of powers of courts under Order 47 Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the Orders under Article 226.

Applying the above principles to the present review petition, there is no gainsaying that the review of the Order passed by this Court cannot be sought on the basis of what was never urged or argued before the Court (emphasis added). The review must remain confined to finding out whether there is any apparent error on the face of the record. As observed by the Supreme Court in *Lily Thomas and Ors. V Union of India & Ors.*, the power of review can be used to correct a mistake but not to substitute one view for another (emphasis added). That explains the reason why Krishna Iyer, J. described a prayer for review as “asking for the moon” *M/s Northern India Caterers (India) Ltd. V. Lt. Governor of Delhi*”.

5. The Commission has examined the review sought, by the petitioner, issue wise, including on maintainability tested on the anvil of the aforesaid Regulations / Case Laws as under: -

**6.1 RETURN ON EQUITY (ROE):**

The petitioner has submitted that RoE @10% has been allowed by the Hon'ble Commission as against the RoE sought i.e. @14%.

**The Commission observes that the return on equity has been allowed as per regulations occupying the field; hence, no review can lie against be same. The Commission, therefore, is of the considered view that the review sought on this issue is not admissible as the same is beyond the scope of review jurisdiction as no new facts / figures or error apparent on the face of record has been put forth by the Petitioner. The Commission rejects the review sought against the Commission's order on the issue of ROE as devoid of merit.**

**6.2 NON-TARIFF INCOME FOR THE FY 2021-22:**

The petitioner has prayed that interest on Corporate Social Responsibility of Rs.1.15 million may not be included in the calculation of Non-Tariff Income.

The Commission has examined the submissions of the petitioner including the General Circular No. 14/2021 of the Ministry of Corporate Affairs wherein certain Frequently Asked Questions (FAQs) have been answered by the Ministry.

**The Commission finds some merit in the submissions of the petitioner. Accordingly, the interest received amounting to Rs. 1.15 Million on Corporate Social Responsibility (CSR) fund shall not be included under the head of 'Non-Tariff Income'. Thus, the Approved Non-Tariff Income for the FY 2021-22 now**

stands revised to Rs. 542.23 Million from Rs. 543.38 Million as per the impugned order i.e. reduction of Rs. 1.15 million.

### **6.3 SHARING OF BENEFIT @ 60% OF INTEREST ON WORKING CAPITAL:**

The Commission has perused the submissions of HVPNL, seeking sharing of 60% of the gain on interest on working capital amounting to Rs. 197.98 Million i.e. 60% of Rs. 329.95 Millions (Actual: Rs. 43.08 Million, Normative: Rs. 373.03 Million).

The Commission has also examined the justification for lesser utilisation of working capital limit submitted by HVPNL, leading to saving in the interest on working capital viz. receipt of income tax refund amounting to Rs.21.62 Crores, open access charges during FY 2021-22 amounting to Rs. 62.73 Crores, internal accruals and time payment of dues by the debtors during the FY 2021-22.

The Commission has further perused the submission of the petitioner that similar benefit was allowed to be shared in the previous tariff order dated 09.03.2021 passed by the Commission in HERC/PRO-75 of 2020.

**The Commission has considered the submission of the petitioner and is not convinced by the arguments of HVPNL that working capital was less utilized due to receipt of open access charges amounting to Rs. 62.73 crore. The Commission has perused Regulation 47 of MYT Regulations, 2019, which provides that *“Intra State Transmission Charges and SLDC charges shall not be applicable on short term power purchase/sale by the long-term and medium-term beneficiaries of the transmission licensee”*. The ibid regulations further provides that *“25% of the charges collected from the short-term open access consumers on account of application money and transmission charges shall be retained by the transmission licensee and the balance 75% shall be considered as non-tariff income and adjusted towards reduction in the transmission charges payable by the long term and medium-term users”*. Thus, 75% of the Open access charges should be adjusted towards reducing transmission charges.**

The Commission observes that the actual interest on working capital as per the audited accounts is Rs. 43.08 Million, as against the approved figure of Rs. 373.03 Million. Thus, there is substantial difference in the interest on working capital allowed by the Commission and actual interest on working capital incurred by HVPNL. The addition to cash flow by way of income tax refund and receipt from the amount retained from ‘open access’ charges by no stretch of imagination be attributed to efficiency gains that may call for sharing of the gains. Hence in absence of any error apparent on the face of record or any new

fact and figures brought before this Commission, the review sought on this issue, is rejected as not maintainable.

**6.4 REPAIR AND MAINTENANCE (R&M) EXPENSES:**

The Commission has perused the submissions of the petitioner herein, seeking true-up of actual Repairs and Maintenance Expenses (R&M) of Rs. 543.61 million for the FY 2021-22 against the approved amount of Rs. 516.16, after considering the impact of inflation factor, as per the formula prescribed in the MYT Regulations, 2019. The petitioner has claimed that after applying the inflation factor, the actual R&M expenses are within the prescribed limits.

**The Commission has perused regulations 45.3 of HERC MYT Regulations, 2019, which provides that R&M may be allowed as per the formula prescribed therein and reproduced below:-**

**$R\&M_n = K * GFA * (INDX_n / INDX_{n-1})$  Where,**

- **'K' is a constant (expressed in %) governing the relationship between R&M costs and Gross Fixed Assets (GFA) for the nth year. The value of K will be 0.50% for the entire control period;**
- **GFA is the average value of gross fixed assets for the nth year;**
- **INDX<sub>n</sub> means the inflation factor for the nth year as defined herein after:**

The Commission has considered the submissions of the petitioner that normative Repair and Maintenance (R&M) for the FY 2021-22, after applying the inflation factor, is arriving at Rs. 551.95 Million, which is higher than the actual Repairs and Maintenance Expenses (R&M) of Rs. 543.61 million. Accordingly, the Commission allows the prayer of the petitioner on this ground. The R&M expenses is now allowed at Rs. 543.61 million as against Rs. 516.16 million allowed earlier in the order under review i.e. an increase of Rs. 27.45 million.

**REVIEW OF AGGREGATE REVENUE REQUIREMENT DETERMINED FOR THE FY 2023-24: -**

**6.5 Employee Expenses and interest on working capital:**

The Commission has examined the prayer of the petitioner to allow the proposed cost of Rs. 48 Million towards employees to be engaged at the new sub-station. The Commission is of the considered view that HVPNL should not seek additional expenses on account of employees cost, without actually incurring the same. However, the issue will be examined at the time of true-up, based on the audited accounts, in accordance with the regulations occupying the field.

Accordingly, the review of interest on working capital for the FY 2023-24, sought by HVPNL, on the ground of consequential impact of additional employee expenses, is

also rejected as it is not sufficient for the petitioner to simply state the location and voltage level of the planned sub-station. The same has to be focused by way of a proper load flow study and other requisite justification. Hence the Commission, at this stage, is not inclined to allow additional employee expenses sought and consequential impact on w/c.

**The Commission, therefore, is of the considered view that the review sought on this issue is not admissible as the same is beyond the scope of review jurisdiction as no new facts / figures or error apparent on the face of record has been put forth by the Petitioner. The Commission finds no merit regarding this issue and rejects the same.**

#### **6.6 RETURN ON EQUITY (RoE):**

The Commission has examined the submissions of the petitioner seeking calculation of RoE @ 10.67% and prayer to allow RoE @11% being the ceiling RoE, in terms of the MYT Regulations, 2019 amended upto date.

The Commission observes that regulations 20 of HERC MYT Regulations, 2019, 2<sup>nd</sup> amendment regulations, 2022, provides as under:-

*“RoE for generation transmission and distribution, shall be allowed, after adding a premium over the ‘Base Rate (BR)’ based on the performance (both financial as well as operational parameters) of the power utilities, subject to a cap as under: -*

...

...

d) *Transmission Business: BR + 4.5% = up to 11 %*

*Provided that the Base Rate (BR) in these Regulations shall be construed as last 2 years average rate (as on 1st April of the relevant financial year) of 10 years Government of India bond.”*

**The Commission observes that the rate of Return on Equity has been allowed as per regulations occupying the field i.e. by adding a margin of 4.5% to 6.17% being the 2 years average rate of 10 years Government of India bond. Hence, no review on the same is admissible. Admittedly, 11% is the ceiling and is no circumstances even if there is unprecedented spike in the Base Rate, the rate of return on equity will not exceed 11% as the dispensation is “upto 11%”.**

#### **6.7 CARRYING COST:**

The Commission has perused the prayer of the petitioner to allow the carrying cost of Rs.68 Crores. The Commission has perused its observations in the impugned order dated 31.01.2023, reproduced hereunder: -

*“The Commission has considered the submissions of the petitioner and in accordance with the audited accounts, approves Rs. 5,062.04 million towards terminal benefits for the FY 2021-22. It is observed that the terminal benefits approved and the actual amount incurred are poles apart. The Commission, for the FY 2021-22, had approved aforesaid amount as proposed by the licensee but the actual amount exceeds the amount proposed and approval thereof. This casts serious doubt on the ability of the licensee to estimate or get the same done by the actuary in a reasonable manner. The tolerable error in projection / estimates ought not to exceed 5% on such issues. Consequently, the licensee, irrespective of the ex-post-facto reasoning/ explanation, advised to gear-up its methodology so that they are able to estimate/project with at least 95% confidence level. The Commission, as a onetime measure, allows true-up in line with the audited accounts of the FY 2021-22 as the same also include Rs. 2010 million brought forward from the FY 2020-21 i.e. recovery of Rs. 6030.10 has staggered over three years. While allowing the truing-up based on Audited Accounts it is observed that the actual amount now claimed also includes a substantial amount on account of past liabilities, recovery of which was staggered over a period of three years so as to cushion any sudden spike in the revenue requirement and tariff for transmission business and SLDC.*

*The Commission reiterates the directive on payment to pension trust issued vide order dated 07.03.2019 as under:*

*“The Commission directs the licensee to seek prior approval of the Commission for contribution to the pension trust in excess of that proposed by it in the ARR in future in view of the fact that there is no legal hitch in deferring the payment to the trust funds as demonstrated by the proposal of the licensee for the FY 2016-17. The Commission further directs the Licensee to ensure that any payment approved by the Commission in its order towards terminal benefits is duly paid within time and before the close of the relevant financial year.”*

*Accordingly, the Commission observes that **though the terminal benefits cost actually incurred by the licensee is approved for true up, no carrying cost shall be allowed on the difference between the approved cost and the pass-through cost in the light of the ibid directive issued by the Commission to pay only the approved cost during the year.** Needless to add that any contribution to the pension trust in excess of the amount approved, has to be with prior approval of the Commission.”*

**In view of the above, since the additional amount allowed during true-up for the FY 2021-22 (Rs. 4367.42 million) was less than true-up on account of terminal benefit (Rs. 5062.03 million), the, carrying cost was not allowed.**

**Now, after considering the true-up allowed in the present review petition, as discussed earlier in this order, the additional amount allowed for true-up for the FY 2021-22, arrives at Rs. 4395.57 million, which is still less than true-up on account of terminal benefit (Rs. 5062.03 million); therefore, carrying cost is not admissible.**

The Commission is of the considered view that it would not be appropriate to realign the tariff determined by the Commission for such a small amount. Hence the licensee may include the amount in the next ARR and Tariff petition.

In terms of the above findings / decisions, the review petition preferred by the HVPNL against the Commission's Order dated 31.01.2023 (Case No. HERC/RA-3 of 2023) is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 05.07.2023.

Date 05.07.2023

(Naresh Sardana)

(R.K. Pachnanda)

Place: Panchkula

Member

Chairman