

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

Case No. HERC/P. No. 21 of 2024

Date of Hearing : 07/08/2024

Date of Order : 03/12/2024

IN THE MATTER OF:

Petition on behalf of the Petitioner under Section 181 of the Electricity Act, 2003 and Regulations 8, 9, 10 and 11 of HERC (Duty to supply on request, Power to recover expenditure incurred in providing supply and Power to require security), Regulations, 2016 read with Regulations 65, 68, 69, 70 and 71 of Conduct of Business Regulations, 2019, seeking amendment/ clarification thereto of HERC (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security) Regulations, as amended from time to time and the approval of the sales circular no. D-07/2024 dated 14.03.2024.

Petitioner

Dakshin Haryana Bijli Vitran Nigam Through SE Commercial, Vidyut Sadan,
Hisar – 125005

Present

On behalf of the Petitioner

1. Ms. Sonia Madan, Advocate

QUORUM

Shri Nand Lal Sharma, Chairman

Shri Mukesh Garg, Member

ORDER

Petition:

1. The petitioner filed this petition and submitted as under:
 - 1.1. The present Petition is being filed by Dakshin Haryana Bijli Vitran Nigam (hereinafter referred to as “DHBVN/ Petitioner” for the sake of brevity) through the Chief Engineer, DHBVN who is authorized to file the instant Petition and is otherwise also well conversant with the facts of the case.
 - 1.2. The Petitioner-DHBVN is entrusted with the responsibility of distribution and retail supply of power within their jurisdiction consisting of districts of Hisar, Fatehabad, Bhiwani, Sirsa, Faridabad, Gurugram, Palwal, Rewari, Jind, and Narnaul in the State of Haryana. The Governor of Haryana on 01.07.1999, in exercise of its power under Section 55 read with Sections 23, 24, and 25 of the Haryana Electricity Reform Act, 1997 vide second transfer scheme issued the rules for the purpose of providing and giving effect to the transfer of distribution undertakings of Haryana Vidyut Prasaran Nigam Limited (‘HVPNL’) to Dakshin Haryana Bijli Vitran Nigam Limited (for brevity ‘DHBVNL’) and Uttar Haryana Bijli Vitran Nigam Limited (for brevity ‘UHBVNL’).
 - 1.3. The present Petition is being filed before the Hon’ble Commission seeking amendment/ clarification thereto of HERC (Duty to supply electricity on request, power to recover expenditure incurred in providing supply and power to require security) Regulations, as amended from time to time to the effect that since the Duty to Supply Regulations, 2nd Amendment, as understood, has been given a prospective application, a void exists in the Regulations as the beneficial legislative amendment made by the Hon’ble Commission vide Duty to Supply Regulations, 2nd Amendment have not been extended to the cases where License has been issued prior to the notification of regulations but the Electrification plan is to be approved after the notification of the regulations.
 - A. Factual Background giving rise to cause of action for filing of instant petition-
 - 1.4. The Hon’ble Commission in the exercise of its power under Section 181 of the Electricity Act, 2003 read with Sections 43, 46 and 47 notified Regulation No. HERC/34/2016 dated 11.07.2016 namely Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security) Regulations, 2006 (hereinafter to be referred to as ‘Duty to Supply Regulations, 2016’). Regulation 4 of the said Regulations stipulated various conditions regarding power of the distribution licensee to recover expenditure incurred in providing supply of electricity. The said conditions were contained in Regulation 4.1 to 4.15 of the Duty to Supply Regulations, 2016.
 - 1.5. Duty to Supply Regulations, 2016 outlines the obligations of licensees in terms of providing electricity supply to consumers, both new and existing. It is specifically pointed out that the cost of extension of

distribution main and/or its up-gradation up to the point of supply, as well as any strengthening/augmentation/updating in the system from the feeding substation, must be paid for by the consumer. The Regulations also define extension of distribution system and service connection charges under regulation 2.3 of Duty to Supply Regulations.

- 1.6. Further thereto, this Hon'ble Commission, on 19.03.2020 notified 1st Amendment to Duty to Supply Regulations, 2016 (hereinafter to be referred to as 'Duty to Supply Regulations, 1st amendment'). The said amendment substituted Regulation 4.12.2 to stipulate detailed conditions relating to obligations of the Developer to bear expenditure for development of electrical infrastructure within its Development area.
- 1.7. The Hon'ble Commission in the matter of *Apex Build Well Private Limited v. DHBVNL (HERC/ PRO 25 of 2021)* passed an order dated 30.11.2021, wherein it was directed to the petitioner that in case, it proposes to release electricity connections at 33 KV level in variance with the provisions of the Supply Code and accordingly, develops relevant electricity infrastructure, then the petitioner shall have to approach Commission for the necessary approval.
- 1.8. The Petitioner filed a Petition bearing no. 04 of 2022 before this Hon'ble Commission, wherein it was put forth that DHBVN endeavours to create a state-of-the-art Distribution System for the State of Haryana towards achieving the goal of developing a millennium city. In that view, it was mentioned that a pilot project has been envisaged in the new Sectors of Gurugram (Sector 58 to 115, Sector 37C and 37 D), Faridabad (Sector 75 to 89) and Dharuhera ("33/0.4 KV Belt") to create a robust and reliable transmission and distribution system of 220/33/0.4 kV for catering to the upcoming load requirement. To give effect to the said pilot project, the Hon'ble Commission was requested to approve/amend/relax the provisions of Supply Code and Duty to Supply Regulations so that the DHBVN can develop a regulated transmission / distribution system of 220/33/0.4 kV in 33/0.4 KV Belt comprising of new sectors of Gurugram (i.e. Sector - 58 to Sector-115) as well as Sector 37 C and Sector 37 D, Faridabad (Nehar paar area); and Dharuhera; etc.
- 1.9. The Hon'ble Commission vide Order dated 28.03.2022 decided the above-mentioned Petition no. 4 of 2022 and after appreciating the need and benefits of switching over to 220/33/0.4 kV system from the existing 220/66/11 KV system in the 33/0.4 KV Belt stated that creation of new proposed transmission / distribution system of 220/33/0.4 kV will be beneficial for the consumers of Haryana in the long run. In view thereof, permission was granted to develop 220/33/0.4 kV system in the 33/0.4 KV Belt and 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. It

was also decided that the Commission shall frame appropriate regulatory framework to specifically regulate all issues concerning creation of such infrastructure.

- 1.10. Thereafter, the Petitioner filed a Petition bearing no. 27 of 2023 before this Hon'ble Commission putting forth the difficulties in release of connections within the 33/0.4 KV belt. It was *inter alia* requested that appropriate amendments in the provisions of Supply Code and Duty to Supply Regulations be made in terms of order dated 28.03.2022 passed in Case No. HERC/PRO 04 of 2022 after suitably incorporating therein the provisions of Sales Circular No. D-31/2022 dated 14.11.2022 and D-05/2023 dated 04.01.2023. The Petitioner sought to switch over all the existing connections to 33/0.4 KV system in 33/0.4 KV Belt. It was also prayed that the regulatory framework be set up for recovery of costs incurred by the licensee for creation of transmission / distribution system required for unapproved and remote areas, from the individual applicants.
- 1.11. The Hon'ble Commission, on 27.09.2023, notified 2nd Amendment to Duty to Supply Regulations, 2016 (hereinafter to be referred to as 'Duty to Supply Regulations, 2nd amendment'). Vide the said amendment, Regulation 4.16 was incorporated which provided '*Special provisions for the pilot project in new Sectors 58-115 and Sector 37-C and 37-D of Gurugram, new sectors of Faridabad and areas falling on the left side of Delhi-Jaipur highway in Dharuhera*'. Under said head, regulations were incorporated for development of Internal and External Electrical Infrastructure and recovery of costs thereof.
- 1.12. Simultaneously, vide the notification of the even date i.e. 27.09.2023, 3rd Amendment to Duty to Supply Regulations, 2016 (hereinafter to be referred to as 'Duty to Supply Regulations, 3rd amendment') was also notified wherein Regulation 4.17 was incorporated containing provisions for the Builder/ Developer(s) in the State of Haryana except new Sectors 58-115 and Sector 37-C and 37-D of Gurugram, new sectors of Faridabad and areas falling on the left side of Delhi-Jaipur highway in Dharuhera. Duty to Supply Regulations, 2nd and 3rd amendments were notified in the official gazette of the State of Haryana on 03.10.2023.
- 1.13. A detailed Order in the background of the Duty to Supply Regulations, 2nd and 3rd Amendments was passed on 26.09.2023, wherein in response to the query of the Centre for Energy Regulation as to whether the regulations will be applicable on existing approved plan or new plan, the Hon'ble Commission commented that the regulation will be applicable for the licenses issued after the notification of this amendment.
- 1.14. In view of the notification of the Duty to Supply Regulations, 2nd Amendment, the Petition no. 27 of 2023 was disposed off vide Order dated 11.10.2023 as the amendments in the relevant Regulations had been issued and notified in the Gazette of Haryana.

- 1.15. It is pertinent to mention here that Duty to Supply Regulations, 2nd Amendment, being a prospective notification, is understood to have been made applicable to the Builder/Developer(s) who have got the license(s) after the notification of said Regulations in the Haryana Government Gazette i.e. 03.10.2023. The Petitioner came across cases where the licenses have been issued prior to 03.10.2023, however, the Electrification plan is yet to be approved. In view of the applicability of the Duty to Supply Regulations, 2nd Amendment being prospective, the Petitioner felt that a void exists in the Regulations to the effect that the beneficial legislative amendment made by the Hon'ble Commission vide Duty to Supply Regulations, 2nd Amendment have not been extended to the cases where License has been issued prior to the notification of regulations but the Electrification plan is to be approved after the notification of the regulations. Such a situation apparently seemed unjustified in view of the fact that all sanctions/approval accorded by the Licensee shall be governed by the prevailing regulatory framework which has been notified after having deliberated upon the difficulties in the execution of work of electrical infrastructure by the developers. As such, the developers who are yet to obtain sanction to their Electrification Plan are in no way differently placed than the developers who shall approach the Petitioner for such approval in the forthcoming years.
- 1.16. Further, on 14.03.2024, DHBVN, as an immediate *bonafide* measure to address cases of Builders whose electrification plan was still to be approved issued a Sales Circular No. D-07/2024 stipulating guidelines for execution of work of electrical infrastructure for such cases where license was issue prior to 03.10.2023, however the electrification plan is sanctioned subsequently. The guidelines were issued on similar lines as is contained in the Duty to Supply Regulations slightly tailored to their case so as to ensure uniformity in the treatment of Developers and ensure effective installation of work of electrical infrastructure in the State.
- 1.17. Hence, by way of present petition, the Petitioner seeks the indulgence of the Hon'ble Commission for amendment/clarification of the Duty to Supply Regulations and consequent approval of the Sales Circular No. D-07/2024.

B. Provisions sought to regulate the approval of Electrification Plan for Developers who have obtained their license prior to 3.10.2023 -

- 1.18. For such Developers, to whom license was issued prior to 03.10.2023 but the Electrification plan is yet to be approved, it is pertinent that the sanction/approval of electrification plan shall be governed in terms of the prevailing regulatory framework. This is based on a rationale that the work of electrical infrastructure, which is governed by the Duty to Supply Regulations, as amended from time to time, shall be initiated by such developers in the prevailing regulatory regime. Such developers therefore, stand on the equivalent footing with those whose license may be issued in the prevailing regulatory regime. For such

cases, the following regulations tailored to their case, shall be considered to be notified -

a) Regulation with respect to creation of Internal Electrical Infrastructure (Similar to Regulation 4.16.2 i) –

- The Builder/Developer(s), at its own cost and expense, shall be responsible for erecting and installing adequate internal electrical infrastructure, commensurate to their ultimate load, for drawing electricity at 33kV level from the switching station. Such internal electrical infrastructure shall include installation of the required Electric Line and Electrical Plant within its premises as per the planning, design, and technical specifications of Petitioner e.g. 33kV lines and 33/0.4 kV distribution transformers, LT lines etc.

b) Regulation with respect to creation of External Electrical Infrastructure (Similar to Regulation 4.16.4) –

- External electrical infrastructure required to supply electricity at 33kV level to Builder/Developer(s) in 33 kV Pilot Project Belt (starting from source sub-station upto and including switching station) required for supplying electricity to the Builder/Developer(s) shall be installed by the Licensee against payment of 31 lacs per MVA as External Electrical System Development Charges (EESDC for 33 kV PP) as per HERC Duty to Supply Electricity on Request and Power to Recover Expenditure and Power to Recover Security Regulations, 2016 (1st Amendment) Regulation, 2020 circulated vide Sales Circular No. D-12/2020 dated 25.06.2020.
- The cost of a 33 kV feeding line from a 33 kV switching station up to the premises of the Builder/Developer(s) shall be borne by the Developer/Builder in addition to the EESDC for 33 kV PPB.
- EESDC for 33 kV PPB is exclusive of the cost of the land required for installing a switching station. Such land as may be required shall be provided by the Builder/Developer(s) for installation of the switching station.
- The rates of EESDC shall be valid for two years from the date of notification of these regulations or any such period as allowed by HERC after which rates are liable for revision as per cost data book relevant at that time with the prior approval of the HERC.

c) Regulation with respect to handing over land for switching station (Similar to Regulation 4.16.8) –

- Builder/Developer(s) shall be required to hand over the vacant and peaceful possession of rectangular land measuring at least 400 sq. yards in the configuration of 14m x 24 m, free of cost. In case the dimensions of the land provided by the Builder/Developer(s) are different from the dimensions mentioned above, then the size thereof shall have to be as per GELO approved by Licensee.
- For handing over land to Licensee, Builder(s)/Developer(s) seeking supply for catering to their ultimate load less than 15MVA shall

have the option to constitute a group with other builders (s)/developer(s) so that the combined ultimate load of the group is up to 25 MVA. Such members of the group shall not be individually required to provide land measuring at least 400 sq. yards to Licensee.

- For the creation of a 33KV Switching Station, the Builder(s)/Developer(s) shall get the land earmarked from DTCP or any other appropriate authority in their approved layout plan and submit the same to Licensee.
- d) Regulation with respect to load of project area being greater than 25 MVA (Similar to Regulation 4.16.10) –
- Where the ultimate load of a project area/scheme of the developer/builder is greater than 25MVA and up to 50 MVA, two 33 kV switching stations with separate bays at the feeding substation and separate feeding lines for each switching station shall be provided. The Builder/Developer will hand over lands for two 33kV indoor AIS switching stations 400 sq. yards(14mx24m) each besides deposition of EESDC for 33 kV PPB.
 - For cases above the ultimate load of 50 MVA, the 3rd 33kV feeder can be provided subject to the condition that there is feasibility of providing the same. The land shall be provided by the Builder/Developer besides the deposition of EESDC. In case there is no feasibility of providing a 3rd 33kV feeder the Builder/Developer will be required to provide land for the 220kV substation besides payment of EESDC for 220kV substation.
 - For Loads above 75 MVA, the Builder/Developer shall have an obligation to provide land for 220kV substation and right of way for lines/ cables besides deposition of EESDC. The land requirement for 220kV AIS substation will be 6.61 Acres (178mx150m) or 3.80 Acres (130mx118m) for GIS. The land size mentioned above is the optimal minimum. In case the dimensions of land provided by the Builder/Developer(s) is different than the dimensions mentioned above, then the size of the land to be provided shall be as per GELO approved by Licensee. The EESDC for the 220kV substation will be 52 lakhs per MVA for AIS and 78 lakhs per MVA for GIS.
- e) Regulation with respect to mechanism for recovery of EESDC (Regulation 4.16.5 modified as the license has already been obtained and deposit of EESDC was not made at that time) –
- 50% of the EESDC shall be deposited by the Builder/Developer(s) within 30 days from the date of approval of the Electrification Plan by the competent authority.
 - Balance EESDC shall be deposited before the grant of occupation certificate (OC)/ part completion certificate (PCC)/ completion certificate (CC) by DGTCP or release of permanent connection by DHBVN, whichever is earlier.

f) Regulation with respect to release of connection and metering arrangements (Regulation 4.16.6 and 4.16.7 modified to confer choice of release of single or multiple connections by the Developer)–

- Electricity connection(s) (Single Point/Multipoint, as per HERC Single Point Regulation 2020 circulated by Nigam vide Sales Circular D-17/2020) to builder(s)/developer(s) shall be released at 33/0.433kV voltage level in the project area/scheme for which license(s) obtained by the builder(s)/developer(s) from the Town & Country Planning Dept of GoH or any appropriate authority.
- In the event the Developer releases Multipoint Connections, all consumer meters shall be smart meters and common utility meter shall be AMR, capable of being read remotely.
- Reference meter shall be installed at the substation/ switching station (sending end) the purpose of reference meter shall be for energy auditing.

g) Regulation with respect to applicability –

- The foregoing regulations/conditions shall be applicable to the license(s) issued to the Builder/Developer(s) before the date of notification of the Haryana Government Gazette.
- The foregoing regulations/conditions can be adopted in those cases of the Builder(s)/Developer(s) whose electrification plan has already been approved, however any external electrical infrastructure has not yet been developed. Such, Builder(s)/Developer(s) shall have the option to opt for these instructions for getting the external electrical infrastructure created and installed by the Licensee against payment of the External Electrical System Development Charges stipulated herein, and their conditions for approval of the electrification plan and release of load may be amended accordingly.

1.19. The above-mentioned regulations are similar to guidelines issued by the DHBVN in its Sales Circular No. D-07/2024. A perusal of same evince that the guidelines were circulated as an immediate *bonafide* measure to address such situations where the electrification plan is being sanctioned currently for Developers who obtained their license prior to 03.10.2023.

1.20. That in addition to the above-mentioned requirement of notifying a regulatory framework/clarifying the applicability of certain provisions, the Petitioner seeks the indulgence of this Hon'ble Commission to consider permitting the Petitioner to release Connections to General/Non-Builder Consumers in 33KV PPB at an interim load of 11/0.433 KV as an interim measure in the event of non-readiness of 33/0.433 KV distribution system. To regulate the same, the Hon'ble Commission may notify following conditions allowing the Licensee to release connections to General/Non-Builder Consumers in 33KV PPB at 11/0.433 KV besides the recovery of the expenditure through ARR for the conversion of supply from 11/0.433kV configuration to 33/0.433 KV:-

- In case of non-readiness of the 33/0.433 KV system of electricity distribution in 33KV PPB, the presently available system of electricity distribution i.e 11/0.433 KV be used for the release of Connections to General/Non-Builder Consumers as an interim measure.
- Further the supply of such consumers in the area be converted from 11/0.4 kV to 33/0.4 kV system of electricity distribution at a later stage at the cost of Licensee.

The foregoing regulation shall help ease challenges in immediate supply of electricity to general/non-builder consumers in 33kV PPB due to the non-readiness of 33KV electrical distribution network.

1.21. In addition to the foregoing, an inadvertent typographical error contained in Regulation 4.16.8 iii) of the Duty to Supply Regulations, 2016 is brought to the notice of the Hon'ble Commission, which may as well be considered to be rectified in the subsequent amendment. Regulation 4.16.8 ii) and iii) is reproduced hereunder in this regard –

- ii. *Each Builder/Developer(s) seeking supply for catering to load of 15MVA to 25 MVA shall have to individually provide the aforesaid parcel of land admeasuring at least 400 sq. yards to the Licensee, as above*
- iii. *Builder/developer(s) seeking supply for catering to load less than 15MVA shall have the option to constitute a group, at the time of application for permanent electrical connection, with other builder(s)/developer(s) so that the combined ultimate load of the group is up to 15 MVA. Such members of group shall not be individually required to provide land measuring at least 400 sq. yards to the Licensee, but as a group together. (Emphasis Supplied)*

The expression 'up to 15 MVA' in Regulation 4.16.8 iii) appears to have been wrongly written and instead the same shall be 'up to 25 MVA'. This is so because Regulation 4.16.8 ii) stipulates a provision of 400 sq. yards land for up to 25 MVA. As such, the developers forming a group together can offer land measuring 400 sq. yards for up to 25 MVA. It is pertinent here to mention that a limit of maximum load of group up to 15 MVA will be economically prejudicial to both the developers as well as to the Petitioner. A limit fixed for less than maximum load will not help the developers monetize the entire value of the land towards project cost. Furthermore, the Petitioner will not be able to develop infrastructure on the land up to its optimum capacity which shall lead to spare capacities and the same shall be onerous to the consumers at large.

1.22. It is also pertinent here to mention that in the draft paper uploaded by the Hon'ble Commission for discussion on the said regulations, the foregoing regulation was mentioned as under –

“Builder(s)/Developer(s), seeking electricity connection (Single/Multipoint) and having ultimate load of their individual project area/scheme one MVA or above but less than 15 MVA, would need to form a group in a manner that the combined ultimate load of the group

is limited to 25 MVA and together they would handover/transfer the Land parcel of size approx. 500 Sq. yards to Licensee free of cost for creation of 33 KV switching station.”

The draft regulations mentioned that the combined ultimate load of group shall be limited to 25 MVA. As such, the words ‘up to 15 MVA’ appearing in notified Regulation 4.16.8 iii is apparently an inadvertent typographical error. The same may therefore, be considered to be rectified.

- 1.23. In light of the forgoing factual background and submissions, the Petitioner seeks the kind indulgence of this Hon’ble Commission for exercise of its inherent power. The Hon’ble Commission as the delegatee has the power to amend/ clarify/rectify the regulations that govern the supply of electricity. It is pertinent here to mention that the Hon’ble Commission, vide Order dated 28.03.2022 passed in Case No. PRO-04 of 2022 held that the Commission is empowered under Regulation 16 and 17 of Supply Code read with Regulation 9, 10 and 11 of the Duty to Supply Regulations to relax/ alter/ amend the provisions of these Regulations and remove any difficulty arising thereunder, in public interest and for reasons to be recorded in writing.
- 1.24. The State Commission has the power to make regulations under Section 181 of the Electricity Act, 2003. The Petitioner has provided sufficient evidence for the Hon’ble Commission to consider the power of granting the relief sought herein, under Sections 50 and sections 43, 46 and 47 read with clause (t, v, x) of Subsection (2) of Section 181 of the Electricity Act, 2003. This is further supported by the judgments given in the cases of *Uttar Pradesh Power Corporation Limited v/s National Thermal Power Corporation Ltd and Ors*, *Premium Granites and Anr. V. State of Tamil Nadu and Ors.*, *Hindustan Paper Corporation Ltd. V. Government of Kerala*, *Hindustan Steels Ltd. V. A.K. Roy*, *S.N. Mukhrjee V. Union of India* and *State of Karnataka and Anr. Vs V.R. Vivekanand Swamy and another* case etc. HERC (Conduct of Business) Regulations, 2019 also confers wide power to this Hon’ble Commission to pass such orders/ make amendments/ relax regulations as are necessary to meet the ends of justice.
- 1.25. That the present Petition is within the jurisdiction of the Hon’ble Commission.
- 1.26. That the Petitioner has paid the requisite fee as per Haryana Electricity Regulatory Commission (Fee) Regulations, 2005, 7th Amendment Regulations, 2022

PRAYER -

In view of the foregoing submissions, it is most humbly submitted that the Hon’ble Commission may be pleased to:

- a. Initiate proceedings to notify regulations tailored for processing of the cases where the Builder(s)/Developer(s) has got license prior to notification of Duty to Supply Regulations, 2nd Amendment i.e. 03.10.2023, as is detailed in Para 19 of the instant Petition and

consequently grant *Ex-post facto* approval to the Sales Circular No. D-07/2024;

- b. Initiate proceedings to notify regulations allowing the Licensee to release connections to General/Non-Builder Consumers in 33KV PPB at 11/0.433 KV as an interim measure due to the non-readiness of 33KV electrical distribution network besides the recovery of the expenditure through ARR for the conversion of supply from 11/0.433kV configuration to 33/0.433 KV, as is detailed in Para 21 of the instant Petition;
- c. In the alternative, clarify the applicability of the specific provisions of the Duty to Supply Regulations, 2nd Amendment to such cases where Builder(s)/Developer(s) has got license prior to notification of Duty to Supply Regulations, 2nd Amendment i.e. 03.10.2023;
- d. Rectify the typographical error contained in Regulation 4.16.8 iii) as detailed in Paras 22 and 23 of the instant Petition; and/or
- e. Pass any such further order(s) that this Hon'ble Commission as may deem fit and necessary in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS AND JUSTICE THE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

2. The case was heard on 05/06/2024. Ms. Sonia Madan counsel for the petitioner re-iterated the contents of the petition and requested the commission to initiate proceedings to notify amendment to Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security regulations for dealing with the cases where builder(s)/Developer(s) has got license prior to notification of the 2nd amendment to Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security. Ms. Madan further prayed to allow the licensee to release connection to General/non-builder consumers in 33KV PPB at 11/0.433 KV, as an interim measure due to non-readiness of 33 KV electrical distribution network. She also the Commission to rectify typographical error in Regulation 4.16.8 (iii), wherein 15 MVA is written instead of 25 MVA. The Commission enquired about number of such cases lying with the petitioner, for which the amendment has been sought. The counsel for the petitioner showed her inability as data of such cases was not readily available with her and sought time to submit the same. The Commission directed the petitioner to submit the details of the cases where:

- i) License has been issued prior to issue of 2nd amendment but Electrification plan (EP) has not been approved yet.
- ii) EP has been approved but work not started.
- iii) EP under revision etc. or any other such category.

The said data may be submitted with number of cases, financial implication and legal complications if any, within two weeks.

3. The case was heard on 19/06/2024. Ms. Ayushi Garg counsel of the petitioner submitted that the additional time of 10 days is required to submit the requisite data as per directions of the Commission passed on

05/06/2024 as the main counsel in the case is indisposed. Acceding to the request of the petitioner, the Commission adjourned the matter

4. The petitioner submitted following Information on 05/07/2024:

4.1. The Petitioner has filed the above titled petition seeking amendment/ clarification to the effect that since the Duty to Supply Regulations, 2nd Amendment, has been given a prospective application, a void exists in the Regulations as the beneficial legislative amendment made have not been extended to the cases where License has been issued prior to the notification of regulations but the Electrification plan is to be approved after the notification of the regulations. In addition, thereto, the petitioner prayed for correction of an inadvertent typographical error in the Duty to Supply Regulations, 2nd amendment and also permission to release connections to general/ non-builder in 33 KV PPB at an interim load of 11/0.433 KV as an interim measure in the event of non-readiness of 33/0.433 KV system.

4.2. The Hon'ble Commission heard the issues involved in the matter in the hearing held on 05/06/2024.

4.3. The Petitioner in compliance with the Order dated 05.06.2024 has collated requisite data, which is segregated based on following categories-

a. Circle-wise list of Developers/Builders whose licenses were issued before 03.10.2023 but Electrification Plan is pending for approval in 33kV Pilot Project Belt -

I. Developers/Builders whose licenses were issued before 03.10.2023 but Electrification Plan is pending for approval in Faridabad Circle;

II. Developers/Builders licenses were issued before 03.10.2023 but Electrification Plan is pending for approval in Rewari Circle;

III. Developers/Builders licenses were issued before 03.10.2023 but Electrification Plan is pending for approval in Operation Circle-1, Gurugram;

IV. Developers/Builders whose licenses were issued before 03.10.2023 but Electrification Plan is pending for approval Operation Circle-2, Gurugram;

b. Circle-wise list of Developers/Builders whose licenses were issued before 03.10.2023 and Electrification Plan has been approved but external electrical infrastructure is yet to be created/started in 33kV Pilot Project Belt -

I. Developers/Builders whose Electrification Plan has been sanctioned but the external electrical infrastructure is yet to be started in Faridabad Circle;

II. Developers/Builders whose Electrification Plan has been sanctioned but the external electrical infrastructure is yet to be started in Rewari Circle;

- III. Developers/Builders whose Electrification Plan has been sanctioned but the external electrical infrastructure is yet to be started in Operation Circle-1, Gurugram;
- IV. Developers/Builders whose Electrification Plan has been sanctioned but the external electrical infrastructure is yet to be started in Operation Circle-2, Gurugram;

4.4. Insofar as the list of Developers/Builders whose licenses were issued before 03.10.2023 but Electrification Plan is pending for approval in 33kV Pilot Project Belt is concerned, a detailed list of the same is appended herewith for Operation Circle Gurugram-I, Gurugram-II, Faridabad and Rewari and the abstract of same depicting the number of such cases in each circle of Pilot Project Belt('PPB') is as under –

Circle Name	No. of pending applications for approval of Electrification Plan (wherein licenses issued before 03.10.2023) in 33kV Pilot Project Belt
Gurugram-I	25
Gurugram-II	9
Faridabad	8
Rewari	2
Total	44

4.5. Insofar as the list of Developers/Builders whose licenses were issued before 03.10.2023 and Electrification Plan has been approved but External Electrical Infrastructure ('EEI') is yet to be created/started in 33kV Pilot Project Belt is concerned, a detailed list of the same is appended herewith for Operation Circle Gurugram-I, Gurugram-II, Faridabad and Rewari and the abstract of same depicting the number of such cases in each circle of Project Pilot Belt ('PPB') is as under –

Circle Name	No. of cases wherein Electrification Plan has already been approved (wherein licenses issued before 03.10.2023), however, the external electrical infrastructure is yet to be created/started by the builder/developer in 33kV Pilot Project Belt
Gurugram-I	36
Gurugram-II	20
Faridabad	61
Rewari	1
Total	118

4.6. It is further worthwhile to bring to the kind notice that Petitioner has received request from certain Developers/ Builders in 33KV PPB who have transferred the land/ or are ready to transfer the land for creation

of 33 KV Sub-station in favour of DHBVN asking for creation of external electrical infrastructure on payment of per MVA cost specified in HERC Duty to Supply Regulations, 2nd Amendment. A copy of letters referring to such requests from certain Developers are being appended herewith as an instance. To deal with such category of developers who are agreeable to execution of work by the Nigam on deposit of standard cost of Rs. 31 lacs per MVA, the Petitioner incorporated following condition in the Sales Circular No. D-07/2024 –

“3. External electrical infrastructure required to supply electricity at 33kV level to Builder/Developer(s) in 33 kV Pilot Project Belt (starting from source substation upto and including switching station) required for supplying electricity to the Builder/ Developer(s) shall be installed by the DHBVN against payment of 31 lacs per MVA as External Electrical System Development Charges (EESDC for 33 kV PP) as per HERC Duty to Supply Electricity on Request and Power to Recover Expenditure and Power to Recover Security Regulations, 2016 (1st Amendment) Regulation, 2020 circulated vide Sales Circular No. D-1212020 dated 25.06.2020.

22. The above instructions shall also apply to those cases of the builder(s)/ developer(s) whose electrification plan has been approved as per the earlier Sales Circular D-14/2018 & D-05/2023 however any external electrical infrastructure has not yet been developed. Such, builder(s)/ developer(s) shall have the option to opt for these instructions for getting the external electrical infrastructure created & installed by the DHBVN against payment of the External Electrical System Development Charges stipulated herein, and their conditions for approval of the electrification plan and release of load may be amended accordingly.” (Emphasis Supplied)

Approval of foregoing conditions shall help expedite the development of requisite electrical infrastructure in the PPB, which is being aggressively pursued by the DHBVN in the larger interest of the consumers.

- 4.7. The creation of requisite electrical infrastructure in foregoing categories shall be effectively regulated with explicit Regulations of the Hon^{ble} Commission. In view of the applicability of the Duty to Supply Regulations, 2nd Amendment being prospective, the Petitioner felt that a void exists in the Regulations to the effect that the beneficial legislative amendment made by the Hon^{ble} Commission vide Duty to Supply Regulations, 2nd Amendment have not been extended to the cases mentioned above. Such a situation apparently seemed unjustified in view of the fact that all sanctions/approval accorded by the Licensee shall be governed by the prevailing regulatory framework which has been notified after having deliberated upon the difficulties in the execution of work of electrical infrastructure by the developers. In view thereof, to fill in the immediate void, DHBVN, as an immediate *bonafide* measure issued a Sales Circular No. D-07/2024 stipulating guidelines for execution of work of electrical infrastructure for such cases not covered by the extant Duty to Supply Regulations. The

guidelines were issued on similar lines as is contained in the Duty to Supply Regulations slightly tailored to their case so as to ensure uniformity in the treatment of Developers and ensure effective installation of work of electrical infrastructure in the State.

- 4.8. The Petitioner, vide the instant petition, is therefore seeking amendment/clarification of the Duty to Supply Regulations and consequent approval of the Sales Circular No. D-07/2024. The same is essential as the amendment of the specific regulations in this regard and validation of the Sales Circular No. D-07/2024 by the Hon'ble Commission shall strengthen the regulatory framework for dealing with cases pertaining to creation of electrical infrastructure by the Developer/ Builder in the State of Haryana and shall ensure effective and reliable power supply in the State.
- 4.9. In addition to the above-mentioned requirement of notifying a regulatory framework/clarifying the applicability of certain provisions, the Petitioner vide the instant Petition, had also sought permission from the Hon'ble Commission to release Connections to General/Non-Builder Consumers in 33KV PPB at an interim load of 11/0.433 KV as an interim measure in the event of non-readiness of 33/0.433 KV distribution system besides the recovery of the expenditure through ARR for the conversion of supply from 11/0.433kV configuration to 33/0.433 KV by incorporating following condition in the regulatory framework –
- i. *In case of non-readiness of the 33/0.433 KV system of electricity distribution in 33KV PPB, the presently available system of electricity distribution i.e 11/0.433 KV be used for the release of Connections to General/Non-Builder Consumers as an interim measure.*
 - ii. *Further the supply of such consumers in the area be converted from 11/0.4 kV to 33/0.4 kV system of electricity distribution at a later stage at the cost of Licensee.*
- 4.10. Further, there are Consumers who have applied for electrical connections in PPB but the same could not be released due to non-readiness of 33 KV electrical infrastructure. The details of such general/non-builder consumers, are as under –

Applications of general/non-builder consumers (falling in 33kV Pilot Project Belt) which are pending for sanction/release due to non-readiness of 33kV external electrical infrastructure					
Sr No.	Name of Circle	Name of Applicant	Address	Category	Applied Load
1	Faridabad	M/s Modern DPS School	Sector-87, Faridabad	HT/NDS	750KW with CD 750KVA
2	Faridabad	M/s BPCL	Sector-87, Faridabad	ECS	60KW with CD 67KVA
3	Faridabad	M/s St. Peter Convent School	Sector-88, Faridabad	HT/NDS	220KW with CD 245KVA

4	Gurugram-I	M/s Controlling Officer Inst. of Buisness Management & Agriprenneurship	Daultabad, Gurugram	HT/NDS	499KW with CD 554KVA
5	Gurugram-I	Shree Sheetla Mata Devi Medical Collage & Hospital at Kheri Majra	Sector-102, Gurugram	HT/NDS	5893.10KW with CD 6203.30KVA
6	Gurugram-I	M/s Gurugram University	Sector-87, Gurugram	HT/NDS	1200KW with CD1333KVA

The release of immediate connections at 11 KV level in above mentioned and such like cases shall help ease the difficulties faced by the Consumers.

In view of the foregoing submissions, it is most humbly submitted that the Hon'ble Commission may be pleased to allow the present Petition, as prayed for by the Petitioner.

Proceedings:

5. The case was heard on 07/08/2024, as scheduled, in the court room of the Commission. At the outset, Ms. Sonia Madan counsel of the petitioner re-iterated the contents of the petition and submitted that the additional data as per directions of the Commission passed on 05/06/2024 has been submitted.

Commission's Analysis & Order:

6. The Commission has considered the submissions made by the Petitioner in the Petition, subsequent submissions and the pleadings made by the petitioner and has also critically examined the entire material/information placed on record.
7. The petitioner through this petition has prayed as under:
 - a) Initiate proceedings to notify regulations tailored for processing of the cases where the Builder(s)/Developer(s) has got license prior to notification of Duty to Supply Regulations, 2nd Amendment i.e. 03.10.2023, as is detailed in Para 19 of the instant Petition and consequently grant *Ex-post facto* approval to the Sales Circular No. D-07/2024;
 - b) Initiate proceedings to notify regulations allowing the Licensee to release connections to General/Non-Builder Consumers in 33KV PPB at 11/0.433 KV as an interim measure due to the non-readiness of 33KV electrical distribution network besides the recovery of the expenditure through ARR for the conversion of supply from

11/0.433kV configuration to 33/0.433 KV, as is detailed in Para 21 of the instant Petition;

- c) In the alternative, clarify the applicability of the specific provisions of the Duty to Supply Regulations, 2nd Amendment to such cases where Builder(s)/Developer(s) has got license prior to notification of Duty to Supply Regulations, 2nd Amendment i.e. 03.10.2023;
 - d) Rectify the typographical error contained in Regulation 4.16.8 iii) as detailed in Paras 22 and 23 of the instant Petition; and/or
 - e) Pass any such further order(s) that this Hon'ble Commission as may deem fit and necessary in the facts and circumstances of the case.
8. Based on the facts placed before the Commission, the following issues are framed:
- a. Treatment of the projects whose licenses were issued before 03.10.2023 but EP is pending for approval in 33kV PPB.
 - b. Treatment of the projects whose licenses were issued and EP has been approved before 03.10.2023 but external electrical infrastructure is yet to be created/started in 33kV PPB.
 - c. Clarification on the Regulation 4.16.8 iii) i.e. Builder/developer(s) seeking supply for catering to load less than 15MVA shall have the option to constitute a group, at the time of application for permanent electrical connection, with other builder(s)/developer(s) so that the combined ultimate load of the group is up to 15 MVA. Such members of group shall not be individually required to provide land measuring at least 400 sq. yards to the Licensee, but as a group together.
 - d. Release of connections at 11/0.433 kV level to General/Non Builders as interim measure due to non-readiness of 33/0.433 kV infrastructure.

The Commission examined the above issues as under:

- 8.1. Treatment of the projects whose licenses were issued before 03.10.2023 but EP is pending for approval in 33kV PPB:

The Commission observes that the projects in 33kV Pilot Project Belt, whose licenses were issued before 03.10.2023 but Electrification Plan is yet to be approved, can be considered for inclusion of these projects in new amended regulations subject to adherence to all the clauses of the Duty to Supply Regulations, 2nd Amendment, except that 50% of the total amount of EESDC(External Electrical System Development Charges) shall be deposited to the DISCOM by such builder/developer before approval of the electrification plan.

- 8.2. Treatment of the projects whose licenses were issued and EP has been approved before 03.10.2023 but external electrical infrastructure is yet to be created/started in 33kV PPB:

The Commission observes that the projects in 33kV Pilot Project Belt whose EP stands already approved but the builders/developers have not initiated any work can also be considered for inclusion of these projects in new amended regulations subject to adherence to all the

clauses of the Duty to Supply Regulations, 2nd Amendment, except that the builders/developers shall get their electrification plan reapproved and 50% of the total amount of EESDC(External Electrical System Development Charges) shall be deposited to the DISCOM by such builder/developer before reapproval of the electrification plan.

8.3 Clarification on the regulation 4.16.8(iii)

The Commission agrees to the prayer of the petitioner for correction of the line “combined ultimate load of the group is up to 15 MVA” as “the combined ultimate load of the group is up to 25 MVA”

Accordingly, Regulation 4.16.8 iii) of the Duty to Supply Regulations, 2016 may be read as following

“Builder/developer(s) seeking supply for catering to load less than 15MVA shall have the option to constitute a group, at the time of application for permanent electrical connection, with other builder(s)/developer(s) so that the combined ultimate load of the group is up to 25 MVA. Such members of group shall not be individually required to provide land measuring at least 400 sq. yards to the Licensee, but as a group together.”

8.4 Release of connections at 11/0.433kV level to General/Non-Builder consumers as interim measure due to non-readiness of 33/0.433kV infrastructure.

Considering the difficulties and harassment of the consumers in case of non-readiness of 33/0.433kV infrastructure, the commission allows the petitioner to release the connections at 11/0.433kV level to the General/Non-Builder consumers as interim measure due to non-readiness of 33/0.433 kV infrastructure. Provided that the licensee will have to create required 33/0.433kV infrastructures within one year of this order. In case the licensee fails to create 33/0.433kV infrastructure within stipulated period of one year due to any unavoidable reasons then the licensee has to seek further extension of the period from the Commission citing proper justification for the delay.

9. Considering the difficulty in implementation of the 2nd amendment to the The Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security) Regulations, 2016 with its subsequent amendments and power conferred to the Commission under clause No. 9 and 10 of the aforesaid regulation reproduced as under:

“9 REMOVAL OF DIFFICULTIES

If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by an order, make such provision, not inconsistent to the provisions of the Act and these Regulations, as may appear to be necessary for removing the difficulty.

10 POWER TO RELAX

The Commission may by general or special order, for reasons to be recorded in writing and after giving an opportunity of hearing to the parties likely to be affected, may relax any of the provisions of these Regulations”

The Commission decides as under:

- 9.1 The projects in 33kV Pilot Project Belt, whose licenses were issued before 03.10.2023 but Electrification Plan is yet to be approved, shall be covered under 2nd Amendment to Duty to Supply Regulations, subject to adherence to all the clauses of the Duty to Supply Regulations, 2nd Amendment, except that 50% of the total amount of EESDC (External Electrical System Development Charges) shall be deposited to the DISCOM by such builder/developer before approval of the electrification plan.
- 9.2 The projects whose licenses were issued and EP has been approved before 03.10.2023 but external electrical infrastructure is yet to be created/started in 33kV PPB shall also be covered under 2nd Amendment to Duty to Supply Regulations, subject to adherence to all the clauses of the Duty to Supply Regulations, 2nd Amendment, except that such builders/developers shall get their electrification plan reapproved and 50% of the total amount of EESDC(External Electrical System Development Charges) shall be deposited to the DISCOM by the builders/developers before reapproval of the electrification plan.
- 9.3 The Regulation 4.16.8 iii) of the Duty to Supply Regulations, 2016 may be read as following
“Builder/developer(s) seeking supply for catering to load less than 15MVA shall have the option to constitute a group, at the time of application for permanent electrical connection, with other builder(s)/developer(s) so that the combined ultimate load of the group is up to 25 MVA. Such members of group shall not be individually required to provide land measuring at least 400 sq. yards to the Licensee, but as a group together.”
- 9.4 The petitioner is allowed to release the connections at 11/0.433 kV level to the General/Non-Builder consumers as interim measure due to non-readiness of 33/0.433kV infrastructure. Provided that the licensee will have to create required 33/0.433kV infrastructures within one year of this order. In case the licensee fails to create 33/0.433kV infrastructure within stipulated period of one year due to any unavoidable reasons then the licensee has to seek further extension of the period from the Commission citing proper justification for the delay.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 03/12/2024.

Date: 03/12/2024
Place: Panchkula

(Mukesh Garg) (Nand Lal Sharma)
Member Chairman