

2. UHBVNL, the distribution licensee, vide memo no. Ch.24/GM/RA/N/F-25/Vol-68 dated 31.08.2017, has filed the present petition seeking review of the said Order passed by the Commission on certain issues as under:-
 - a. Non consideration of Interest cost of loans undertaken under UDAY scheme.
 - b. Return on Equity @ 14% p.a., as proposed instead of 10% p.a. allowed by the Commission.

3. Additionally, UHBVNL filed supplementary submissions vide memo no. Ch.30/SE/RA/N/F-25/Vol-68 dated 25.09.2017 regarding TOU Tariff approved by the Commission in its ARR Order dated 11.07.2017 as under:-
 - a) That the Commission vide para 4.4 of HERC ARR Tariff Order for FY 2017-18 dated 11th July 2017 has introduced the Time of Use (ToU) tariff on optional basis for following categories of consumers:-
 - i) HT Industry including furnace.
 - ii) LT Industry.
 - iii) HT Non-Domestic.
 - iv) Bulk Supply Consumers (excluding Bulk DS).
 - v) Public Water Works.
 - vi) Lift Irrigation.

In this context, it has been submitted that due to implementation issues, ToU tariff in the category of consumers at sr. no. (ii) & (iv) to (vi) may be limited to the eligible consumers having connected load more than 20kW.

It has been submitted that the rationale behind restricting the applicability of ToU Tariff only to the consumers having load 20kW and above is that the connections with connected load upto 20 KW are being released by the Nigam through meters which are not having ToD facility commensurate to that required as per Commission's order. It has been further submitted that the number of connections with load upto 20 KW in the Nigam is very large and it is not be possible for the Nigam to reconfigure all these meters to compute time of day consumption as per requirement of Time of Use Tariff. The connections with connected load above 20 KW normally have the electronic meter which have the ToD register required for computing TOU Tariff.

b) That considering the variation in peak and off-peak hours to a certain extent across the state during the applicable period of ToU Tariff, the Commission has allowed concerned SE/XEN of the areas to re-determine the period of peak hours of supply when the variation is more than half an hour. In this regard UHBVNL has submitted that Peak Load Hrs. are fixed by the Nigams and SE/XEN are not empowered to change the Peak Load Hrs.

Moreover, it is submitted that the above provision may lead to complications in billing mechanism as frequent changes in peak load hours will have adverse impact on overall billing. Therefore, it has been prayed that the above provision made by Commission may be reviewed in light of the present submission and the said provision may be deleted.

4. **Commission's Analysis & Order**

In Order to examine the scope of review jurisdiction, the Commission has perused the provision of Regulation 78(2) of the HERC (Conduct of Business) Regulations, 2004 including its subsequent amendments, which empowers the Commission to exercise review jurisdiction. The relevant regulation is reproduced below:-

78 (2) **"REVIEW OF THE DECISIONS, DIRECTIONS, AND ORDERS:**

The Commission may review its Orders or decisions if:-

- (a) There exists an error apparent on the face of the record, or*
- (b) Any new and important matter of evidence was discovered which after the exercise of due diligence, was not within the knowledge of or could not be produced by the party concerned at the time when the Order or decision was made, or*
- (c) For any other sufficient reasons".*

Further, the Commission has also 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, issue wise, by the petitioner on including maintainability tested on the anvil of the aforesaid Regulations / Case Laws as under:-

a) Non consideration of Interest cost of loans undertaken under UDAY scheme.

On this issue UHBVNL has submitted that the Commission in its Tariff Order dated 11.07.2017, for the FY 2017-18, has allowed Rs 238.63 cr as interest on working capital loan against the projected Rs 1602.13 cr. In addition to the interest cost of Rs 238.63 cr, the Commission has quantified but not allowed Interest Cost of Rs 945.22 Cr in Annual Revenue Requirement of the Discoms and has directed the DISCOMS to meet this cost through Operational Financial Requirement (OFR) support proposed under the UDAY scheme. The relevant excerpts of the Tariff Order has been reiterated for ready reference, as under:-

“3.2.22 Interest on UDAY Bonds

As per the financial arrangement under UDAY scheme, 75% of the borrowings as on 30.9.2015 were to be taken over by the State Government within 5 years by conversion into equity and grant. Until such time the arrangement is completed, the interest is to be borne by the Distribution licensees.

The Discoms have proposed to recover all their interest costs from the consumers by way of interest on borrowings for capital expenditure and the balance through interest on working capital borrowings inclusive of UDAY bonds. However, the Commission observes that the interest cost borne by the licensee is recovered from the consumers of the state by way of interest on borrowings for capital expenditure, interest on working capital borrowings; interest on Advanced Consumption Deposit and also some interest is recovered as part of FSA. The interest being recovered as part of FSA has not been accounted for by the licensees while calculating the financial burden of interest as part of the UDAY scheme. The revised approved interest on UDAY borrowings is as under:-

Interest on UDAY borrowings for the FY 2017-18

As per the information provided by the Discoms the interest payable for UDAY bonds for the FY 2017-18 is as under:-

Rs. Crore

Interest to State Govt. for UDAY Bonds	UHBVNL	DHBVNL	Total
	548	397.22	945.22

The total cost for the FY 2015-16 and FY 2017-18 adds up to **Rs. 946.89 Crore.**

The same shall be met out of OFR available under the UDAY”

It has been further submitted that in UDAY scheme, the projected Annual Revenue Requirement for the FY 2017-18 consisted of Interest on UDAY loans i.e. the interest to be paid on the loans under taken under UDAY was also part of the Annual Revenue Requirement of the Discoms. The non-consideration of Interest cost on UDAY loans in the Annual Revenue Requirement of FY 2017-18 has resulted in understatement of the Annual Revenue Requirement of the Licensee and thereby leading to lower approved Cost of Supply which has further resulted in under estimation of AP Subsidy and Wheeling Charges.

UHBVNL has further submitted that the Commission vide its impugned Tariff Order dated 11.07.2017 has allowed interest on working capital on normative basis as per the MYT Regulations, 2012. In addition, the Commission has admitted Rs 945.22 cr as interest cost on loans undertaken under UDAY scheme. However, the Commission has not admitted the interest cost on the balance 25% loans i.e. an amount of Rs 8650 cr. Therefore, the interest on Rs 8650 cr, out of which the working capital loan is Rs 4724 cr, ought be allowed.

The Commission has considered the submission on this issue and observes that the petitioner in its ARR petition for recovery of revenue gap for the FY 2017-18 made the prayer as under:-

“ the resultant gap after continuation of current levels of tariff and FSA will be met through the OFR as proposed under UDAY”

The Commission has also examined the Tripartite Memorandum of Understanding signed by the Power Utilities and observes that under sub clause “I” of clause 1.2 of the agreement, the State Government is committed to provide Operational Funding Requirement (OFR) support to the Haryana DISCOMS till the DISCOMS achieve financial turnaround.

Hence, as per the UDAY scheme, what is to be recovered from the consumer is the current tariff only and the petitioner correctly proposed that the revenue gap would be borne by the State Government and the same is supported by the MOU under the UDAY scheme. The Commission in its order dated 11.07.2017, estimated revenue at current tariff and the same resulted in revenue surplus of Rs. 1011 crores and that is only after the interest on UDAY bonds was not a pass through and was met through OFR. Accordingly, the Commission orders that in case on true up of the FY 2017-18, there is any surplus, the interest on UDAY bonds can be met out of the same to that extent. However, shortfall, if any, in the revenue on account of true up for the FY 2017-18 shall be met out of OFR by the State Government in accordance with the UDAY scheme approved by the Commission.

It is evident from the above discussions that the entire gamut of allowing interest on UDAY bonds was well within the knowledge of the all stakeholders including this Commission and the same was specifically dealt with in the impugned Order dated 11.07.2017. The Petitioner has not placed on record any new facts or error apparent on the face of record that may merit review on this issue. Therefore, the review sought on this issue is rejected as devoid of merit and also beyond the scope of review jurisdiction of this Commission.

b) Return on Equity @ 14% p.a. instead of 10% p.a. allowed

UHBVNL has submitted that Regulation no. 20 of Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012 herein referred to as MYT Regulation, 2012 provides for Return on Equity (RoE) up to 14% on the Equity Base of the Licensee.

It has been submitted that the Commission, vide its order dated 11.07.2017, has allowed 10% Return on Equity of Rs 191.56 cr and Rs 173.16 cr for UHBVN and DHBVN based on projected equity of Rs 1915.6 Cr and 1731.6 Cr respectively instead of 14% rate of interest as provided in the MYT Regulation, 2012. The disallowance of 4% RoE has resulted in understatement of Annual Revenue Requirement by an amount of Rs 145.89 cr

Further, as per the UDAY the Scheme, the takeover of loans is done in the form of equity and grant. The relevant excerpts of UDAY scheme has been reiterated below for ready reference:-

“The Government of India, the State of Haryana and the DISCOMs of Haryana (Uttar Haryana Bijli Vitran Nigam Ltd. and Dakshin Haryana Bijli Vitran Nigam Ltd.) signed the tripartite Memorandum of Understanding (MOU) under the Scheme UDAY – “Ujwal DISCOM Assurance Yojana” on 11th March, 2016 for operational and financial turnaround of the DISCOMs.

The Salient Features of UDAY are listed below:-

- *States shall take over 75% of DISCOM debt as on 30 September 2015 over two years- 50% of DISCOM debt shall be taken over in 2015-16 and 25% in 2016-17.*
- *Government of India will not include the debt taken over by the States as per the above scheme in the calculation of fiscal deficit of respective States in the financial years 2015-16 and 2016-17.*
- *States will issue non-SLR including SDL bonds in the market or directly to the respective banks / Financial Institutions (FIs) holding the DISCOM debt to the appropriate extent.*
- *DISCOM debt not taken over by the State shall be converted by the Banks / FIs into loans or bonds with interest rate not more than the bank’s base rate plus 0.1%. Alternately, this debt may be fully or partly issued by the DISCOM as State guaranteed DISCOM bonds at the prevailing market rates which shall be equal to or less than bank base rate plus 0.1%. Reduction of cost of power.*

The schedule of takeover of loan has been given as under:-

<i>Break up of State Government Takeover of Loans</i>					
<i>Particulars</i>	<i>FY 16</i>	<i>FY 17</i>	<i>FY 18</i>	<i>FY 19</i>	<i>FY 20</i>
<i>Grant (%)</i>	<i>11.25%</i>	<i>11.25%</i>	<i>11.25%</i>	<i>11.25%</i>	<i>11.25%</i>
<i>Grant (Cr)</i>	<i>3,892.5</i>	<i>3,892.5</i>	<i>3,892.5</i>	<i>3,892.5</i>	<i>3,892.5</i>

Equity (%)	3.75%	3.75%	3.75%	3.75%	3.75%
Equity (Cr)	1,297.5	1,297.5	1,297.5	1,297.5	1,297.5
Debt (%)	35.00%	45.00%	30.00%	15.00%	0.00%
Debt (Cr)	12,109.9	15,569.9	10,379.9	5,190.0	0.0

As mentioned above, in the FY 2015-16 and FY 2016-17, Discoms have received a total Equity of Rs 2595 Cr in addition to the projected equity base. However, the Commission has not allowed the Return on Equity on the equity received from the Government of Haryana.

Therefore, in order to achieve the financial and operation turnaround as proposed under UDAY scheme, the Commission is requested to allow the Return on Equity at the rate of 14 % i.e. Rs 363.3 cr on the equity support of Rs 2595 cr received from the State Government.

The Commission has considered the above submissions and observes that the following Order was passed at para 3.2.23 of the ARR Order dated 11.07.2017:-

“Additionally, the Commission observes that, so far, no RoE has been allowed to the Discoms because of the Equity being eroded due to accumulated losses. The Commission, in view of the UDAY, is of the considered view that in the present Order distribution loss trajectory has been pegged as per that agreed upon in the said scheme as well as not allowed any additional working capital loan and interest thereto on account UDAY. Further, fresh Equity is expected to be infused in the Discoms under UDAY. Hence, in order ensure financial turnaround of the Discoms in line with the objectives of UDAY, the Commission has considered it appropriate to allow 10% RoE in the FY 2017-18 i.e at the same rate as allowed to HPGCL and HVPNL. Consequently, RoE amounting to Rs. 364.72 Crore for both the Discoms shall be recovered along with the revenue gap in the FY 2017-18”.

In view of the above, it is apparent that the Commission has taken a holistic view of the power sector in Haryana and in line with the Regulations in vogue i.e. **up to** (emphasis added) 14%, while approving RoE of Rs. 364.72 Crore in the impugned Order dated 11.07.2017. Further, the RoE was allowed on the Equity amount in consonance with the petition. The Commission has merely reduced the rate of RoE from 14% sought by DISCOMs to 10% at par with the rate allowed to HPGCL and HVPNL. Therefore, the review sought on

this issue is rejected as devoid of merit and also beyond the scope of review jurisdiction of this Commission.

- c) The Commission further observes that the supplementary submissions of UHBVNL to restrict the implementation of ToD for LT Industry, Bulk Supply Consumers (excluding Bulk DS), Public Water Works and Lift Irrigation and having connected load not more than 20 KW on the ground that such consumers being large in number and not having ToD meters, is not cohesive with the progressive vision of the Commission which intends to promote smart meter and smart grid, which includes provision for ToD. Similarly, the submission of UHBVNL for deletion of the provision which allows SE/XEN concerned of the areas to re-determine the period of peak hours of supply when the variation is more than half an hour, is a mere statement and is not supported by any data. Now that the scheme has been in force, since more than a year, DISCOMs are directed to substantiate their submission with relevant data in the next ARR petition to enable the Commission to re-consider the same. In conclusion the Commission observes that supplementary submissions cannot form part of a review petition in terms of Regulation 78(2) of the HERC (Conduct of Business) Regulations, 2004 as amended from time to time.
6. In terms of the above findings / decisions on each issue, the review petition preferred by the Discoms against the Commission's Order dated 11th July, 2017 (Case No. HERC/PRO-39 of 2016 & HERC / PRO – 40 of 2016) is disposed of.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 14th December, 2018.

Date: 14.12.2018
Place: Panchkula

(Pravindra Singh Chauhan)
Member

(Jagjeet Singh)
Chairman