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

Case No. HERC/RA-4 of 2019

Date of Hearing : 26.03.2019
Date of Order : 26.03.2019

IN THE MATTER OF


Review Petitioner
M/s. Naraingarh Sugar Mills Limited (NSML)

Respondent
Haryana Power Purchase Centre, Panchkula (HPPC)

Present On behalf of the Petitioner
1. Shri Varun Pathak, Advocate

Present On behalf of the Respondent
1. Smt. Sonia Madan, Advocate
2. Shri Vikas Kadian, Xen, HPPC.
3. Shri Randhir Singh, AEE, HPPC.

QUORUM
Shri Jagjeet Singh, Chairman
Shri Pravindra Singh Chauhan, Member

ORDER

Brief Background of the Case
1. The petition has been filled by M/s. Naraingarh Sugar Mills Limited (NSML), under Regulation 78 of HERC (Conduct of Business) Regulations, 2004 read with Sections 94 & 86 of the Electricity Act, 2003, against the order of the Commission dated 10.01.2019 in case no. PRO-42 of 2018 filed by HPPC.
2. NSML has submitted as under:-
   a) That the review jurisdiction of this Commission is being invoked on the following grounds against the Impugned Order:
      (i) Filing of tariff petition by NSML in terms of the Power Purchase Agreement dated 10.03.2014 (hereinafter referred to as "PPA");
      (ii) Finding on letter no. No. NSML / 2018-19/424 dated 27.09.2018 regarding scheduling and dispatch of renewable power by NSML; and
      (iii) Signing of supplementary agreement by NSML.
b) That NSML is aggrieved of the finding given by this Commission to file a separate tariff petition. The said finding is contrary to the regulations framed by this Commission under the Act. The relevant regulation in this regard is the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 (hereinafter “2017 Regulations”). The control period as per Regulation 4 of the 2017 Regulations is FY 2017-18 to the FY 2020-21. As per Regulation 5 of the 2017 Regulations the first-year tariff shall be applicable from the Commercial Operation Date (hereinafter “COD”) of the project which in the present case is 12.01.2018. As per order dated 04.08.2015, passed by this Commission in HERC (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Energy Sources, Renewable Purchase Obligations and Renewable Energy Certificates Regulation, 2010 (4th Amendment), 2015 – Suo Motu, the control period under the previous regulations was extended only up to the FY 2016-17. Thus, clearly it is the 2017 Regulations which are applicable in the present case. Therefore, as per Regulation 6 of the 2017 Regulations project specific tariff for biomass projects can only be determined for projects which are not based on rankine cycle technology with water cooled / air cooled condenser. As the biomass project of NSML is based on rankine cycle technology with water cooled/air cooled condenser technology the project specific tariff determination is not possible and only the generic tariff as determined by this Commission from time to time is applicable. The same understanding is also clearly reflected from the provisions of the PPA wherein the definition of at Article 1 (40) read with Article 2 makes it clear that the tariff payable shall be as may be decided/notified and amended /modified/clarified from time to time by this Commission which clearly points to the determination of generic tariff for biomass tariff.

c) That issue number two and three are connected. As far as letter no. No. NSML / 2018-19/424 dated 27.09.2018 (hereinafter “Letter”) regarding scheduling and dispatch of renewable power by NSML is concerned, the same was addressed to the Commission under Chapter 7, Regulation 7.1 (e) of the Haryana Grid Code Regulations, 2009 (hereinafter “HGC”) and therefore, was not connected with the instant petition and therefore, no arguments were addressed at the time of the hearing of the instant petition. Further, while passing the Impugned Order, the Commission has not considered the issues raised in the Letter. By way of the Letter, NSML has raised a query under the provisions of the HGC wherein a clarification was sought from the Secretary regarding scheduling and dispatch. As per the provisions of the Act the distribution licensee, being an interested party, cannot issue scheduling and dispatch instructions and the same has to be done by the State Load Dispatch Centre as per the principles enunciated and laid down by this Commission. In the Impugned Order, the Commission has held that the generating plant of NSML is not a must run plant
and the same has been done without hearing the review petitioner. Further, the Commission has ignored its own order dated 03.10.2017 in PRO 67 of 2017 and connected matters wherein this Commission at page 96 of the said order has held that scheduling and dispatch shall be done as per 2017 Regulations. Further, reference is made to page 121 of the said order wherein this Commission has held that for Biomass/Bagasse plants this Commission shall consider two-part tariff wherein fixed cost shall be the levelised tariff and fuel cost shall be determined on a year to year basis. As the ABT regime has not been implemented within the state of Haryana, the issuance of scheduling and dispatch instructions by HPPC/distribution licensee is contrary to the provisions of the Act.

d) That the Commission has not considered that the generating station of NSML will be run on bagasse and biomass. As far as biomass is concerned it also includes paddy straw as per the definition clause. As per the government of Haryana Policy biomass co-generation plants like that of the Petitioner are to be promoted as promoting use of biomass for production of energy including cogeneration, bio-CNG, bio-char and biofuels/bio-ethanol will not only help reduce dependence on conventional sources energy thereby reducing import bills but will also help to improve environment and soil health and will also create alternate stream of income to farmers and employment in rural area. The open crop residue/biomass burning causing the emission of air pollutants in the atmosphere and therefore, running of biomass projects on must run basis will result in less pollution. Further, sugar mill bagasse fired boilers are best suited to use parali as fuel without much processing and sizing. Haryana being rich in wheat and paddy farming can use parali to its advantage for imbedded based power generation to reduce fossil-fuel based power generation and purchase from within and outside the state sources. Further, no additional precious and scarce agriculture land will be required to be spared for Installation of Biomass based additional power plants for handling Parali and protecting the environment, the land of sugar mill, water and grid connectivity is already there.

e) That the Commission had granted 'must run status' to paddy straw based power generators in its order dated 03.01.2019 in Case No. HERC / PRO – 45 of 2018, as a special case in larger public interest, in order to address the environmental concerns arising out of burning of paddy straw. The same principle is applicable to the project of NSML as well and to exclude it from must run status is arbitrary and capricious as during the off-season the generating station will also largely use paddy straw as a fuel and will reduce pollution as the NSML is located in an area of Haryana state where paddy is largely grown and paddy residue is available as biomass. The use of parali by NSML will reduce the disadvantage associated with transportation of such biomass fuel to distant biomass power plants as compared to NSML. Therefore, the same dispensation of 'must run', as provided by the Commission in Case No. HERC / PRO – 45 of 2018 is applicable in principle and fact.
f) That another reason for having a must run status for renewable plants is that renewable energy being a clean energy must be promoted under the mandate provided under the Act and the Constitution of India. Further, this Commission may permit scheduling for energy accounting purposes but to promote renewable energy generation and also to ensure that stubble burning is reduced, the plant of the petitioner may be permitted to be run on a must run basis.

g) That keeping in view of the above facts and circumstances, the following prayer has been made:

(a) Review and modify the Impugned Order in light of the submissions raised in the instant petition; and/or

(b) To Pass any other or such further order(s), which this Commission may deem fit and proper in favour of the Petitioner and against the Respondents in the interest of justice.

Procedings in the Case

3. The case was heard on 26.03.2019, wherein Shri Varun Pathak, Ld. Advocate, for the Review Petitioner mainly reiterated the contents of its review application, which for the sake of brevity is not reproduced. Per-contra, Smt. Sonia Madan, Ld. Advocate for the Respondent filed a detailed reply in the matter, submitting as under:

a) The petition filed by the NSML is for review of order dated 10.01.2019 with respect to the specific observations of this Commission on three issues, i.e. (i) Direction given by the Hon'ble Commission to NSML to file tariff petition under Section 62 of the Electricity Act, 2003 in terms of Power Purchase Agreement (PPA) dated 10.03.2014; (ii) Clarification of this Commission that power supplied by NSML using biomass as fuel during off crushing season shall not be "Must Run" as per Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 (hereinafter to be referred as "RE Regulations, 2017"); and (iii) Direction given by this Commission to HPPC/ Discoms to redraft the impugned Supplementary Agreement.

b) At the outset, it is stated that HPPC is in the process of filing an appeal against the order dated 10.01.2019 passed by this Commission in Case No. HERC-PRO/42 of 2018. HPPC is filing the present reply without prejudice, while reserving all its rights on the grounds and contentions of the said appeal.

c) The petition filed by the Petitioner is untenable in its present form. The petitioner has under the garb of review sought a relief which has not been allowed by this Commission after due consideration of facts of this case. The Order of the Commission dated 10.01.2019 categorically framed, considered and decided the grounds on which review is sought in the present petition.
d) That it is pertinent to reproduce the law settled by the Hon'ble Supreme Court in judgment dated 8th August, 2013 under Writ Petition (CRL.) 135 of 2008 with respect to scope of Review under law. The relevant part of the said judgement is reproduced below:

“This Court has repeatedly held in various judgements that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient."

Also in Sow Chandra Kante & Anr. Vs. Sheikh Habib (1975) 1 SCC 674, Apex Court held as under:

“Mr. Daphtary, learned counsel for the petitioners, has argued at length all the points which were urged at the earlier stage when we refused special leave thus making out that a review proceeding virtually amounts to a re-hearing. May be, we were not right in (sic.) refusing special leave in the first round; but, once an order has been passed by this Court, a review thereof must be subject to the rule of the game and cannot be lightly entertained ....”

The prayer for review of the order of the Commission has no basis in view of the fact that the Petitioner has failed to establish as to what constitutes in this case “sufficient grounds” and “sufficient reasons” as enshrined in the CPC for seeking review of an order / direction passed by a Court including a misconception of fact or law or even a misapprehension of the true state of circumstances.

In view of the foregoing, it has been submitted that Petitioner have failed to set up any case fit for review of order of this Commission dated 10.01.2019.

e) Insofar as the contention of NSML against the directions of this Commission to file tariff petition under Section 62 of the Electricity Act, 2003 in terms of Power Purchase Agreement (PPA) dated 10.03.2014 is concerned, it is submitted that the said direction of the Commission is legal and valid and has been passed taking into account the terms and conditions of PPA signed between the parties. There is no ground for seeking review of said part of the Order as while giving such directions, the Commission duly took into account Clause 2.1.1 of PPA dated 10.03.2014 which provides that the HPPC shall purchase and accept all such electrical energy generated by the Company’s facilities (New Plant and Machinery) upto 25 MW delivered at the interconnection point at the rate decided/notified and as amended/modified/clarified by HERC from time to time. It is however, submitted that Commission in its Order dated 10.01.2019 as an interim gap arrangement allowed tariff at Average Purchase Price Cost (APPC) for biomass run power till the determination of tariff under Section 62 of Electricity Act, 2003 by the Commission, but did not pass any order on tariff for bagasse based generation. The terms of PPA implies that tariff is to be determined by this Commission for whole of the project
(i.e. for Bagasse & Biomass based generation) subject to the other provisions of PPA. By omitting to give directions for determination of tariff for Bagasse based generation, the Commission allowed undue benefit to Petitioner to claim generic tariff for Bagasse based generation. The Commission should consider that the tariff needs to be assessed for the project as a whole. If generic tariff is granted to the Petitioner, it would lead to an undue enrichment of the Petitioner at the cost of State Exchequer. Moreover, allowing generic tariff for the whole project would mean that the capacity charges would be recovered twice by the Petitioner. Thus, the contention of the Petitioner that it should be allowed generic tariff for the entire project in terms of RE Regulations, 2017 is illegal, unjust and unreasonable.

Furthermore, as per the Electricity Act, 2003, the power generation is a regulated business, as such, generator is not supposed to make profit in excess to the allowable limits.

f) Insofar as the contention of NSML against finding of this Commission on not granting ‘Must Run’ status to the project of NSML is concerned, it is submitted that the said finding of this Commission cannot be made a subject matter of review. The said finding of the Commission is given after considering the letter of the Petitioner dated 27.09.2018 placed on record of the Commission. The clarification/ finding that power supplied by NSML using Biomass as fuel during off crushing season shall not be ‘Must Run’ is based on thorough consideration of RE Regulations, 2017. The said regulations have been notified by this Commission after due deliberations and are binding on all concerned for provisions not specified in the agreement executed prior to notification of these regulations. The said finding of the Commission takes into account the submissions/averments made by the NSML and is in line with the RE Regulations, 2017. The finding of the Commission with respect to not granting ‘Must Run’ status to project of NSML is legal and valid. Thus, the contention of the Petitioner is not worthy of any credence and no valid ground for review are made for by the Petitioner.

g) In view of the Preliminary Submissions made above, the contentions of NSML are liable to be dismissed being illegal, unjust and untenable. The para-wise reply is given hereunder –

Reply on Merits–

a) That the contents of para no. 1, being reference to the relief sought in the instant petition, do not call for any comments.

b) That the contents of para no. 2, being reference to the Commission’s Order dated 10.01.2019 in PRO-42 of 2018, are a matter of record.

c) The contents of para no. 3 are denied to the extent that the grounds mentioned by the Petitioner are untenable in the eyes of law. The Petitioner has under the garb of review sought a relief which has not been allowed by this Hon’ble Commission after due
consideration of facts of this case. The Order of the Hon'ble Commission dated 10.01.2019 categorically framed, considered and decided the grounds on which review is sought in the present petition.

d) That the contents of para no. 4, insofar as it refers to provisions of RE-Regulations, 2017, are a matter of record. However, the self-serving interpretation of said Regulations and the conditions of PPA dated 10.03.2014 are denied. It is worthwhile here to bring to the kind notice of the Commission, Article 2 sub clause 2.1.1 of PPA signed between HPPC and NSML, which provides as under:-

“2.1.1 The HPPC shall purchase and accept all such electrical energy generated by the Company’s facility (new plant and Machinery) up to 25 MW delivered at the interconnection point pursuant to the terms and Conditions of this agreement at the rate decided/notified and as amended/modified/clarified by HERC from time to time. The fuel (biomass mix/bagasse) cost (Rs/kWH) decided by the Commission shall be subject to a cap of twice (2 times) the fuel cost (Rs/kWH) approved by the Commission for thermal power generation of HPGCL in Haryana. Beyond which the HPPC/Discoms shall be under no obligation to purchase power from the company. In such an event, the Company shall have the right to sell the entire power generated by them to a third party including offering power to the Discoms at the average pool power cost (APPC) as determined by the Commission, selling power through the power exchange etc.”

The above mentioned condition specifically provides that tariff has to be decided/ notified and amended/modified/clarified form time to time by the Hon'ble Commission. By no means does the same confer applicability of generic tariff, as contended by the Petitioner. A thorough perusal of clause 2.1.1 of PPA stipulates that tariff is to be determined by the Commission subject to other terms and conditions of PPA, as such, the generic tariff cannot be made applicable for the power scheduled from the plant of the Petitioner. Generic tariff is based on project specific parameters notified by the Commission from time to time and cannot be made applicable in view of the specific conditions incorporated in the PPA in the instant case.

The Commission duly took into account Clause 2.1.1 of PPA which provides that the HPPC shall purchase and accept all such electrical energy generated by the Company’s facilities (New Plant and Machinery) upto 25 MW delivered at the interconnection point at the rate decided/notified and as amended/modified/clarified by HERC from time to time and accordingly ordered for determination of tariff under Section 62 of Electricity Act, 2003. The terms of PPA implies that tariff is to be determined by this Commission for whole of
the project (i.e. for Bagasse & Biomass based generation) subject to the other provisions of PPA.

The Petitioner has further contended that tariff determination is not possible for Rankine cycle technology as per regulation 6 of RE Regulations, 2017. In this regard, it is submitted that the project of the Petitioner is unique and one of its own kind in the State of Haryana, as such, the provisions of RE Regulations, 2017 do not intend to take into account the elements of the power generated through such project. It is therefore, submitted that applicability of generic tariff to the instant project would not be in consonance with the objective of the Electricity Act, 2003 and project specific tariff needs to be determined in order to secure the public interest at large.

e) That the contents of para no. 5 to 8 of the Petition are wrong, incorrect and hence, denied.

The contention of the Petitioner against finding of the Commission with respect to not granting ‘Must Run’ status to the project of Petitioner cannot be made a subject matter of review. The said finding of the Commission is given after considering the letter of the Petitioner dated 27.09.2018 placed on record of the Commission. The clarification/finding that power supplied by Petitioner using Biomass as fuel during off crushing season shall not be ‘Must Run’ is based on thorough consideration of RE Regulations, 2017. The said regulations have been notified by this Commission after due deliberations and are binding on all concerned for provisions not specified in the agreement executed prior to notification of these regulations. The said finding of the Commission takes into account the submissions/averments made by the Petitioner and is in line with the RE Regulations, 2017. The said finding is legal and valid.

Insofar as ABT regime is concerned, the Commission has already published draft Haryana Electricity Regulatory Commission (Deviation, Settlement Mechanism and related matters) Regulations, 2018, which if approved, will be applicable to the captive generators (more than 10 MW) connected to Intrastate Transmission system. Furthermore, the contention of petitioner for grant of ‘Must Run’ status is an afterthought as the provision is in existence since the signing of PPA dated 10.03.2014. Clause 11.3 of Article 11 of PPA also provides that the generating plant of the Company shall be subject to scheduling and dispatch code as specified under RE Regulations, Haryana Grid Code and other relevant Regulations including amendment thereto. Thus, the contention of the Petitioner is not worthy of any credence and no valid ground for review are made for by the Petitioner.

f) That the contents of para no. 9 are denied as wrong and incorrect.

g) That the contents of para no. 10 are subject matter of verification.

h) That the contents of para no. 11 are denied as wrong and incorrect in view of the submissions made above.
i) That the contents of para no. 12 do not call for any comments.

j) That the contents of para no. 13 are denied as wrong and incorrect in view of the submissions made above.

k) That in reply to contents of para no. 14, it is submitted that in view of the submissions made above, the present petition deserves to be dismissed.

**Commission’s Analysis and Order**

4. The Commission has considered the application of the Review Petitioner as well as written submissions filed in the matter and observes that Review has been sought by M/s. NSML against the Impugned Order of the Commission dated 10.01.2019 passed in case no. HERC/PRO-42 of 2018 on three issues i.e. a) Filing of tariff petition by NSML in terms of the Power Purchase Agreement dated 10.03.2014 (hereinafter referred to as “PPA”); b) Finding on letter no. No. NSML / 2018-19/424 dated 27.09.2018 regarding scheduling and dispatch of renewable power by NSML; and c) Signing of supplementary agreement by NSML.

5. 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 Supreme Court in judgment dated 8th August, 2013 under Writ Petition (CRL.) 135 of 2008 with respect to scope of Review under law, cited by the Respondent (HPPC). The relevant part of the said judgement is reproduced below:-

“This Court has repeatedly held in various judgements that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient. ”

Also in Sow Chandra Kante & Anr. Vs. Sheikh Habib (1975) 1 SCC 674, Apex Court held as under:-
“Mr. Daphtary, learned counsel for the petitioners, has argued at length all the points which were urged at the earlier stage when we refused special leave thus making out that a review proceeding virtually amounts to a re-hearing. May be, we were not right in (sic.) refusing special leave in the first round; but, once an order has been passed by this Court, a review thereof must be subject to the rule of the game and cannot be lightly entertained ....”

6. 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) Filing of tariff petition by NSML in terms of the Power Purchase Agreement dated 10.03.2014 (hereinafter referred to as “PPA”):-

The Commission has addressed the issue in length at para 11 in its Impugned Order dated 10.01.2019. The same is reproduced as under:-

“The Commission has further taken note of the clause 2.1.1 of the main PPA dated 10.03.2014, entered into between the parties, as under:-

“……..The fuel (biomass mix/bagasse) cost (Rs/kWH) decided by the Commission shall be subject to the cap of twice (2 times) the fuel cost (Rs./kWH) approved by the Commission for thermal power generation of HPGCL in Haryana. Beyond which the HPPC/Discoms shall be under no obligation to purchase power from the company. In such an event, the Company shall have the right to sell the entire power generated by them to a third party including offering power to the Discoms at the average pool power cost (APPC) as determined by the Commission, selling power through the power exchange etc.”

In view of the consent already accorded by HPPC to the Generator for purchase of power from its generating station with biomass as the fuel, it is ordered that the tariff shall be decided on the separate petition to be filed by Generators under section 62 of the Electricity Act, 2003, in accordance with clause 2.1.1 of the main PPA dated 120.03.2014, entered into between the parties. The tariff petition shall include DPR approved by HAREDA and all other relevant documents to arrive at the reasonable incremental capital cost to be incurred on running with biomass as the fuel, if any, and all other tariff components. However, as the power has already started flowing to the DISCOMs and the tariff determination is a long exercise including public proceedings, the Commission as an interim measure, approves that till the time final tariff is determined by the Commission upon filing of the requisite application by the Generator, the interim tariff shall be APPC for the power generated using biomass as fuel and injected into the grid subject to adjustments vis-à-vis the final tariff determined by the Commission. “

The Commission observes that the review petitioner has prayed that clause j of Regulation clause no. 6(1) prohibits any project specific tariff determination of Biomass project based on Rankine Cycle Technology. The Review Petitioner therefore seeks that generic tariff determined under the RE regulations shall be available to it. However, the Commission observes that Proviso to Regulation Clause No. 36 of HERC RE Regulations,
2017 appropriately address the current scenario of generation and sale of power by bagasse based co-generation projects using biomass as fuel using non-crushing season as under:-

“Provided that the bagasse based co-generation projects, selling power to the Discoms under PPA approved by the Commission, shall be permitted to use biomass as fuel during the non-cane crushing season. In such cases the generators can approach the Commission for determination of tariff for the power generated using biomass as fuel. The HPPC shall not refuse purchase of such power without the prior approval of the Commission.”

Further, the Commission also observes that there is merit in the submission of the Respondent (HPPC) that “allowing generic tariff for the whole project would mean that the capacity charges would be recovered twice by the Petitioner. Thus, the contention of the Petitioner that it should be allowed generic tariff for the entire project in terms of RE Regulations, 2017 is illegal, unjust and unreasonable.”

The Commission observes that the Commission, in the HERC RE Regulations, 2017, has not determined generic tariff for a plant, which run on Bagasse as the fuel source for some months of the year and on other Biomass as the fuel source for some other months of the year. Rather, generic tariff was fixed in the RE Regulations, 2017, for biomass based power project running on the same fuel source throughout the year.

In view of the above submissions & discussions, the Commission is of the considered opinion that the issue raised is liable to be rejected as being devoid of merit and also beyond the scope of review jurisdiction of this Commission.


The Commission observes that the grievance of the applicant (NSML) has arisen from para 12 of the Impugned Order dated 10.01.2018. The same is reproduced as under:-

“12. The Commission has observed that the Respondent has submitted a letter no. No. NSML / 2018-19/424 dated 27th September, 2018 regarding scheduling and dispatch of renewable power generated by them. However, no such issue was raised by them during the hearing of the matter. The Commission further observes that that the RE Regulations in vogue provides for 'must run status' to RE Power Plants below 10 MW only. The Commission had granted ‘must run status’ to paddy straw based power generators in its Order dated 03.01.2019 in Case No. HERC / PRO – 45 of 2018, as a special case in larger public interest, in order to address the environmental concerns arising out of burning of paddy straw. Additionally, the running of power plant of the Respondent on Biomass during off-crushing season is not effected by non introduction of intra-state ABT in Haryana / any Regulations in this regard including the Haryana Grid Code, as the fixed cost of the plant is already covered in the tariff for the energy generated on Bagasse as the fuel.
In view of the above discussions, it is clarified that the power supplied by the Respondent using biomass as fuel during off crushing season, shall not be “Must Run”, in accordance with the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017.”

The Commission observes that the issue of scheduling of the power plant running on Biomass as the fuel source was decided, in view of the issue brought to the consideration of the Commission by NSML vide letter no. No. NSML / 2018-19/424 dated 27th September, 2018 wherein a clarification has been sought from the Commission. Considering the application/ request of the petitioner and the applicable legal framework namely the various regulations covering the scope of “must run status” of power plants, the Commission has given its opinion. The petitioner has, nowhere, in its above letter, has sought any relaxation of any regulation and only a clarification was sought. Now, the petitioner, under the garb of review has sought to give additional justification and has sought a relaxation of applicable regulation. Since, only a clarification was sought in the original letter and no relaxation was sought, the Review Petitioner is barred from seeking additional relief by way of review under the applicable legal framework.

The Commission further observes that even while granting approval to the RfP for Paddy Straw based power project in case no. HERC/PRO-39 of 2017, vide letter no. 1338/HERC/Tariff dated 20.07.2017, it was directed that “……………..Use of any other biomass/fossil fuel etc. shall not be allowed.”

In view of the above, the special dispensation of ‘must run status’ granted by the Commission to paddy straw based power generators in its order dated 03.01.2019 in Case No. HERC / PRO – 45 of 2018, in relaxation of the relevant provisions in the HERC RE Regulations, 2017 was granted for the plant operating on the single specified fuel source i.e. Paddy Straw and that too for the plants set up specifically to meet a specific purpose. By no mean of imagination, the same relaxation can be extended to a power plant running on biomass fuel mix. Such an action, shall open the Pandora of such petitions before the Commission, seeking relaxation on various grounds, which is not justified.

Therefore, since the “Must Run” status has not been granted by present HERC RE Regulations to Biomass power plants of 10 MW and above, therefore, the prayer of the Petitioner, in absence of the provision to this effect in the Regulations in vogue, can not be accepted.

Accordingly, the issue raised is rejected as being devoid of merit and also beyond the scope of review jurisdiction of this Commission.
c) **Signing of amendment agreement by NSML.**

The Commission observes that the amendment agreement dated 07.06.2018 was already entered into between the HPPC and NSML, which was submitted before the Commission for approval, vide case no. HERC/PRO-42 of 2018. The generator made use of the opportunity of hearing given in the matter and contested that the agreement was not willfully signed but signed out of financial coercion so far as grant of tariff at Average Power Purchase Cost is concerned. No other part of amendment agreement was contested by the Review Petitioner.

The Commission after considering all facts & circumstances of the case directed HPPC/DISCOM to redraft the impugned Supplementary Agreement and submit a signed copy of the same for the record of the Commission.

The Commission further observes that amendment agreement is necessary to clarify certain clause of the Main PPA dated 10.03.2014. Accordingly, the issue raised by NSML that there is no need to sign the amendment agreement is rejected as being devoid of merit and also beyond the scope of review jurisdiction of this Commission.

Under the grab of seeking a review, a Petitioner cannot seek re-determination of the case on merits. The power of review cannot be invoked as an appellate jurisdiction of its own decision. A manifest illegality must be shown to exist or a patent error must be shown in an order to review a judgement. No such grounds or patent error has been shown by the Review Petitioner. Hence, even on the said score, the petition deserves to be dismissed.

7. The petition is accordingly disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 26.03.2019.

Date: 26.03.2019 (Pravindra Singh Chauhan) (Jagjeet Singh)  
Place: Panchkula (Member) (Chairman)