

**Before the Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)**

A.No. 205 of 2014 & IA No. 321 of 2014

Dated : 28th April, 2016

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. I. J. KAPOOR, TECHNICAL MEMBER**

In the Matter of:

Hissar Industries Association

Through its President

3, Industrial Development Colony,
Hisar, Haryana – 125 005

... Appellant(s)

Versus

1. Haryana Electricity Regulatory Commission

Bays 33-36, Sector 4,
Panchkula, Haryana – 134 112

2. Haryana Vidyut Prasaran Nigam Ltd.

Shakti Bhawan, Sector-6,
Panchkula – 134 112

... Respondent(s)

Counsel for the Appellant(s) : Mr. Amit Kapur, Ms Pallavi Mohan, Ms. Adrija Das, Advs., Ms. R. Dua, Ms. Raveena Dhamija Mr. R.K. Jain & Ms. Richa Sharma (Reps.)

Counsel for the Respondent(s) : Mr. Sameer Malik, Mr. G. Saikumar, Mr. Raheel Kohli and Ms. Soumya Sai Kumar, Mr. Varun Pathak, Advs. Mr. A. K. Rampal, Consultant, HERC

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

The instant appeal has been filed by Hisar Industries Association (*the appellant herein*) under Section 111 of the Electricity Act, 2003 challenging the order dated 29.05.2014, passed by the Haryana Electricity Regulatory Commission (hereinafter referred to as the **State Commission**) disposing of Petition No.PRO-6 of 2014 allowing ARR for transmission and state load despatch centre business of Haryana Vidyut Prasaran Nigam Ltd. (**HVPNL**) for FY 2014-15, 2015-16 and 2016-17 determining transmission tariff and SLDC charges for FY 2014-15.

- 2) According to the appellant Association, it is aggrieved by arbitrary and unreasonable doubling of the transmission charges which along with unjust multifold increase in cross subsidy surcharge, additional surcharge and distribution wheeling charges is designed to defeat competition and prevent the industrial consumers in the State of Haryana from procuring cheaper power through open access, hence, the present appeal.
- 3) The appellant, Hisar Industries Association has 16 industrial units located in Hisar district and its members are HT Industrial consumers who procure power through open access from outside the State of Haryana. The respondent No.1 is the State Regulatory Commission which is authorised to discharge various functions prescribed under the Electricity Act, 2003 and respondent No.2 is Haryana Vidyut Prasaran Nigam Ltd. a State, a State Government owned company registered under the Companies Act, 1956 and is presently engaged in the business of transmission in the State and is also operating State Load Despatch Centre (**SLDC**) at Sewah in District Panipat.
- 4) HVPNL, respondent No.2 herein, filed MYT/Tariff Petition No. PRO-6 of 2014 on 15.01.2014, under HERC (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff framework) Regulations, 2012 (hereinafter referred to as **MYT Regulations**) seeking determination of ARR for its transmission and State Load Despatch Centre business for FY 2014-15 to FY 2016-17 and the transmission tariff and SLDC charges for FY 2014-15. The first control period for determination of ARR/Tariff under MYT framework was to begin from 01.04.2014 to 31.03.2017. After hearing the parties, including the stake holders, the State Commission has disposed of the said Petition by the Impugned Order. By the Impugned Order 29.05.2014, the learned State Commission, *inter alia*, increased the transmission wheeling charges from 17 paisa/Unit to flat 29 paisa/Unit in order to stifle the spirit of competition in the State. The Impugned Order violates and frustrates the letter and spirit of the Act and the National Tariff Policy, which is to encourage competition in the electricity sector through open access by creating the tariff barriers. In fact, the

order has snuffed out competition by rendering choice of consumers through open access meaningless. Further, the Impugned Order violates principles enunciated under Section 61 of Electricity Act, 2003 as it burdens open access consumers with a prohibitive tariff for availing open access from outside the State, constraining their choice of availing power at the most competitive tariff. Further, the Impugned Order being unfair, unjust and unreasonable, unduly favours the licensees in the State of Haryana at the cost of the generators and licensees outside the State. Thus treating equals unequally. The Impugned order creates trade barriers for generators and licensees existing outside the State of Haryana, which is violative of Articles 19(1)(g) and 301 and 303 of the Constitution of India.

- 5) We have heard Mr. Amit Kapur for the appellant and Mr. G. Sai Kumar and Mr. Samir Malik for the respondents. We have also gone through the written submission submitted by the appellant and also gone through the material on record including the Impugned Order passed by the State Commission.
- 6) The only issue that arises for our consideration is whether the learned State Commission has committed an error in increasing the transmission charges from 17 paisa/Unit to flat rate of 29 paisa/Unit?
- 7) Following are the contentions of the appellant on the said issue:
 - 7.1) That the State Commission has committed an error in abruptly increasing the transmission charges leviable on open access consumers from 17 Paise per unit in FY 2013-14 to a flat rate of 29 Paise per unit in FY 2014-15 without giving any valid reason or justification in the same. The percentage increase in the transmission charges is almost 70%, whereby the energy to be handled has increased by hardly 8%.
 - 7.2) That the State commission has erroneously determined the transmission charges by taking into account future augmentation/modernization of the transmission system and has increased the transmission charges accordingly.

An asset can be charged only when it is put to use and not for projected augmentation of such assets.

- 7.3) That increase in transmission charges is an attempt to burden the industrial consumers availing power through open access and making it prohibitive for them to obtain power from outside the State of Haryana. This increase in transmission charges leading to an increase in the open access charges is colourable exercise of power which is in complete contravention of the Electricity Act, 2003 which expressly provides for and encourages open access as a means of increasing competitiveness in the electricity sector.
- 7.4) That the Impugned Order would result in creating trade barriers for not just the open access consumers in the State of Haryana but also for the generators and licensees outside the State of Haryana, who were supplying power to consumers in the State of Haryana through open access. The prohibitive cost of open access power can be deemed to be an unreasonable restriction on the right of trade and commerce of both the HT industrial consumers in Haryana as well as of the outside generators and licensees, which is enshrined in Article 19(1)(g) and 301 of Constitution of India.
- 7.5) That increase in transmission charges seems to be insignificant in terms of sheer numbers but it is relevant that it is one more way of making open access power prohibitively expensive. It cannot be said that open access consumers have to pay transmission charges in isolation rather cross subsidy charges, additional charges and wheeling charges are also required to be paid by the open access consumers. The role of the Regulatory in such a scenario is not to accept the figures provided by the licensees but rather to put them under prudence check and to further assess them based on the requirement of increasing competition. The reasonable rate of return of the licensees should be ensured, however the Regulatory role is to also ensure that inefficiencies of the licensees are not covered up because of this process.
- 7.6) That the State Commission should be directed to determine the transmission charges based on actual information/data HVPNL.

8) **Per contra**, following are the contentions raised on behalf of the respondent HVPNL:

8.1) That the appellant had not challenged any of the ingredients/factors leading to computation of transmission tariff and simply questioned the increase in tariff although the increase is based on the components of ARR.

8.2) That while referring to Table 3.6 of the Impugned Order, the transmission tariff is simply a product of the total ARR amount divided by the quantum of energy to be wheeled over the system. Thus the ARR ingredients should have been challenged.

8.3) That HVPNL referred to the increase in items like interest on Bonds, interest on Provident Fund Bonds, Terminal benefits and Employees expenses as components of ARR. Since these were duly examined and approved by the State Commission, there is no flaw in the computation of transmission charges.

8.4) Section 61 of the Electricity Act 2003 also has to be read in terms of recovery of cost of electricity in a reasonable manner and not just in terms of promoting competition.

9) **Our consideration and conclusion on the said issue:**

9.1) We have deeply considered the contentions raised by the rival parties which we have cited above. To test or examine the correctness and legality of the Impugned order relating to transmission tariff we deem it proper to cite and consider the relevant part of the Impugned Order, which we reproduce as under:

“3.4 Transmission tariff

The Commission, for determining transmission tariff, has considered the fact that entire cost allocated to the transmission business is of ‘fixed’ nature as already stated. Hence, it would be reasonable to recover the

entire cost through a demand charge based on the ratio of the projected transformation capacity of the distribution licensees and Long-term open access customer i.e. TPTCL.

Considering the above factors, the Commission approves monthly fixed charges (Rs. Million) for the transmission of power by HVPNL and transmission tariff for short term open access consumers for FY 2014-15 as per details given in the Table 3.4:-

Table 3.6 – Determination of Transmission Tariff (FY 2014-15)

Particulars	
Transmission Cost (Rs. Millions)	10099.22
Projected Transformation Capacity (MVA)	19614.28
UHBVNL's Share (MVA)	9476.0
H BVNL's Share (MVA)	10000.5
TPTCL's Share (MVA) 124 MW divided by 0.90 power factor)	137.8
Ratio of Average Transformation Capacity	
UHBVNL (%)	48.31%
DHBVNL (%)	60.99%
TPTCL (%)	0.70%
Transmission Charges Recoverable from UHBVNL (Rs. Millions)	4879.109
Transmission Charges Recoverable from DHBVNL (Rs. Millions)	5149.170
Transmission Charges Recoverable from TPTCL (Rs. Millions)	70.941
Monthly Transmission Charge UHBVNL (Rs. Millions)	406.592
Monthly Transmission Charge DHBVNL (Rs. Millions)	429.097
Monthly Transmission Charge TPTCL (Rs. Millions)	5.912
Transmission Tariff for short term open access customers based on energy sales of 35189 MUs (Rs./kWh)	0.29

- 9.2) The main contention of the appellant, Association, is that the computation of any tariff component cannot be done in such simply strict terms. It is true that the appellant, Association, have not challenged any of the ingredients/factors leading to the computation of transmission tariff. The appellant simply has questioned the increase in tariff although the increase is based on the components of ARR. We have carefully gone through the Table 3.6 of the Impugned Order and find that the prudence check has been exercised by the State Commission and the State Commission has not accepted the figures just at their face value.
- 9.3) It is true that the Electricity Act 2003 also enjoins the Regulatory Commission to ensure that the tariff progressively reflects the actual cost of supply. The State Commission appears to have taken progressive steps in that direction. This is not a case where licensees might be trying to cover up their inefficiency by not providing adequate data. The State Commission after going through the increase referred by HVPNL in items like Interest on bonds, interest on provident fund bonds, terminal benefits and employees expenses as components of ARR has determined the transmission charges for the open access consumers, after applying prudence check in a correct and logical manner. We do not find any flaw in the computation of the transmission charges. The said increase appears to us to be legal and correctly justifiable and requires no interference at this stage in this appeal. The State Commission in the Impugned Order has clearly given the figures in a chart for the said increase from 17 paisa/unit in the FY 2013-14 to a flat rate of 29 paisa/unit for FY 2014-15 after giving valid reasons and proper justification. None of the components of the ARR has been challenged in the whole appeal or during the arguments by the appellant, Association.
- 9.4) In the result, the issue is decided against the appellant, Association and the appeal fails.

ORDER

The instant appeal, being Appeal No.205 of 2014, captioned as *Hisar Industries Association Vs. Haryana Electricity Regulatory Commission & Ors.*, is hereby

dismissed as being without merits and the Impugned Order dated 29.05.2014 relating to transmission charges is hereby affirmed. All the IAs stand disposed of.

No order as to costs.

Pronounced in the open court on this **28th April, 2016.**

(I. J. Kapoor)
Technical Member

(Justice Surendra Kumar)
Judicial Member

