

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

Case No. HERC/RA-1 of 2020

Date of Hearing : 14.07.2020
Date of Order : 15.07.2020

In the Matter of

Petition under Regulation 57 of Haryana Electricity Regulatory Commission (Conduct of Business) Regulation 2019 seeking review of the order dated 07.03.2019 in PRO-52/2018 and PRO-53/2018

Petitioner:

Shree Cement Limited

Respondent:

Uttar Haryana Bijli Vitran Nigam Limited

Present on behalf of the Petitioner:

Sh. Amarjit Singh, Assistant Vice President & Constituent Attorney
Sh. Chetan Rawat, M/s Shree Cement Limited

Present on behalf of Respondent:

Sonia Madan, Advocate, HPPC

Quorum

**Shri D.S. Dhesi
Shri Pravindra Singh
Shri Naresh Sardana**

**Chairman
Member
Member**

ORDER

Brief background of the Case

1. The Petitioner, M/s Shree Cement Limited, has filed the review petition on 12.02.2020 seeking review of the ARR order dated 07.03.2019 in PRO-52/2018 and PRO-53/2018. The petitioner has also submitted application seeking condonation of delay in filing of Review petition.
2. The brief facts leading to filing of the present Petition are as under:-
 1. That the Petitioner, having its Cement production unit at Panipat, is an HT consumer of the Respondent. The production facility of the Petitioner has a contract demand of 8000 KVA that draws power at 33 KV through an independent feeder from 132 KV/33 KV Matlaura sub-station of the Respondent.
 2. That the Hon'ble Commission vide its ARR order dated 11.07.2017 introduced Time of Day (ToD) tariff in the state of Haryana for the period Oct-17 to March-18. The ToD tariff was as available as an option to the H.T Industry including Furnace, L.T.

Industry, H.T. Non-Domestic, Bulk Supply consumers (Excluding Bulk DS), Public Water Works & Lift Irrigation. The necessary conditions for opting ToD were also set out by the Commission in the same order dated 11.07.2017 as under:

“..Since the Commission has introduced ToU tariff as an option, once electing to be charged at the Time of Use Tariff, the consumer / applicant opting for the same shall be charged for a period of not less than six months from the date the Discoms, on an application submitted by a consumer, allows the same. The Discoms shall in no case delay approval / consent beyond three working days from the date of receipt of application from a consumer.

All other charges except PLEC on power purchased from the Discoms during the ToU period shall be applicable for the electricity consumer opting for ToU Tariff. But during the non ToU period PLEC shall continue to be levied. Also, PLEC shall continue to be levied for Open Access Power during ToU period as well as non-ToU period. Based on the response from the consumers and impact on the revenue of the Discoms, the Commission shall review the dispensation on ToU Tariff for the FY 2018-19.

The ToU compatible meter, as per specifications of the Discoms / CEA shall be procured by the Consumers opting for ToU Tariff. The Discoms shall test, seal and install the same within ten days counted from the day a consumer hands over the meter to the Discoms.”

3. That as evident from above the option of ToD tariff was also available to open access consumers for period Oct-17 to Mar-18 , provided they have installed compatible ToD meters.
4. That the Commission vide its ARR order dated 15.11.2018 for tariff period 2018-19 extended the ToD tariff as it is, till further order, except that the rebate for off-peak hours was reduced from 15% to 10%. The Commission further mentioned as under:
“The rebate of 10% shall be increased to 15% in case the consumer install Smart Meter/Smart Grid as per CEA norms. Further, if such consumer install rooftop solar system also then the rebate shall be increased to 20% and in case the rooftop solar system is accompanied by battery storage system, the rebate shall be increased to 25%. The consumers may be allowed to avail these benefits by giving an undertaking to comply with the terms and conditions mentioned herein above within seven months of the date of undertaking. In case any consumers fails to comply with the undertaking within the period of seven months, the benefits so availed shall have to be refunded immediately along with the interest of 17% per annum.”
5. That the petitioner had opted for TOU tariff for both Financial year 2017-18 and Financial Year 2018-19 and was meeting with all the conditions of eligibility to avail the TOU tariff scheme.

Period	Charge	Time
Off-Peak Demand (October to March)	10 % rebate on the normal energy charges as approved by the Commission. *	Will be decided by the concerned SE with the approval of the Managing Director and shall be widely publicized through local newspapers, local television channels, e-mail, sms etc.
Peak Demand (October to March)	19% premium over the energy charges determined by the Commission	
Normal Demand (October to March)	Normal Tariff	
Demand Charges	As determined by the Commission - shall be the same for all	

Period	Charge	Time
	categories of consumers including ToU. PLEC shall continue to be applicable for Open Access Power.	

6. That the Commission in its order dated March 7, 2019 under PRO-52/2018 and PRO-53/2018 on true- up for the FY 2017-18, annual (mid-year) performance review for the FY 2018-19, aggregate revenue requirement of UHBVNL and DHBVNL and distribution & retail supply tariff for the FY 2019-20 has decided to continue the optional Time of Use (TOU)/Time of Day (TOD) tariff for the period from October 2019 to March 2020. The revised ToD tariff scheme approved by the commission in its order dated 7th March 2019 was as under:

** Note: This rebate shall be allowed only to the consumers who install Smart Meter/Smart Grid, irrespective of the consumer category. The same may be installed by the DISCOMs as well as by the consumer themselves as per the directions of DISCOMs. Further, if such consumer install rooftop solar system also then the rebate shall be increased to 15% and in case the rooftop solar system is accompanied by battery storage system (minimum 15% of Sanctioned Load), the rebate shall increase to 20%. The consumers may be allowed to avail these benefits by giving an undertaking to comply with the terms and conditions mentioned herein above within seven months of the date of undertaking. In case any consumers fail to comply with the undertaking within the period of seven months, the benefits so availed shall have to be refunded immediately along with the interest of 17% per annum. The ToD tariff shall not be applicable to the consumers, who source their power from Captive Generation or Open Access at any point of time after 15.06.2019.*

7. That subsequent to order of Hon'ble Commission the Respondent has also issued the Sales Circular No. U-28/2019 dated September 09, 2019 for TOD Tariff in enumerating the ToD time slots and other conditions for opting the TOU/TOD tariff. The copy of the sales circular is enclosed with the petition.

8. That the sale circular provides that the TOU tariff to be charged from the eligible consumers who opt for the same is as per below mentioned table

Period	Time	Charge
Off-Peak demand	2100 hrs to 0530 hrs (next day)	10% of rebate on the normal charges as approved by commission
Peak Demand	19% premium over the energy charges determined by the commission	1730 hrs to 2100 hrs
Normal demand	Normal Tariff	0530 hrs to 1730 hrs

9. That the eligibility conditions as provided in the order of Hon'ble HERC as well as in the sales circular issued by the Respondent for implementation of ToD tariff further states that a consumer who had sourced power from captive generation or open access at any point of time after 15.06.2019, should not be eligible for opting ToD tariff scheme.

10. That from above it is evident appears that ToD tariff benefit cannot be availed by a consumer who has set up a captive generating plant including Solar plant for meeting its captive energy requirement. This is in contradiction with the condition provided in the order dated 07.03.2019, wherein additional rebate of 5% has been allowed

during off peak hours to those consumers who installs a solar rooftop. The relevant extract of the order is reproduced as below:

“..Further, if such consumer install rooftop solar system also then the rebate shall be increased to 15% and in case the rooftop solar system is accompanied by battery storage system (minimum 15% of Sanctioned Load), the rebate shall increase to 20%.”

11. That the Petitioner has also installed a solar plant of 999 KW capacity for captive consumption at its premises which is in operation from September 2019. However, the additional rebate offered for installation of solar rooftop in the order dated 07.03.19 is proving to be imaginary for the reason that the sequence in which these additional rebates are to be allowed fails at the very first step itself, due to the condition which that a consumer who avails power from captive generation or open access of any point of 15.06.2019 would not be eligible.
12. That the Petitioner is also an Open Access consumer and purchases power from IEX under open Access. The petitioner continued to buy power under Open access even after 15.06.2019 as at that time in its did not have a plan to avail power from Discoms during off-peak hours.
13. That further the petitioner also did not have the plan to set-up a captive solar system in its premises, and as such could not comprehend the finer points of the order.
14. That the Petitioner, vide its letter dated 27th November 2019, submitted a written request to opt for ToD to the SDO of concerned sub-division of Respondent (Copy enclosed with the petition). The SDO denied the ToD tariff citing that we have availed Open Access after 15.06.2019. Such a decision, is not in line with the principles enshrined in Electricity Act,2003 as it tantamount to denial of Open Access though not upfront but in a camouflaged way.
15. That besides such an Order is also not in the best interest of Discoms, as it is depriving them of a consumer who is willing to absorb power during the time when it is having massive surplus.
16. That aggrieved by the denial of ToD tariff by the Respondent, the Petitioner is hereby filing this instant petition, for review of the conditions of Open Access and captive consumption, by this Commission, to enable a consumer to avail ToD/ToU benefits.
17. That sufficient reasons, as enumerated above, exist, which empower the Commission to review the specific conditions of limitation in extending the ToU/TOD Tariff to a consumer availing of Open Access after 15.06.2019 and having a captive Solar system installed in its premises.
18. The petitioner prayed the following:
 - a) Extend ToU/ToD tariff benefit for the remaining period, to consumers who are availing Open Access after 15.06.2019 and who are sourcing power from captive solar rooftop system/Captive generation.
 - b) Provide an opportunity to the Petitioner to present his case in person and be permitted to make additional submissions, if any, at the time of hearing.

Proceedings in the Case

3. In response to the review petition, HPPC (Respondent) filed its reply, submitting as under:-

- 1) That the Answering Respondent is filing a short reply at this stage regarding maintainability of the present Petition before this Commission and craves the leave of the Commission to file additional reply on merits in case need so arises or as may be directed by the Hon'ble Commission.
- 2) That at the very outset, it is submitted that the present Petition filed by the Petitioner has become untenable and cannot be adjudicated in its present form as the prayers sought by the Petitioner have been rendered infructuous and are thus, liable to be rejected. The Petitioner, in the present petition has sought review of the order dated 07.03.2019 passed in PRO-52 & 53 of 2018. The said order was passed in the petition for Aggregate Revenue Requirement (ARR) and Distribution and Retail Supply Tariff for the FY 2019-20. However, the said order is no longer applicable and has been superseded by the order dated 01.06.2020 passed by this Hon'ble Commission in PRO- 59 & 60 of 2019 in the Petition for Aggregate Revenue Requirement (ARR) and Distribution and Retail Supply Tariff for the FY 2020-21. Hence, the present Petition has been rendered infructuous by passing of order dated 1.06.2020 and is liable to be dismissed on this short score alone.
- 3) That the Petitioner made following specific prayer in the instant petition –
"Extend the ToU/ ToD tariff benefit for the remaining period to consumers who are availing Open Access after 15.06.2019 and who are sourcing power from captive solar rooftop system/ captive generation."
The remaining period referred in the aforesaid prayer was upto 1.06.2020, i.e. the date of passing of ARR order for FY 2020-21, which has elapsed by now. Thus, the grievance of the Petitioner no longer exists and the present Petition is liable to be dismissed as untenable.
- 4) That even otherwise, the Petitioner has under the garb of review petition sought reliefs which has not been allowed by this Hon'ble Commission after due consideration of facts and submissions of all affected parties. The order of the Hon'ble Commission dated 07.03.2019 is categorical and specific with respect to non-applicability of ToD tariff on specific category of consumer. There is no omission/error apparent on the reading of said order and there exists no 'sufficient cause' permitting review of the order to the extent sought in the present Petition. The Petitioner has in fact claimed reliefs in the present application, which cannot be considered in review jurisdiction. An application seeking modification of the order for personal gain of particular category of stakeholders at the cost of other stakeholders cannot be permitted. The instant application is therefore, an abuse of process of law and liable to be rejected as not maintainable.
- 5) That without prejudice to foregoing, it is submitted that the Hon'ble Commission in the impugned Order had specifically laid down the restriction for Consumers sourcing power from Open Access or captive generation considering that the applicability of Time of Day sensitive pricing on such consumers defeats the very purpose of introduction of ToD/ToU tariff. The ToD tariff was introduced to encourage large consumers of electricity to draw more energy during the off-peak period so as to enable effective load management. This benefit is therefore, intended for the regular consumers of the Discoms, who constantly and uniformly use electricity. The Open Access Consumers do not have any fixed load pattern and if the ToD is made

applicable for them, the Open Access Consumers will get choice for availing cheapest available power from shifting sources of power thereby bringing volatility in the load pattern of the Discoms. Also, this will hamper the power purchase planning of the State and may result in increased cost of supply, additional penalties and losses to the State Exchequer. Further, the rationale for fixation of 15.06.2019 as deadline for imposition of such restriction was to allow sufficient transitional time to the consumers from the date of passing of the order. Thus, the Hon'ble Commission rightly ordered the ToD tariff as non-applicable for Consumers sourcing power from Open Access or captive generation. Therefore, even on merits, the relief sought by the Petitioner is against the larger interest and deserves rejection.

- 6) That it is additionally submitted that the non-applicability of ToD tariff for the consumers sourcing power from Open Access or captive generation has not been stated specifically in the Order dated 1.06.2020 passed by this Hon'ble Commission in PRO-59 & 60 of 2019. It appears from the perusal of order dated 1.06.2020 that the non-applicability of ToD tariff to consumers sourcing power from Open Access or captive generation has been inadvertently omitted to be specified. There appears no logical reason for withdrawal of such restriction in the Order for FY 2020-21. The rationale for not extending the benefit of ToD tariff to Consumers sourcing power from Open Access or captive generation is just and reasonable. As if the Time of the Day sensitive pricing is made applicable to such consumers, it will defeat the very objective of the introduction of ToD/ToU tariff which is intended to reform the load curve. As stated above, if the Consumers sourcing power from Open Access or captive generation are allowed the benefit of ToD tariff, it would tantamount to unduly benefit a particular group of stakeholders at the cost of the public at large. Thus, the ToD tariff should only be applicable to the consumers who are constantly and uniformly drawing energy from Discoms. In that view of the matter, it is humbly prayed that the Hon'ble Commission may pass an order specifically extending the non-applicability of ToD tariff to the consumers sourcing power from Open Access or captive generation.
- 7) That it is submitted that review is by no means an appeal in disguise and there is a difference between an erroneous decision and an error apparent on the face of the record. The Petitioner is seeking re-modification of the Order to its advantage under review jurisdiction, which is not permissible under law. Thus, considering any aspect of the matter, the instant petition is untenable and bereft of any merit.
In view of the foregoing, it is most humbly prayed that the review application filed by the Petitioner shall be dismissed summarily with exemplary costs.

Commission's Analysis and Order

4. The case was scheduled for hearing on 06.05.2020 but due to pandemic, was rescheduled for 14.07.2020. The matter was heard by the Commission on 14.07.2020, as scheduled through virtual court.
5. At the onset, the Petitioner briefly stated the facts of the case and that they have sought review of the HERC order dated 07.03.2019 passed in PRO-52 & 53 of 2018 passed on the petition filed by the Discoms for determination of Aggregate Revenue Requirement (ARR) and Distribution and Retail Supply Tariff for the FY 2019-20.

6. The counsel for the respondent observed that the present Petition filed by the Petitioner has become untenable and cannot be adjudicated in its present form as the prayers sought by the Petitioner have been rendered infructuous by passing of order dated 01.06.2020 in PRO- 59 & 60 of 2019 in the Petition for Aggregate Revenue Requirement (ARR) and Distribution and Retail Supply Tariff for the FY 2020-21 and are thus, liable to be rejected. On a query from the Commission, the petitioner also agreed with the aforesaid submission of the respondent herein.
7. Considering the submissions and admitted position of both the parties, the Commission is of the considered view that the review sought by the petitioner has become infructuous in light of the Order dated 01.06.2020 in PRO- 59 & 60 of 2019. Therefore, nothing remains for consideration and order of the Commission.
8. The review petition is accordingly disposed of.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 15.07.2020.

Date: 15.07.2020
Place: Panchkula

(Naresh Sardana)
Member

(Pravindra Singh)
Member

(D.S. Dhesi)
Chairman