

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

CASE NO: HERC / PRO- 41 of 2020

**DATE OF HEARING : 15.04.2021
DATE OF ORDER : 15.04.2021**

IN THE MATTER OF:

Petition under Section 86(1)(e), 86(1)(c), Section 42 and other applicable provisions of the Electricity Act, 2003 read with the relevant provisions of the HERC (Terms and Conditions for grant of connectivity and open access for intra-state transmission and distribution system) Regulations, 2012 and the HERC (Terms and Conditions for determination of tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017.

Petitioner

1. M/s. Greenyana Power Private Limited. (HERC/PRO-41 of 2020)

Respondents

1. Haryana Vidyut Prasaran Nigam Ltd (HVPNL), Panchkula
2. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Hisar
3. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Panchkula
4. Haryana Power Purchase Centre (HPPC), Panchkula
5. Haryana Renewable Energy Development Agency (HAREDA)

Present

On behalf of the Petitioner through Video Conferencing

1. Shri Damodar Solanki, Advocate

On behalf of the Respondents through Video Conferencing

1. Shri Samir Malik, Advocate for Respondents (UHBVN, DHBVN, HPPC)

QUORUM

**Shri Pravindra Singh Chauhan,
Shri Naresh Sardana,**

**Member
Member**

ORDER

1. By way of the present petition, the petitioner has invoked the jurisdiction of this Commission under Sections 86(1) (e), 86 (1) (c), Section 42 Read with Electricity Act, 2003 and the relevant provisions of the HERC (Terms and Conditions for grant of

connectivity and open access for intra-state transmission and distribution system) Regulations, 2012 ("HERC OA Regulations, 2012") and the HERC (Terms and Conditions for determination of tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 ("HERC RE Regulations, 2017"). So invoking the jurisdiction, the petitioner has prayed for the following reliefs:-

- a) Direct the Respondents to sign the connection agreement with the Petitioner.
 - b) Direct the Respondent No. 1/HVPN to grant R-Number to the Petitioner to enable it to start the evacuation system work;
 - c) Hold and declare that the conditions imposed in Clause (viii) of the Final Approval dated 07.11.2019 granted by HVPN in restricting the drawl of power by the consumer from the captive renewable generator is bad in law and accordingly, is to be quashed;
 - d) Hold and declare that the provisions of the draft Tripartite Banking Agreement to the extent of restrictions on the quantum of renewable energy generation capacity and quantum of injection are bad in law and are non-operable;
 - e) Hold and declare that the Respondents cannot impose any condition in relation to either the capacity of the Renewable Energy based captive generator, or for drawl of power by the consumer or for the agreement to be entered into by the consumer with the captive generator or in relation to the quantum of electricity to be banked or injected by the generator;
 - f) Award costs of the present petition in favour of the Petitioner and against the Respondents; and
 - g) Pass such other further order (s) as the Hon'ble Commission may deem just in the facts of the present petition.
2. The case was heard by the Commission on 15.04.2021, through Video Conferencing, as scheduled, in view of COVID-19 pandemic. The Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by the parties.
 3. The Commission observes that issue no. c, d and e raised by the Petitioner in its prayer, have already been decided by the Commission in its Order dated 24.09.2020 (HERC/PRO-23 of 2020, in the matter of M/s. Greenyana Solar Private Limited). The operative part of the Order dated 24.09.2020, is reproduced below: -

“67. This Commission has analysed the provision of Regulation 5 read with Regulation 8 of the Open Access Regulations. Regulation 5 provides for the eligibility of a consumer/person seeking connectivity for open access from the DISCOM in as much as it prescribes the voltage level at which open access is to be granted in general. Regulation 8(1) lays down the qualification criterion for entitlement of open access which in general cases can be availed by consumers having a minimum capacity/demand of 1 MW. It further specifies that this restriction of minimum capacity is not applicable in case of generators based on renewable energy. Clearly, the above provision lays down the minimum threshold limit prescribed for grant of open access and in no way relates to the limit on drawl beyond contracted capacity. The system design is based on contracted capacity as such contracted capacity is a system parameter and the open access has to be restricted within that limit. The Commission has deliberately put penalty for drawl beyond open access in lieu of system security. In this regard reference is made to S. No. 2.5 of statement of reasons given in OA regulations first amendment.

“2.5. Levy of demand surcharge for total drawl (MW) exceeding the contract demand (for open access consumers) In the Schedule of Tariff approved by the Commission the provision for levy of demand surcharge in case maximum demand of a consumer exceeds his contract demand has been made as under:

“In case the maximum demand of the consumer exceeds his contract demand in any month by more than 5%, a surcharge of 25% will be levied on the SOP amount for that month.” The main reason for providing such a heavy / deterrent penalty for drawl or maximum demand of the consumer exceeding his contract demand is that in doing so the consumer is over loading or straining the system of the licensee beyond permissible design limits which may sometime even cause damage to the system. The Commission observes that if an embedded open access consumer, who is drawing power partly or whole of it through open access, exceeds his contract demand by more than 5% as per his energy meter, he is subjecting the system of the licensee to the same risk as is being done by another consumer, who is not drawing any power through open access, when he exceeds his contract demand. So the penalty in the two cases has to be same. It has been accordingly provided that in case total drawl (i.e. drawl from the licensee plus drawl through open access) of an embedded open access consumer exceeds his contract

demand by more than 5% at any time during the month as per his energy meter, he will be levied demand surcharge as per schedule of tariff approved by the Commission from time to time and for the purpose of levying demand surcharge, the total energy drawn during the month including drawl through open access shall be considered. The consumption charges for the energy drawl through open access, for the purpose of SOP, will be worked out at the applicable tariff for the category to which the consumer belongs. The amendment in the regulations has been made accordingly.”

68. *The proviso to Regulation 8 (1) cannot in any manner be read to understand that there cannot be any restriction on drawl of power by a captive consumer of a Solar based Captive generating plant, as has been argued by the Petitioner. The Petitioner’s above argument is arising out of misreading of the above Regulations. Regulation 8 clearly provides that the provisions thereof are subject to the other regulations contained in Open Access Regulations. Thus, Regulation 8 shall have to be read along with other applicable regulations of Open Access Regulations., i.e. Regulations 24, 42, 43 and 45.*
69. *A conjoint reading of the said Regulations 24, 42, 43 and 45 prescribe certain consequences and penalties for over drawl of electricity by an open access consumer beyond their contract demand. These regulations in essence place restrictions on open access consumers to limit their drawl up to its contracted capacity. Regulation 42 read with regulation 24, 43 and 45 specifically prescribe penalty for drawl of power beyond the contact demand of an embedded open access consumer in the form of imbalance charges, demand surcharge, etc.*
70. *In case open access power drawl of any consumer of the Petitioner exceeds his contract demand, then in terms of the above provisions he shall be liable for penalties prescribed. The incorporation of the condition that open access granted to the Petitioner shall be restricted to the contract demand of its open access consumer is thus, in line with the provisions above mentioned. There is no illegality in making explicit what the above provisions prescribe.*
71. *Further, such restrictions are necessary to be placed in the approvals for connectivity granted to the solar power developers to prevent/reduce unutilized surplus solar power.*
72. *Accordingly, the condition no. (viii) of the in-principle connectivity which reads as:-*

“viii. The power drawn by the consumer/applicant shall not be more than its contract demand during any time slot of the day”,

and the condition no. (viii) of the final connectivity, which reads as:

“Open Access consumers going for tie up with solar generators, should not be permitted to have agreements more than their respective contracted demand, so that there is minimum unutilized surplus solar power generation”

are legal and in consonance with the Open Access Regulations.

Considering the above, this Commission is of the view that the conditions imposed under In-Principle Feasibility and Final Connectivity granted by HVPNL restricting the drawl of electricity by open access consumers as well as the capacity for which an agreement can be entered into upto their respective contract demands, respectively, are legally valid.

d) Whether the condition in the Tripartite Agreement to treat the power injected by the generator beyond the contracted capacity as dumped energy bad in law?

73. This Commission has considered its order dated 13.05.2019 passed in PRO 22 of 2019 filed by HAREDA seeking amendments in the RE Regulations. One of the prayers made in the said petition for seeking amendment in Clause no. 60 (1) & (2) of the RE Regulation, 2017 in-line with Clause no. 4.3 of Haryana Solar Power Policy 2016 amended and notified vide notification no. 19/7/2019-5P dated 08.03.2019. This Commission after considering the rival contentions and views of all stakeholders and after conducting a public hearing, inter alia, held as under:

“7. The issues raised by the stakeholders including HAREDA and the Commission’s decision thereto are as under:-

i) Wheeling and banking agreement has not been finalized by HVPNL/SLDC.

Commission’s view:-

Procedure/guidelines for banking of energy from RE power projects submitted by HVPNL vide memo no. Ch-104/15B-521 dated 06.03.2019 as prepared in consultation with stakeholders, is approved and enclosed with these Regulations as Annexure-A-1.

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ANNEXURE A-1

PROCEDURE / GUIDELINES FOR BANKING OF RENEWABLE ENERGY (RE) POWER:

This procedure has been prepared in compliance to the “Haryana Electricity Regulatory Commission RE Regulations, 2017(notification dated 24th July 2018). This Procedure shall be read in conjunction with the said Regulations.

The procedure covers guidelines, terms and conditions, various applicable charges, application format for applying for Banking/use of Transmission and/or Distribution system of the licensee(s) i.e. Haryana Vidyut Prasaran Nigam limited (HVPNL) and/or Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) and Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) and disposal of applications made with HPPC for Banking of power by from Solar Power developers. This procedure shall be reviewed or revised by the nodal office i.e. HPPC, as and when required to address any teething/ implementation problems that may arise, with prior approval of HERC. This procedure shall come into force after approval of the HERC.

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D. Terms and conditions for Banking:

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xiv. Any solar power injected over and above the contracted capacity in any time block will be treated as dumped energy and not accounted for.”

74. A perusal of the order passed by this Commission clears the position that as per Annexure A-1, clause D of the guidelines for banking as approved by the Commission, one of the condition for availing banking facility by a RE Generator is that the solar power injected over and above the contracted capacity in any time block will be treated as dumped energy and not accounted for.
75. Thus, condition incorporated in the Tripartite Agreement to treat the power injected by the generator beyond the contracted capacity as dumped energy is in line with the aforesaid order dated 13.05.2019 and the guidelines issued by this Commission in PRO 22 of 2019. Accordingly, it is held that the same is valid and is correctly incorporated in the Tri-Partite Agreement.

76. Further, from this perspective also it is important that restriction of drawl of electricity only up to contract demand by captive users of the Petitioner is necessary and has been rightly so incorporated in the in-principle approval and final approval.

In view of the above, this Commission is of the view that the provisions of the Tripartite Banking Agreement are in consonance with the order passed by this Commission as well as the RE Regulations and thus, legally valid.”

4. The Commission observes that issue decided in its Order dated 24.09.2020, reproduced above, applies mutatis-mutandis to the issue no. c, d and e raised by the Petitioner. However, an appeal has been filed against the Order of the Commission dated 24.09.2020, in the Hon'ble Appellate Tribunal for Electricity (Appeal No. 164 of 2020) and the petitioner has admitted that the outcome of the said appeal has direct bearing on the present case. Therefore, issue no. c, d and e are decided in terms of the Order dated 24.09.2020, subject to the decision of Hon'ble Appellate Tribunal for Electricity in Appeal No. 164 of 2020.
5. Further, regarding issue no. a and b i.e. signing of the connection agreement and grant of R-Number to the Petitioner by the Respondents, the Commission has taken note of letter no. Ch-173/ISB-521/Vol-III dated 02.04.2021, filed by HVPNL intimating the circulation of *“Procedure for dealing pending solar applications seeking grid connectivity of Solar Power Plants/Parks from HVPNL/DISCOMs Substations”*, vide memo no. Ch-201/ISB-535/Vol-III (Progress) dated 01.04.2021. The said procedure has been prepared by HVPNL, under the directions of the Commission in similar cases under consideration of the Commission (HERC/PRO-37 of 2020 and HERC/PRO-38 of 2020). Further, HVPNL, vide memo no. Ch-154/ISB-521/Vol-III dated 22.03.2021, has submitted *“Detailed procedure for grant of connectivity & intra-State Open Access”*, for approval of the Commission, in accordance with Regulation no. 6 of the HERC OA Regulations, 2012. The Commission has approved the said procedure, vide Memo no. 162-166 / HERC / Tariff , dated 15.04.2021.

6. Accordingly, HVPNL/DISCOMs are directed to send a copy of the procedure to the Petitioner as well and take further necessary action in the matter accordingly within the timeframe and manner specified in the said procedure approved by the Commission.
7. In terms of the above Order, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 15.04.2021.

Date: 15.04.2021
Place: Panchkula

(Naresh Sardana)
Member

(Pravindra Singh Chauhan)
Member

Haryana Electricity Regulatory Commission