

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

Case No. HERC/Petition No. 11 & 14 of 2021

**Date of Hearing : 25.08.2021
Date of Order : 01.09.2021**

IN THE MATTER OF

Petition under Regulation 10 of HERC (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to recover security) Regulations 2016, regarding deferment/postponement of the revision of Consumption Security Deposit recoverable from consumers during the FY 2020-21 & FY 2021 – **UHBVN Petition No. 14 of 2021**

AND IN THE MATTER OF

Petition for waiver of revision of Advance Consumption Deposit (ACD) for FY 2019-20 and FY 2020-21 – **DHBVN Petition No. 11 of 2021.**

Petitioner(s)

Uttar Haryana Bijli Vitran Nigam Ltd. (Petition No. 14 of 2021)
Dakshin Haryana Bijli Vitran Nigam Ltd (Petition No. 11 of 2021)

Present On behalf of the Petitioner, through Video Conferencing

Shri R.K. Sodha, Director 'OP', DHBVN
Shri Anil Sharma, SE / IT, DHBVN
Shri Krishan Swaroop, SE / Commercial/RA, DHBVN
Shri R.K. Khanna, CE / Commercial, UHBVN
Shri Anurag Nanchahal, CFO, UHBVN

Quorum

Shri R.K. Pachnanda	Chairman
Shri Pravindra Singh Chauhan	Member
Shri Naresh Sardana	Member

ORDER

1. The petitioner(s) herein i.e. UHBVNL and DHBVNL (collectively referred to as the Discoms) are the distribution licensees in Haryana and functioning under the terms of distribution and retail supply license issued to them by the Haryana Electricity Regulatory Commission.

2. The Commission, in exercise of the legislative functions delegated to it under section 181 of the Electricity Act, 2003 notifies Regulations incorporating the terms and conditions for conducting various functions of the licensees and intra-State generating companies in Haryana. As held by the Apex Court, the Regulations notified by the Commission has the force of law behind them. Needless to add that the Regulations are of binding nature for all the regulated entities in the power sector in Haryana.
3. Accordingly, in exercise of powers conferred under sub-section 2 (t, v) of section 181 read with sections 43, 46 & 47 of the Electricity Act, 2003, the Commission specified the following regulations including amendments and re-enactment.
 - i) DUTY TO SUPPLY ELECTRICITY ON REQUEST, POWER TO RECOVER EXPENDITURE INCURRED IN PROVIDING SUPPLY & POWER TO REQUIRE SECURITY – dated 26th July, 2005.

Regulation 5.3.1 empowers the Discoms to collect and maintain consumption security, defined as security on account of consumption, both from HT as well as LT consumers. Further, regulation 5.5.1 of the ibid regulations provided that the security amount shall be initially revised within a period of six months from the date of notification of the Regulations and once in three years thereafter based on average consumption during the preceding financial year.

The aforesaid Regulations were amended vide notification dated 9th September, 2009 (1st amendment) and 24th April, 2013 (2nd amendment).

However, the relevant clause, as appearing in the principle regulations, the dispensation on consumption security remained un-changed.

- ii) The Regulations i.e. Duty to supply electricity on request, power to recover expenditure incurred in providing supply and Power to require security was re-enacted vide notification dated 11th July, 2016. In these regulations the nomenclature of consumer security was changed to Advance Consumption Deposit (ACD) defined as under:

(2) “advance consumption deposit (ACD)” means deposit as a security to cover the consumption charges for the period as specified in these Regulations;

Additionally, the dispensation for ‘review’ was changed from once in three years to ‘annual’ i.e. at the beginning of each financial year. The relevant regulation is reproduced below:

“5.9 Review of Security Deposit for power consumption (ACD)”

(1) At the beginning of the financial year, the licensee shall review the consumption pattern of the consumer for the adequacy of the security deposit from April to March of the previous year...”

Evidently, the dispensation regarding consumption security / Advance Consumption Deposit had existed since notification of the Regulations in the year 2005. The obvious reasons behind the dispensation was to provide risk mitigation to the Discoms against defaulting consumers as well as minimise the working capital loan requirement and interest thereto, as the interest payable on ACD to the consumers is at the RBI Bank Rate which is way below the MCLR linked interest on short – term working capital loans.

4. The petitioner(s) i.e. DHBVN has prayed for waiver of revision and recovery, from the consumers, of Advance Consumption Deposit (ACD) for FY 2019-20 & FY 2020-21, whereas UHBVN for the FY 2019-20, FY 2020-21 & FY 2021-22, in view of the Covid 19 pandemic.
5. The petitions, being similar in nature, were heard together in the hearing held on 25.08.2021 through video conferencing, in view of the Covid-19 pandemic. In the hearing, the Discoms submitted that revision of ACD could not be accomplished in the timeline prescribed for the purpose as the underlying data was voluminous in nature and also required updating. The petitioners admitted that there has been non-compliance of the regulations / order of the Commission.
6. At the onset the Commission notes that UHBVNL has sought ex- post facto waiver of revision i.e. for the FY 2020 and FY 2021 (subsequently clarified to include FY 2022), which is long over. Hence, seeking waiver for relinquishing the duty to undertake revision of ACD for the financial years already over serves no purpose. UHBVNL, while seeking similar waiver, has included FY 2022 as well, which is almost half way through. The Commission has taken note of the submissions of UHBVNL that the data of ACD revised since 8.01.2014 is being compiled and some details in respect of ACD revision for the FY 2015-16 and FY 2016-17 has been received in respect of four circles. The submissions of the Director ‘OP’ DHBVNL that the status of ACD revision was carried out for HT and LT consumers for the FY 2017-18 to FY 2018-19 only, as ACD data for DS / NDS could not be updated, has also been taken on record.
7. The Commission has considered the above submissions including the assertion of DHBVNL that no individual officer / official can be pinpointed since huge work

is involved in reconciliation of ACD of DS / NDS consumers due to their number running into lakhs. The Commission has taken strong exception to the indifferent and casual approach in dealing with the statutory provisions on ACD and its revision thereto, something that has been vogue for over 15 years now. Hence, such negligence and inaction for a prolonged period of time cannot be considered as inadvertent. The officers concerned are guilty of depriving the Nigam of the additional amount in the form of ACD that it would have got on timely revision as well as interest costs that could have been saved on working capital.

The Commission has taken serious note of the fact that the senior management including the BoD of both the Discoms failed to put in place a system since 2005 to assess, review and accordingly reset ACD in a timely manner as per the Regulations in vogue. At this stage, without even quantifying the ACD adjustments required across all consumer categories, the Discoms have sought ex-post facto waiver of the regulatory requirement qua ACD review for FY 2020 to FY 2022, as the same was required to be undertaken at the beginning of the financial year. Such negligence leading to reconciliation problems and inability to review ACD as required not only impacts the liquidity of the Discoms but may also lead to onerous and avoidable financial burden on the electricity consumers in case of revision of the ACD amount after a gap of several years instead of marginal year to year adjustments. Had this been done timely it would not have burdened the consumers at this stage.

As far as concerns regarding revised ACD expressed by consumers and consumer association is concerned, the Discoms needs to note that the Regulations are notified by the Commission keeping in view the interest of all stakeholders including the power utilities and electricity consumers as well. Hence, any deviations to be taken from regulations / order in vogue, has to be necessarily with the prior approval of the Commission. However, in the present case, the Discoms have sought ex-post facto approval to the waiver of a statutory provision regarding ACD revision that has already been given effect by them by issuing commercial circular(s). Further, the ex-post facto approval was sought after the Commission issued notice under section 142 of the Electricity Act for non-compliance of the regulation on revision of ACD for the FY 2019-20. Additionally, it is observed that the revision in ACD for the FY 2019-20, as per the regulation, should have been accomplished at the beginning of the said financial

year i.e. 1st April, 2019 and at that time Covid – 19 and its repercussions had not touched the shores of India.

In view of the admitted non-compliance and, in the considered view of the Commission, wilful negligence, as well as system failure, leading to the present situation of lack of updated information in giving effect to a statutory provision, the Discoms are liable for penal action u/s 142 and 146 of the Electricity Act, 2003. **However, before proceeding with the penal action, the Commission has taken cognizance of the contention of the Dakshin Haryana Bijli Vitran Nigam Limited and Uttar Haryana Bijli Vitran Nigam Limited that responsibility for non-compliance in the present case cannot be “pinpointed”. In such a situation, the Commission is constrained and has no alternative but to direct the Chairman of the Dakshin Haryana Bijli Vitran Nigam Limited and Uttar Haryana Bijli Vitran Nigam Limited to investigate as to why revision of ACD of individual consumers, as intended in the Regulations in vogue, since 2005, was not carried out. Had this been done every year, even after amendment in 2013, the issue of hardship to consumers after the onset of Covid-19, would not have arisen at all. The Chairman of the Dakshin Haryana Bijli Vitran Nigam Limited and Uttar Haryana Bijli Vitran Nigam Limited must submit a report to the Commission on this, within 15 days from the date of this order.**

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 01.09.2021. A copy of this order be forwarded to the Chairman of the Discoms for compliance in a time bound manner.

Date: 01.09.2021 (Naresh Sardana) (Pravindra Singh Chauhan) (R.K. Pachnanda)
Place: Panchkula Member Member Chairman