

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

**Case No. HERC/Petition No.- 31 of 2022**

**Case No. HERC/Petition No.- 35 of 2022**

**Date of Hearing : 19.10.2022**

**Date of Order : 20.10.2022**

**IN THE MATTER OF:**

**Petition filed under Section 42 of the Electricity Act 2003 and Regulations 22 of Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 and amended thereof for determining the Additional Surcharge for 1st Half of FY 2022-23 and approval for levying the same to the Open Access consumers till the issuance of the next order.**

**Petitioners**

1. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Panchkula
2. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Hisar

**Respondents**

General Public

**Present on behalf of the Petitioner(s)**

1. Shri Ved Parkash Sihag, SE/RA, DHBVNL
2. Shri Kunal Singhal, Director (PWC), Consultant, UHBVNL and DHBVNL
3. Shri B.S. Kamboj, XEN/RA, UHBVNL
4. Shri Shamsher Singh, XEN/RA, DHBVNL

**Present on behalf of the Respondents**

1. Shri Ashu Gupta, M/s. Cleanmax Enviro Energy Solutions Pvt. Ltd.

**QUORUM**

**Shri R.K. Pachnanda,  
Shri Naresh Sardana,**

**Chairman  
Member**

**ORDER**

1. The instant petition(s) have been filed by the distribution licensees in Haryana viz. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Panchkula and Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Hisar (hereinafter referred to as "DISCOMs) for determination of Additional Surcharge for the 1st half of the FY 2022-23 onwards on the basis of data for the 2nd half of the FY 2021-22 i.e. Oct., 2021 to March, 2022.
2. The DISCOMs have submitted as under:
  - a) To ensure that only the power stranded/surrendered due to open access consumers is considered for determination of additional surcharge, the lower of the

open access power and surrendered power in each time slot has been taken into account to calculate the quantum of stranded power for determination of the Additional Surcharge.

- b) That based on the time slot wise stranded power, as determined above, the total quantum of backing down, eligible for computation of the Additional Surcharge, has been determined.
- c) That the admissible backing down quantum of power is further multiplied by the per unit fixed charge (Rs. kWh) approved by this Hon'ble Commission to determine the total amount of Additional Surcharge.
- d) That the per unit average fixed charges, approved by the Commission, in the tariff order dated 30.03.2021 (Case No. HERC/PRO - 77 of 2020 & HERC/PRO - 78 of 2020), is Rs. 1.17 per kWh.
- e) Accordingly, the per unit Additional Surcharge is determined by dividing the total Additional Surcharge with the estimated Open Access Units in MUs in the first half of the FY 2022-23, on the assumption that the quantum of power bought by the consumers under open access mechanism will be the same as that in the second half of the FY 2021-22.
- f) The details of the backing down, attributable to Open Access in MW and MUs, for calculation of Additional Surcharges and power brought under Open Access mechanism, is given in the table below:-

#### Month-wise Stranded Power & Open Access Power

Month	Stranded Power Min. of OA & backdown (MW)	Stranded Power Min. of OA & backdown (MU)	OA Purchase (MW)	OA Purchase (MU)
Oct'21	25.54	19.00	36.46	27.12
Nov'21	76.51	55.09	96.28	69.32
Dec'21	83.84	62.38	116.84	86.93
Jan'22	61.82	45.99	62.82	46.74
Feb'22	52.67	35.40	115.90	77.88
Mar'22	3.15	2.34	4.12	3.07
<b>Total</b>		<b>220.20</b>		<b>311.05</b>

- g) The calculation of total Additional Surcharge as well as in terms of Rupees per unit (Rs / Unit) to be recovered from the Open Access consumers in the first half of the FY 2022-23 and onwards, as submitted by the DISCOMs, is as follows:

#### Calculation of Additional Surcharge

SN	Particulars	Units	Value
1	Total Eligible Quantum (Min of Backing down and OA) to be considered for Additional Surcharge	MU	220.20
2	Actual Fixed cost per unit for FY 2021-22	Rs/kWh	1.173
3	Cost of stranded power eligible for Additional Surcharge	Rs. Cr.	25.83
4	Estimated Open Access Units for H1 of FY 2022-23 (considered same as in H2 of FY 2021-22)	MU	311.05

5	Additional Surcharge to be applicable on OA Consumers	Rs /kWh	0.83
---	---	---------	------

- h) That the DISCOMs have proposed to recover additional surcharge of Rs 0.83 per unit from the open access consumers, calculated on the basis of details of the slot wise surrendered power and slot wise open access power, considering data of all days.
- i) In view of the above, following prayers have been made:-
- i) The instant Petition for Additional Surcharge may kindly be approved;
  - ii) Additional Surcharge of Rs. 0.83/kWh may kindly be allowed to recover from Open Access consumers in First Half of FY 2022-23 and thereof till the issuance of subsequent Order;
  - iii) Condone any inadvertent omissions/errors/shortcomings and permit the Petitioners to add/change/modify/alter this filing and make further submissions as may be required during the proceedings in the matter;
  - iv) Pass the necessary order as may be deemed fit for recovery of Additional surcharge from the Open Access Consumers.

### **Proceedings in the Case**

3. In order to take the process forward, the Commission issued a Public Notice in two newspapers having wide circulation in Haryana i.e. The Indian Express (English) and Dainik Jagran Haryana (Hindi) dated 30.08.2022 and 31.08.2022, respectively, for inviting comments/objections from the general public/stakeholders, on or before 13.10.2022 and intimating that hearing shall be held on 19.10.2022 in the court room of the Commission. The said public notice was also hosted on the website of the Commission under "Public Notice" heading.
4. In response to the ibid public notice, the following comments / objections / suggestions were received by the Commission:-
  - (a) M/s Cleanmax Enviro Solutions Pvt. Ltd.
  - (b) M/s. IEX
5. The comments/objections filed by M/s. Cleanmax Enviro Solutions Pvt. Ltd is briefly set out as under:-
  - a) In line with the statements made by the Haryana Power Generation Corporation Limited (HPGCL), reports of Comptroller & General and of CEA, it is not convincing that that the Back down of power is on account of power being sourced under open access by the various Commercial and Industrial consumers in the state of Haryana and thus any such additional surcharge may not be levied on the open access consumers of the state.

b) HPGCL in its petition for True-up of FY 2020-21, Mid-Year Performance Review for FY 2021-22 & Generation Tariff for FY 2022-23 has submitted before this Commission as under:-

**“A5.2: Unit-6 Scheduling; regarding:**

1. HPGCL at this juncture is not challenging any of the issue adjudicated by the Commission on Stay application, the issue is being raised merely for calling the attention of the Commission about **the step treatment being given by DISCOMs to HPGCL Units.**

2. HPGCL has raised the concerns vide letter 27.08.2021, the same may be perused at Annexure-P3 that power is being procured from the IEX at abnormal high prices and boxing up of Unit-6, PTPS even at offered price of Rs 3.675/KWh cannot be justified and is against the interest of the Consumers of the State.

.....

9. HERC in many orders has categorically directed DISCOMs to take prior approval while resorting to Short Term purchase of power above APPC price. Thus, the DISCOMs have tweaked the Commission permission of day ahead power to resort to costly purchase from market on day to day basis. The same require to be noted in the matter and corrective steps are required to be taken in interest of consumer of State at large.

10. It is worth to apprise that as per the knowledge of HPGCL, no regulatory order or directive bars the scheduling of Unit-6, PTPS by DISCOMs at offered price, when the power is being procured from the IEX at abnormal high rate of Rs 12/KWh.

.....

12. The Short-Term power purchase by DISCOMs @ Rs 12/KWh (approx) instead of Scheduling 190MW of Unit-6 (Ex-bus) @ Rs 3.675/Kwh has lead to additional burden of Rs 2.827 Crore during 16.08.2021 to 18.08.2021.

.....

14. Further, HPGCL vide letter dated 01.07.2021 has communicated the price of Rs 3.675/KWh for merchant sale. The reasons for not taking standing approval from the Commission for having cheaper stand by source for peak season in present scenario where Adani and CGPL have backed out from contracted obligations is of great concern and needs to be noted.

.....

16. Therefore, the matter of **non-scheduling of HPGCL Unit-6, PTPS @ Rs 3.675/KWh available inside the state, instead of resorting to costly merchant power procurement from outside the state by additionally paying transaction charges and grid losses in prevailing high price scenarios from IEX is of**

**great concern. Thus, DISCOMs may be directed to ascertain the reasons for non-scheduling of Unit-6, PTPS and resorting to power purchase from IEX.**

- c) The petitioner has failed to provide the data as to how much backdown has been done to the Haryana based power plants for the procurement of the power by the petitioner DISCOMs under short term/medium term under bilateral purchase or from exchange. The summary of the back down data provided by the petitioner, is as under: -

Backdown of Power Month /Backdown	UHBVNL						DHBVNL					
	Oct	Nov	Dec	Jan	Feb	Mar	Oct	Nov	Dec	Jan	Feb	Mar
Haryana Based Plants	82%	88%	81%	84%	73%	87%	82%	88%	81%	84%	73%	82%
Outside Haryana Plants	18%	12%	19%	16%	27%	13%	18%	12%	19%	16%	27%	18%

From the above, it can be seen that more than 82% of the backdown has happened for the power plants of the state of Haryana / HPGCL. Thus, the reason of the backdown and statement of the HPGCL in their petitions finds relevance for the calculation and imposition of the Additional Surcharge on the Open Access Consumers in the state of Haryana.

- d) The Report of the Comptroller and Auditor General of India on Functioning of Haryana Power Generation Corporation Limited- Government of Haryana Report No. 6 of the year 2022 (Performance Audit) states that:-

*“The backing down of the Thermal Power Plant of state of Haryana / HPGCL are not on account of Open Access being availed by the C&I consumers rather it is on account of **“Higher Variable Cost of Power from the Plants of HPGCL”** due to which BDIs are being issued to them by the petitioner DISCOMs / HPPC.*

*The prime reason for the higher variable cost of power from the plants of HPGCL is again **“NOT Attributed”** to the open access of power consumed by the C&I Consumer but is attributed to factors like:*

- i. Inherent Locational disadvantages to HPGCL Plants*
- ii. incorrect booking of Operation & Maintenance (O&M) expenses in variable coal cost.*
- iii. Repair and Maintenance of Power Plants*

- e) Honorable Uttar Pradesh Electricity Regulatory Commission in the matter of Additional Surcharge has decided as under:-

**“Commission’s Analysis:**

*7.5.15 The Commission has taken note of the submission made by the Petitioner. It is observed that approx. 50% of the power purchased by the Licensee is from short & medium-term sources. In view of the same, it is not understood, how a*

consumer opting for open access would then result in the stranded costs for the Petitioner.

- f) The following CEA data showing the actual power supply position during the year 2021-22 and anticipated power requirement and availability position during the year 2022-23, supports the denial of the demand for additional surcharges on the open access consumers in the State:-

**File No.CEA-GO-12-31/1/2022-GM Division**

**CENTRAL ELECTRICITY AUTHORITY** **LGBR: 2022-23**

**Anticipated Power Supply Position in the Country during 2022-23**

State / UT / Region	ENERGY				PEAK			
	Require ment	Availa bility	Surplus / Deficit (-)		Demand	Availa bility	Surplus / Deficit(-)	
	(MU)	(MU)	(MU)	(%)	(MW)	(MW)	(MW)	(%)
Chandigarh	1,610	1,680	70	4.3	440	370	-70	-15.9
Delhi	35,580	29,610	(-) 5,970	(-) 16.8	8,200	5,860	(-) 2,340	(-) 28.5
Haryana	61,820	59,330	(-) 2,490	(-) 4.0	12,700	11,650	(-) 1,050	(-) 8.3

**File No.CEA-GO-12-31/1/2022-GM Division** **Annex-II**

**Actual Power Supply Position in terms of Energy for various States/UTs during the year 2021-22**

Region / State / System	Requirement (MU)	Energy Supplied (MU)	Energy not Supplied	
			(MU)	(%)
Chandigarh	1,608	1,608	0	0.0
Delhi	30,917	30,911	6	0.0
Haryana	55,168	54,979	189	0.3

- g) In view of the above, since the Backing down of the power plants of the State of Haryana was not on account of Open Access by C&I Consumer, the Additional surcharge should not be leviable on them. Further, till such time the petitioners avail power under short term and medium term, there cannot be a situation for the levy of additional surcharge on account of backing down of long term PPA by the petitioner.
6. The comments/objections filed by M/s. IEX is briefly set out as under:-
- a) That the consumers of the Distribution Licensee pay demand charges even while availing power through open access. These demand charges account for recovery of some part of the fixed cost borne by the Distribution Licensee and ought to be