

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Petition No. - of 2023

Date of Hearing : 06.04.2023
Date of Order : 24 .04.2023

In the Matter of

Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023 - Suo-Moto.

Present: -

1. Mr. Ashu Gupta, M/s. Cleanmax
2. Ms. Vidisha Dubey, M/s. DiSPA
3. Ms. Aerika Singh, Advocate, HVPNL
4. Mr. Parinay Deep Singh, Advocate, M/s. KRBL
5. Mr. Parag, Mr. Ashwani, Mr. Parmesh, M/s. Maruti Suzuki India Ltd.
6. Mr. V.P. Sihag, SE/RA, DHBVNL
7. Mr. J.C. Sharma, SE/RA, UHBVNL
8. Ms. Sonia Madan, Advocate, DISCOMs
9. Mr. U.K. Aggarwal, Director/HPGCL
10. Mr. Roopal Khushwaha, Renew Power
11. Mr. Raj Kumar Singh
12. Mr. Mayank Tyagi
13. Mr. Sandeep Aggarwal
14. Mr. O.P. Aggarwal
15. Mr. Mohd. Asif Iqbal, SE/STU
16. Mr. Ravi Shekhar
17. Mr. Anshumali Bajpai
18. Ms. Shreya

Quorum

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

**Chairman
Member**

ORDER

Statement of Reasons (SOR)

1. Section 181 of the Electricity Act, 2003 empowers the Commission to frame regulations specified therein i.e. "*The State Commission may, by notification, make regulations consistent with this Act and the Regulations generally to carry out the provisions of this Act.*" Further, Section 2 (59) of the Act defines "Regulations" as "*Regulations means*

Regulations made under this Act". Additionally, Section 176 and Section 180 of the Electricity Act, 2003 empowers the Central/State Governments to make Regulations for carrying out the provisions of this Act.

Gol Notification (6.06.2022):

2. That the Ministry of Power, Government of India, has notified, on 06th June, 2022, the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Regulations, 2022, applicable on generation, purchase and consumption of green energy as defined therein including waste-to-energy power plants.

Central Nodal Agency:

3. Consequent to the notification of the Green Energy Open Access Regulations, 2022, the Central Government, on 08.07.2022, notified the Power System Operation Corporation Limited now known as Grid Controller of India Ltd. (POSOCO), as the Central Nodal Agency to set up and operate a single window green energy open access system for renewable energy.
4. As per Rule 7 of the ibid Regulations, POSOCO was to prepare a common format for administration and grant of green energy open access by the Central Nodal Agency. Accordingly, POSOCO framed the procedure of green energy open access and submitted to Forum of Regulators (FOR) on 17.11.2022.
5. Further, as per Rule 12 (1) of the Regulations, FOR was required to prepare a model regulation on methodology for calculation of open access charges, as well as banking charges, in order to have a common methodology for calculation of open access charges across the country. The same was approved by the Forum of Regulators (FOR) in its 82nd meeting held on 16.09.2022.
6. In the above gridline, it is noted that India has set a target of non-fossil energy capacity of 500 GW by 2030, out of which 280 GW is expected to be the share of solar power. India has a target of 5 million ton a year of green hydrogen capacity by 2030. By the

year 2070, India has a target to achieve Net Zero Carbon Emissions i.e. Carbon Neutral.

7. The Commission in order to broadly align its Regulations with the aforesaid goals, in order to achieve the national objectives and "Rules" issued a draft Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023 for discussions and invited comments/ suggestions/objections from the stakeholders for giving a final shape to the draft Regulations.
8. A public notice, inviting comments on the draft amendment, latest by 31.03.2023, was placed in the Newspapers dated 22.03.2023 and also hosted on the website of the Commission,
9. In response, the following stakeholders have filed their comments/suggestions: -
 1. Sunbeam Real Venture Pvt. Ltd.
 2. LR Energy (Roop Ram Industries Pvt. Ltd.)
 3. Cleanmax Enviro Energy Solutions Pvt. Ltd.
 4. KRBL Ltd.
 5. Distributed Solar Power Association (DiSPA)
 6. Saini Power Transactor
 7. Reliance Industries Ltd.
 8. Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL)
 9. AMP Energy India Pvt. Ltd.
 10. TSSDG India Pvt. Ltd.
 11. PHD Chamber of Commerce and Industry
 12. Maruti Suzuki India Ltd.
 13. Vena Energy
 14. Fourth Partner Energy Pvt. Ltd.
 15. Faridabad Industries Association
 16. The Associated Chambers of Commerce and Industry of India
 17. ReNew Power
 18. Haryana Vidyut Prasaran Nigam Ltd. (HVPNL)
 19. Uttar Haryana Bijli Vitran Nigam Ltd. (UHBVNL)
 20. Indian Energy Exchange (IEX)

The Comments filed / issues raised by the intervenors and the Commission's view thereof, are as follows:-

- 9.1 **Regulation 1 (4):** The draft for discussions provide that,
"These regulations shall be applicable on generation, purchase and consumption of green energy as defined herein including waste-to-energy power

plants, notwithstanding anything contrary containing in any other regulations, for the time being in force.

Provided that other conditions of grant of connectivity and open access in respect of green energy generation, purchase and consumption, to which no express provision has been made in these regulations, shall be in accordance with the provisions of HERC Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation Regulations, 2019, Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 and Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021, as amended from time to time.

9.1.1 Comments filed by Sunbeam Real Venture Pvt. Ltd., PHD Chamber of Commerce and Industry, Faridabad Industries Association and Vena Energy:

The intent of “Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022” is to promote renewable energy by providing uniform approach. Clause 5(1) of the said rules clearly states that “To provide Green Energy Open Access to consumers of green energy, the appropriate Commission may, if necessary, amend the relevant regulations made by it and such regulations shall be consistent with these rules”. Therefore, all provisions of other regulations should not be applicable on green energy open access projects.

The interveners have requested the Commission to incorporate following provisions:

Reliability Charges specified under the clause 72 (c) of “Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021” shall not be applicable.

In order to avoid confusion and make it clearer and implementable, it is requested to add provision ‘that only charges specified under Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023” shall be applicable.

Commission’s View: It goes without saying that any other charge, not mentioned in these Regulations or the Green Open Access Rules, 2022, will not be applicable. However, to allay the fears of the intervener it is made clear that from the date of notification of these Regulations, the ‘Reliability Charge’ will not be applicable for the Open Access consumers availing open access for bringing in green power under these Regulations.

It needs to be noted that this Commission is also bound by its Regulations. Hence, the distribution licensee ought not to collect any charge other than what they are authorized by the Regulations to collect. Resultantly, the suggestion of the interveners has been considered. It is clarified that only charges specified under Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023” shall be applicable in addition to charges as specified in the Deviation Settlement Mechanism and Open Access Regulations in vogue or applicable charges as per the HERC ARR / Tariff order(s).

The interveners have submitted that this Hon’ble Commission in its Discussion Paper for inviting comments/suggestions from stakeholders/general public for finalization of the Haryana Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023 has made both HERC Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation Regulations, 2019 and Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 applicable, which is causing double commercial impact on captive users.

As per the provision of clause 12 of the Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 and amendment 2013, there

is a penalty in case captive user is drawing more than the admissible drawl. Relevant provision is reproduced below: -

"In case recorded drawl of the consumer in any time slot exceeds his total admissible drawl but is within 105 % of his contract demand, he will be liable to pay charges for the excess drawl (beyond admissible drawl) at twice the applicable tariff including FSA. In case the recorded drawl exceeds the sanctioned contract demand by more than 5% at any time during the month as per his energy meter, demand surcharge as per relevant schedule of tariff approved by the Commission shall also be leviable. For the purpose of calculating demand surcharge in such cases, the total energy drawl during the month including the energy drawl through open access shall be considered. The consumption charges for the energy drawl through open access, for the purpose of levy of demand surcharge, will be worked out at the applicable tariff for the category to which the consumer belongs."

Also, as per the provisions of HERC Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation Regulations, 2019 there are penalties on injection side also.

Objections (Sunbeam & PHD Chambers)

As renewable energy source is intermittent in nature, imposing penalty on both drawl and injection sides is a double loss to the consumers. Therefore, it is requested that there should not be any penalties on drawl side as mentioned in clause 12 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 amendment 2013.

Commission's View: At the onset it is noted that in order to manage costs imposed by larger integration of green power including the cost of transmission, say a 50 MW of solar power, will have to pay for the entire capacity i.e. 50 MW but the actual capacity utilization is just a fraction of the installed capacity. Further, with advancement in the reliability of forecasting, the error factor has considerably reduced. Moreover, the

HERC Deviation Settlement Mechanism is for Solar and Wind power only. However, addressing just the supply side (injection) does not complete the cycle for efficiently managing the Grid. Therefore, on the drawl side (consumers) there has to be some discipline as well. This is taken care of by the Open Access Regulations, 2012 including its subsequent amendments or re-enactment, if any.

Resultantly, the Commission finds no merit in the contentions of the interveners on this issue. Grid security and efficiency is of utmost importance and any violations have to be curtailed directly or indirectly through price signals.

9.1.2 Comments filed by Cleanmax Enviro Energy Solutions Pvt. Ltd. and ReNew Power

The charges and surcharges imposed through the said regulations under clause 72 (c) shall be categorically stated to be not applicable on the generation / consumption of power from renewable energy.

Commission's View: - The Commission has considered the above objection; the issue of levy of 'reliability charge' has been discussed earlier in this order. It is reiterated that only those charges as mentioned in these Regulations will be applicable.

9.1.3 Comments filed by KRBL Ltd.

M/s KRBL has objected on the plea that the proviso Regulation 1(4) could be interpreted to mean that the provisions of the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 (hereinafter referred to as the "**HERC RE Regulations, 2021**") even if contradictory to the express provisions of the GOA Rules, made by the Central Government under Section 176 of the Act, 2023, will continue to prevail despite the notification of the proposed Regulations. For instance, Regulation 72 (c) of HERC RE Regulations, 2021 which fixes 'reliability charge' at INR. 1.50 should not continue to

prevail being contrary to Rule 9 of the GOA Rules 2022, this is because the rules prescribe the charges to be imposed on Green Open Access Consumers and these charges are exhaustive and do not include any “reliability charge”. If there is any other interpretation that this Hon’ble Commission has in mind while inserting this paragraph, then this Hon’ble Commission may clarify it, at least to the extent that ‘reliability charge’ under Section 72(c) of the HERC RE Regulations, 2021 have now come to an end.

Commission’s view: The issue raised by the intervener herein is again regarding the apprehension that ‘Reliability Charge’ may still be continued under the garb of the proviso referred to in the ibid objection. The Commission has considered the objection filed on this issue, and observes that on the issue of levy of ‘reliability charge’ the Commission, earlier in this order, has already given its mind. Hence, the same is not being repeated here.

9.1.4 **Objections filed by Distributed Solar Power Association (DISPA) and Haryana State Development Council of the Associated Chambers of Commerce and Industry of India (ASSOCHAM)**

It has been submitted by ASSOCHAM that a clarification may be issued that term “other conditions” does not include charges under regulations 72 (c) “Reliability charges” of the HERC (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021, as amended from time to time.

Further, the charges and surcharges imposed through the said regulations under clause 72 (c) shall be categorically stated to be not applicable on the generation / consumption of power from renewable energy.

Further, the Hon’ble Commission in their regulations should also categorically define that no other charges / surcharges as may be defined in any other regulations will be applicable on generation and consumption of renewable energy from solar and wind under intrastate Open Access which is not the part of the Haryana electricity Regulatory Commission green energy Open Access regulations 2023 for the entire useful life for

the projects which are commissioned within the control period or prior to the control Period of these regulations.

Commission's View: The interveners herein have again raised the issue of levy of 'reliability charge' and 'other' charge as may be specified in any other Regulations notified by this Commission. The Commission has considered the objection filed, it is reiterated that only those charges as mentioned in the 'Rules' shall be levied under these Regulations and 'reliability charge' is not one of them. Further, a few charges that are incidental to 'open access' including scheduling and dispatch and mentioned in the HERC DSM and Open Access Regulations shall be leviable.

9.1.5 **Comments filed by Fourth Partner Energy Pvt. Ltd.**

The intervener has submitted that it may be clarified as under:-

1. Reliability Charges specified under the clause 72 (c) of "Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021" shall not be applicable.
2. Prior captive status approval from Discom shall be removed/deleted from STU connectivity procedure dated 15.04.2021.

Commission's View:

The issue raised at point number one above has already been dealt by the Commission earlier in the present order. It is once again made clear that no charge, other than the charges mentioned in the 'Rules' will be levied except the charges incidental to 'open access' per.se.

The Commission observes that the second issue pertains to upfront approval of 'captive' status by the Discoms. As it pertains to the terms of connectivity procedure, the Commission is not expressing its view on this issue here as the details of the connectivity procedure is not part of the Regulations under considerations.

9.1.6 **Comments filed by Haryana Vidyut Prasaran Nigam (HVPNL)**

1) Issue w.r.t. grant of Connectivity:

MoP ibid notification dated 6th June 2022, nowhere specify about dealing/granting connectivity under these rules. Also, the procedure for Green Energy Open Access issued by GRID-INDIA (formerly POSOCO) has excluded the grant of connectivity outside the purview of their GOAR portal. The same is reproduced as under for kind reference please:

“3. Connectivity: Any new entity shall obtain connectivity to the grid (interstate/intrastate) prior to making an application for registration in the GOAR portal as per the extant CERC/SERC regulations as may be applicable.

4. Registration: Once the connectivity has been obtained by the entity, an application for registration shall be made on the GOAR portal

As per draft Regulation, the time frame for dealing connectivity has been mentioned as 15 days. Allowing connectivity to a large MW scale generator with grid in time frame of 15 days is quite difficult & depend case to case basis, in some cases it is not possible within above timeframe as the same require technical assessment as well as load flow study for stability of grid.

Hence, the matter w.r.t. grant of connectivity to generators seeking Green Energy Open Access should be in line with MoP notification dated 06.06.2022 and subsequently procedure issued by POSOCO (Central Nodal Agency). The same may be dealt as per existing regulation/procedure prior to the registration of applicant on GOAR portal.

2) At present, applications for Open Access in Haryana are governed by HERC Connectivity & Open Access Regulation 2012 and its 1st amendment in 2013. It is submitted that the instant draft regulation is not elaborate and does have a few clauses, also many provision of existing Open Access Regulation will also be applicable on such Green Open Access applications and hence, HVPNL is of view that it will more suitable to incorporate these changes through amendment in existing HERC Open

Access regulation to give effect to MOP ibid notification. Moreover, this will also avoid any overlapping or contradiction on the applicability of any clause w.r.t. renewable energy/green energy e.g.

Time frame for grant of connectivity as per HERC Open Access regulation: 45 days,

As against this the time frame for grant of connectivity as per draft Green Energy Open Access regulation: 15 days

Commission's view: The Commission has considered the above-mentioned objections filed by the transmission licensee / HVPNL. At the onset, the Commission, given the importance attached to promoting rapid integration of green power, has considered it appropriate to frame a separate set of Regulations for promoting Green Open Access, instead of amending the existing OA provisions. A separate set of Regulations will give more clarity to the entire mechanism. However, a cross-reference to OA Regulations, 2012 and DSM Regulations is required as it is incidental to open access per.se.

On the issue of timeline for grant of connectivity, the Commission observes that in the past grant of connectivity to open access consumers has been has been unduly delayed by the power utilities creating a lot of uncertainty for the project developers. As far as Load Flow is concerned, it is a dynamic exercise; hence, it should be undertaken on a continuous basis at regular intervals. Consequently, HVPNL must gear up its resources, however, given the inter – utility work involved as pointed out by the intervener, the Commission is of the considered view that 30 days will be a reasonable time. Hence, instead of 15 days, the draft Regulations shall be amended to read as 30 days' timeline for grant of connectivity.

Action: HVPNL As far as connectivity procedure is concerned, HVPNL, in consultation with the stakeholders should revisit the existing connectivity procedure with an objective to make it seamless, removing all possible bottlenecks/ambiguities and submit the same for approval of the Commission within a month.

9.2 **Provision in The Draft Regulations**

Regulation 3: Applicability-

Provided that a generating station, including captive generating plant, or a consumer/ person shall not be eligible to apply for long term or medium term or short-term open access unless he has the connectivity or he applies for connectivity to the intra-State transmission or distribution system as the case may be.

9.2.1 **Comments filed by Fourth Partner Energy Pvt. Ltd.**

Comments/Suggestion: -

1. Please clarify what is the definition of captive generating plant and how much equity investment will be required for a consumer to qualify as captive consumer of that plant.
2. Will you allow LTOA, MTOA, or STOA for a consumer having Inter State Transmission System connectivity.

Commission's View: The Commission has considered the contentions of M/s Fourth Partner. The Commission is of the considered view that there may not be a need to define a CPP here. A CPP is defined in the Electricity Act, 2003 and by the 'Rules' framed by the Central Government the terms including equity holding has been laid down.

As far as granting open access to a consumer having inter-State connectivity is concerned, it needs to be noted that given the fact that the intervening state transmission lines / transformation capacity etc. will have to be reckoned with prior to granting open access to the intra-state transmission / distribution system. Hence, for an entity to avail open access to the intra-state transmission / distribution system the requirement for having intra-state connectivity will be essential.

9.2.2 **Comments filed by HVPNL**

These regulations shall apply where an application has been made for grant of connectivity in respect of green energy for the purpose of open access to the intra-state transmission and or distribution system and or where such an application has been made for long term open access, medium term open access or short-term open access for use of the intra- State transmission and or distribution system including when such system is used in conjunction with inter-State transmission system.

Provided that a generating station, including captive generating plant, or a consumer / person shall not be eligible to apply for long term or medium term or short term open access unless he has the connectivity or he applies for connectivity to the intra-State transmission or distribution system as the case may be.

~~Provided further that a person may apply for connectivity as well as long term or medium term or short term open access simultaneously.~~

Provided further that prior to making an application, the entity shall obtain connectivity to the grid (interstate/intrastate) as per the extant applicable CERC/HERC regulations

Commission's view: The Commission has considered the submissions of HVPNL on the issue of connectivity. It is observed that the changes suggested in the language do not add any value or clarity to the regulations as such. Hence, no change, is required.

9.3 Provision in The Draft Regulations

Regulation 4(a): Renewable Purchase Obligation-

Own Generation from renewable energy sources: - There shall not be any capacity limit for installation of power plants from renewable energy sources, by obligated entities for their own consumption and such plants may be set up at any location in India and power shall be transmitted by using open access.

Provided that the generating plant may be set up by the entity itself or by a developer with which the entity enters into a power purchase agreement.

9.3.1 Comments filed by Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL) -

The capacity limit for installation of power plants should be restricted up to the contract demand of the obligated entities so that the existing infrastructure don't get overburdened

9.3.2 **Comments filed by Uttar Haryana Bijli Vitran Nigam Ltd. (UHBVNL)**

The capacity limit for installation of power plants may please be restricted up to the contract demand sanctioned by Distribution Licensee as the electric infrastructure created by the Discom commensurate with the sanctioned contract demand.

While the valuable consumers are facilitated to go for Open Access beyond their contract demand, it also become important to value the role of Discoms in providing electricity access to all. Discom's role may not only be restricted only to create and maintain infrastructure while the valuable consumers are facilitated to go for Open Access.

Commission's view – The Commission observes that both the distribution licensees in Haryana i.e. UHBVNL and DHBVNL have filed identical comments i.e. to restrict the capacity of RE Power Plant to the sanctioned contract demand. The power sector reform in India began by delicensing generation activity. The statute occupying the field i.e. The Electricity Act, 2003 provides for the same. Hence, imposing capacity restrictions, that too on renewable power plant, will be akin to imposing regulations / restrictions through the back door. The submissions of the distribution licensee is devoid of merit and hence rejected. The Discoms are advised to assess the demand that is likely to met through Green Open Access and accordingly formulate their power procurement plan in the medium to long term. In effect it would mean that Discoms, in addition to projecting consumer category wise sales must also build-in demand that would be met through open access power both Green and conventional fuel-based power.

9.4 **Provision in The Draft Regulations**

Regulation 4(C)

“(a) Any consumer may elect to purchase green energy either up to a certain percentage of the consumption or its entire consumption and they may place a

requisition for this with their distribution licensee, which shall procure such quantity of green energy and supply it and the consumer shall have the flexibility to give separate requisition for solar and non-solar;

(b) The consumer may purchase on a voluntary basis, more renewable energy, than he is obligated to do.

(c) The tariff for the green energy shall be determined separately by the Commission.

(d) Any requisition for green energy from a distribution licensee shall be for a minimum period of one year;

(e) The quantum of green energy shall be pre-specified for at least one year;"

9.4.1 **Comments filed by Reliance Industries Ltd.**

We request the Honorable Commission to incorporate the below changes in the said clauses: -

"d) Any requisition for green energy from a distribution licensee shall be for a minimum period of one month;

(e) The quantum of green energy shall be pre-specified for at least one month;"

Rationale: -

Rule 4, in sub-rule (2), in clause (C), for sub-clause (a) of Electricity (Green Energy Open Access Amendment) Rule 2023 issued by Ministry of Power on 27th January is reproduced below:-

"Any consumer may elect to purchase green energy either upto a certain percentage of the consumption or its entire consumption and they may place a requisition for this with their distribution licensee, which shall procure such quantity of green energy and supply it and the consumer shall have the flexibility to give separate requisition for solar and non-solar".