

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

CASE NO: HERC / PRO- 33 of 2022

IA No. 3 of 2023

IA No. 5 of 2023

IA No. 6 of 2023

DATE OF HEARING : 29.03.2023
DATE OF ORDER : 26.04.2023

IN THE MATTER OF:

Petition seeking initiation of amendment in the provisions of the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Certificate) Regulation, 2021.

AND IN THE MATTER OF

Application for impleadment on behalf of M/s. KRBL Limited (IA No. 3 of 2023)

AND IN THE MATTER OF

Application for impleadment on behalf of M/s. Goodrich Carbohydrates Ltd (IA No. 5 of 2023)

AND IN THE MATTER OF

Application for impleadment on behalf of M/s. Faridabad Industries Association (IA No. 6 of 2023)

Petitioners

1. M/s. Distributed Solar Power Association (DISPA)
2. M/s. Merino Industries Ltd
3. M/s. Garg Spinning Mills

Respondents

1. Haryana Power Purchase Centre (HPPC), Panchkula
2. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Panchkula
3. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Hisar

Objectors

M/s. KRBL Limited

Present

On behalf of the Petitioners

1. Shri Aditya K. Singh, Advocate

On behalf of the Respondents

1. Ms. Aditi Lakhanpal and Ms. Aerika Singh, Advocates c/o Smt. Sonia Madan

On behalf of the Objectors

1. Shri Parinay Deep Shah, Advocate for M/s. KRBL
2. Shri D.S. Patwalia, Sr. Advocate with Shri Sehaj Bir Singh, Advocate for M/s. Goodrich Carbohydrates Ltd. and M/s. Faridabad Industries Association (M/s. FIA)

Quorum

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

**Chairman
Member**

ORDER

Brief Background of the case

1. The present petition has been filed by M/s. Distributed Solar Power Association (“DiSPA) along with M/s. Merino Industries Ltd and M/s. Garg Spinning Mills, praying for initiation of the process to repeal Regulation 72 (c) of the HERC RE Regulations, 2021, to ensure consistency with the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 (“MoP Open Access Rules”).
2. **Brief submissions of the petitioner (s) are as under:-**
 - 2.1 That Rule 9 of MoP Open Access Rules list out certain charges which can be levied on Green Energy Open Access consumers. Rule 9 in clear terms provides that consumers are not liable to pay any other charges which are not listed in rules. Rule 9 has listed Transmission Charges, Wheeling Charges, Cross Subsidy Charges and Standby Charges.
 - 2.2 That Regulation 72 of the HERC Tariff Regulations, 2021 lays down that open access customers/generators shall pay Rs. 1.50 per unit for injection/drawl of solar power in the grid as “Reliability Charges” which is unlawful and without any basis and therefore, initiation of suitable process under Section 181 r/w Section 86 (1) (b) (c) and (k) of the Act is sought.
 - 2.3 That Regulation 72 was brought into effect by this Hon’ble Commission on 27.04.2021 and Rule 9 of MoP Open Access Rules was brought into effect on 06.06.2022. Section 181 of the Electricity Act, 2003 (“Electricity Act”) states in clear manner that this Hon’ble Commission should make regulations consistent with the provisions of the Act and the Rules issued by the government. It is a matter of record that terms of the HERC Tariff Regulations, 2021 are not consistent with MoP Open Access Rules.

2.4 Therefore, this petition has been filed to pray this Hon'ble Commission to ensure consistency between the terms of the HERC Tariff Regulations, 2021 and MoP Open Access Rules, as mandated under Electricity Act, 2003.

2.5 The following prayers have been made:

- a. Admit the present petition.
- b. Initiate process of amendment in Regulation 72 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, to repeal 72 (c), to ensure consistency with Rules framed by the Central Government;
- c. Pass any other order/ direction as the Commission may deem fit in the interest of justice.

3. HPPC/UHBVNL the respondent nos. 1 and 2 in the present matter, have filed their common reply on an affidavit dated 25.01.2023. The brief submissions of the respondents are as under:-

3.1 That the present petition is essentially a challenge to Regulation 72 of the HERC RE Regulations, 2021. Whereas, the challenge to the validity of Regulations framed by the Hon'ble Commission lies only before the Hon'ble High Court under Article 226 of the Constitution of India.

3.2 That the petitioners have contended that Rule 9 of the Electricity (Promoting renewable energy through green open access) Rules, 2022 ("Green Energy OA Rules, 2022") notified on 06.06.2022 by the Ministry of Power ("MoP"), lists out certain charges which can be levied on Green Energy Open Access Consumers, apart from which no other charges can be levied. The petitioners have alleged that Regulation 72 of the RE Regulations, 2021, whereby Reliability Charges are being imposed is contrary to the Green Energy OA Rules, 2022 notified by the MoP. Whereas, a perusal of Rule 9 shows that the 'Standby Charges' are being imposed on the OA Consumers. The said charges are defined under Rule 9(4) as under:

"(4) The standby charges, wherever applicable, shall be specified by the State Commission and such charges shall not be applicable if the Green Energy Open Access Consumers have given notice, in advance at least twenty four hours before the time of delivery of power, for standby arrangement to the distribution licensee:

Provided that the applicable standby charges shall not be more than Ten per cent of the energy charges applicable to consumer tariff category.

Explanation: For the purposes of this rule, (i) the expression—standby charges means the charges applicable to open access consumers against the standby arrangement provided by the distribution licensee, in case the open access consumer is unable to procure power from the generating sources with whom they have the agreements to procure power due to outages of generator, transmission assets and the like.”

At present, no ‘stand-by charges’ are being imposed. Further, Rule 8 of the Green Energy OA Rules, 2022 relating to Banking of energy state that – “Banking shall be permitted at least on a monthly basis on payment of charges to compensate additional costs, if any, to the distribution licensee by the Banking and the Appropriate Commission shall fix the applicable charges.” Therefore, the Commission has been duly empowered to fix such charges as are appropriate to cover the associated cost of solar generation in the State. Thus, the reliance of the petitioners on the Green Energy OA Rules, 2022 is completely misplaced.

- 3.3 That the Reliability Charges have consciously been provided under the HERC RE Regulations, 2021 considering the impact of infirm injection of solar power on Discoms. The Reliability Charges provides for recovery cost associated to keep the system ready and available, increasing flexibility of existing thermal plants, associated balancing cost and to recover part of DSM/ADSM penalties. Since there is no mechanism for sharing the balancing costs by the beneficiaries, the RE generators should contribute by way of payment of suitable Reliability Charges to the Discoms for availing Open access along with banking facility in addition to other applicable charges.
- 3.4 That there are certain charges attributable to managing the infirm solar and wind generation, which are not recovered from the respective beneficiaries and are instead socialized in tariff and recovered from consumers at large. Therefore, based on a study conducted by the Central Electricity Authority (CEA) in pursuance of directions from the MoP, the impact to the tune of Rs. 1.50 per unit has been assessed for Haryana towards RE integration and the same should be recovered from the renewable generators in the form of reliability charges for availing banking facility or OA in addition to other applicable charges.
- 3.5 That the petitioners have failed to provide any justification or material on record to demonstrate that the charges determined are wrong or incorrect. However, if

required, a fresh study, taking into account the recent market trends may also be conducted for evaluating the Reliability Charges to be imposed.

Proceedings in the Case

4. The petition was taken up for hearing on 01.02.2023. The learned counsel for the respondents Ms. Sonia Madan proposed that the Discoms/HPPC may be allowed, to conduct a fresh study, taking into account the policy changes and recent data for assessing the 'Reliability Charges' to be imposed. Accordingly, the Commission, vide its interim order dated 01.02.2023, directed the respondents to conduct a detailed study and file the same in the Commission along with the proposal of charges to be levied on green open access consumers, taking into consideration the Electricity (Promoting renewable energy through green open access) Rules, 2022 (Green OA Rules, 2022), notified by the Ministry of Power on 06.06.2022, within six weeks.
5. The Hon'ble Punjab and Haryana High Court, took cognizance of the interim order of the Commission dated 01.02.2023, in its judgment dated 08.02.2023 in CWP 6549 of 2022 and granted liberty to the litigants, as prayed for by them, to file their objections/representations before the Commission. The operative part of the judgement is reproduced hereunder:-
“
...
In such circumstances, and in view of the abovesaid statements, it is observed that the petitioners are permitted to file their objections/representations, within a week from today. They are also granted liberty to approach the Commission in respect of levy/recovery of reliability charges etc., during the pendency of the matter before the Commission. The Commission shall consider the representation/objections of the petitioners as regards their concerns/grievances, as indicated above, and decide the same within a period of two weeks thereafter.”
6. Accordingly, M/s. KRBL, M/s. Goodrich Carbohydrates Ltd and M/s. Faridabad Industries Association, have filed their comments/representations and prayed for an interim stay on the levy of banking as well as reliability charges.
7. The Commission has allowed the objectors to file their objections. However, the objectors were directed that they ought not to lose sight of the scope of the present petition, which is limited to the prayer of the petitioner (s) herein i.e. “Initiate process of amendment in Regulation 72 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,

to repeal 72 (c), to ensure consistency with the Rules framed by the Central Government”.

8. The Commission in its interim order dated 01.02.2023, has already directed HPPC to conduct a detailed study for the State of Haryana for calculation of financial implication for the grid (transmission and distribution system) on account of managing intermittency of renewable energy generation and file the same in the Commission along with the proposal of charges to be levied on green open access consumers, taking into consideration the Electricity (Promoting renewable energy through green open access) Rules, 2022 (Green OA Rules, 2022), notified by the Ministry of Power on 06.06.2022 read with subsequent amendment (s). Further, the Commission is in the process of preparing a draft regulation for discussions in view of the Green OA Rules, 2022, notified by the Ministry of Power, Government of India.

Commission’s Analysis and Order

9. The case was heard on 29.03.2023, in the court room of the Commission, wherein the parties reiterated their written submissions, which for the sake of brevity, is not being reproduced here.
10. The counsels for the respondents submitted that the Central Electricity Authority (CEA) has been requested to conduct a study on the reliability surcharge in Haryana, as directed by the Hon’ble Commission in its earlier orders. The counsel further placed on record an email from the Central Electricity Authority dated 18.03.2023, wherein CEA has intimated that they are in internal consultation with other formations and will revert in a week’s time after discussing and deciding about the approach for the instant study as well as the time required for the study. The counsels for the respondent pleaded that the present case may be adjourned for at least two weeks.
11. Shri D.S. Patwalia, the learned counsel for the objectors viz. M/s. Goodrich Carbohydrates Ltd. and M/s. Faridabad Industries Association (M/s. FIA), vehemently argued that the Commission is empowered to grant an interim stay on the levy of reliability charges of Rs. 1.50/unit as provided under regulations 72 of the HERC RE Regulations, 2021 and the same shall not amount to amendment/relaxation of the Regulations. In support, Shri Patwalia referred the judgement of the Hon’ble Supreme Court dated 29.04.1992 (Shree Chamundi Mopeds Ltd. vs. Chuch of South India Trust Association CSI CINOD Secretariate, Madras, Civil Appeal No. 2553 of 1991

with CA No. 126 of 1992). The relevant para of the judgement cited by the learned counsel is reproduced hereunder:-

“f.....while considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order, which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.....”

The learned counsel further argued that the report of CEA on the study of reliability charges may take considerable time to come as the same has not even started and is in an internal deliberation stage only. However, he submitted that in case, some charges are held to be recoverable post CEA study, the Discoms may always recover the same from the open access consumers who are also embedded consumers of the Discoms. Therefore, it is the apt case to grant an interim stay on the levy of reliability charges on green open access consumers of the State.

12. Shri Parinay Deep Shah, the learned counsel for M/s. KRBL, argued that although their application for grant of an interim stay on the imposition of reliability charges, has been declined, but, the Commission may consider that the regulations framed by this Commission under Section 181 of the Electricity Act, 2003 has to be in conformity with the provisions of the Electricity Act, 2003 as well as rules framed thereunder. The Ministry of Power, Government of India, has notified the Green Energy Open Access Rules. Rule 9 of the ibid rules provides the kind of charges to be levied on the green energy open access consumers and the reliability charge is not mentioned in such kind of charges. Therefore, the imposition of reliability charge under regulation 72 (c) of the HERC RE Regulations, 2021, is not in conformity with the prevailing law.
13. Shri Aditya K. Singh, the learned counsel for the petitioner submitted that the limited prayer in the present petition was for initiating the process of amendment in the Regulation 72 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, to repeal

regulation 72 (c), to ensure consistency with the Rules framed by the Central Government. Since, the Commission has framed the discussion paper for Green Energy Open Access Regulations which does not mention reliability charge as one of the charges to be imposed on the green energy open access consumers, therefore, the present petition has been rendered infructuous and may as such be disposed of. Shri Singh further averred that the exercise of getting the study conducted from CEA for the levy of reliability charge, has also become redundant, as under the new dispensation as well as the discussion paper, no such charge is to be levied.

14. The Commission observes that it has already passed an order approving the 'Green Energy Open Access Regulations, 2023', which shall be applicable from the date of its notification in the official gazette. Regulation 9 of the ibid regulations provides that the charges to be levied on Green Energy Open Access consumers shall be as follows:-
- a) Transmission charges;
 - b) Wheeling charges;
 - c) Cross subsidy Surcharge;
 - d) Standby charges wherever applicable;
 - e) Banking charges; and
 - f) Application fees/SLDC fees/Charges, scheduling charges, deviation settlement charges and reactive energy charges.

It is apparent from the above list of charges that the reliability charge has not been made a part of the charges recoverable from the Green Open Access Consumers under these Regulations.

15. Hence, as submitted by the petitioner, the present petition along with the IAs filed in the matter have become infructuous and is accordingly disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 26.04.2023.

Date: 26.04.2023
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman