

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION**

**AT PANCHKULA**

**Case Nos. HERC/RA-6 of 2020**

**Case Nos. HERC/RA-7 of 2020**

**Case Nos. HERC/RA-8 of 2020**

**Date of Hearing: 10.11.2020**

**Date of Order : 29.12.2020**

**In the matter of**

Petition under Section 94 of the Electricity Act 2003 read with Regulation 57 (1) and (2) of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019, as amended from time to time, for review of Haryana Electricity Regulatory Commission Tariff Order dated 07.03.2019 for True-Up for FY 2017-18, Annual (Mid-Year) Performance Review for FY 2018-19, Aggregate Revenue Requirement of UHBVNL and DHBVNL and Distribution & Retail Supply Tariff for the FY 2019-20. (RA 6 of 2020, RA 7 of 2020 and RA 8 of 2020)

**1. RA 6 of 2020**

Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Panchkula

&

Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Hisar

Petitioners

**2. RA 7 of 2020-**

Faridabad Industries Association

Petitioner

**3. RA 8 of 2020**

Jindal Stainless (Hisar) Ltd

Petitioner

**Quorum**

**Shri Pravindra Singh Chauhan Member (in chair)**

**Shri Naresh Sardana Member**

**ORDER**

**Brief background of the Case**

**1. RA 6 of 2020.**

**1.1.** The petitioners, Uttar Haryana Bijli Vitran Nigam Ltd (UHBVNL) and Dakshin Haryana Bijli Vitran Nigam Ltd (DHBVNL), have submitted that the Commission (Haryana Electricity Regulatory Commission), in exercise of its powers vested under the Electricity Act, 2003 (EA 2003 or Electricity Act) has passed the **Tariff Order dated 01.06.2020 on True-Up for FY 2018-19, Annual (mid-year) Performance Review for FY 2019-20, Aggregate Revenue Requirement of UHBVNL & DHBVNL for the MYT control period FY 2020-21 to FY 2024-25 and Distribution &**

**Retail Supply Tariff for FY 2020-21.** The Petitioner has filed this Review Petition (RA 6 of 2020) on behalf of both the Discoms under Regulation 57 (1) & (2) of Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019, requesting the Hon'ble Commission may review/revisit certain issues as given in the following paragraphs.

#### ISSUES FOR REVIEW

##### 1.2. Error apparent in determination of revenue gap for FY 2020-21

- a) that the Commission in its Tariff Order dated 01.06.2020 has approved revenue gap amounting to Rs. 6.69 crore for FY 2020-21. However, the following inconsistencies are apparent in the Tariff order:
- b) That while calculating Energy Balance as well as revenue gap for FY 2020-21 at current tariff, total sales are taken as 38473.64 MUs (page no.178 & 209) as against approved sales of 37176.62 MUs (page no. 167).
- c) That the Revenue amounting to Rs. 5162 crores (page no. 277) is neither on the basis of existing tariff nor on revised tariff as for the slabs 0-50 & 51-100 the revised tariff is considered i.e. Rs. 2/kWh & Rs. 2.5/kWh and for 0-150 existing tariff i.e. Rs.4.50/kWh has been considered.
- d) That at page no. 274, the Commission has observed that the revenue from DS consumers for the FY 2020-2021 shall be about 6019 Crores @ Rs. 5.06 per unit which is contrary to the statement on page 277 of the Order.
- e) That the Commission has calculated the subsidy as the difference between revised tariff Rs. 5162 crores and subsidized tariff of Rs. 4697 crores i.e. Rs. 465 crores. In these calculations also, there is apparent calculation error as mentioned in point (ii) above.
- f) The Hon'ble Commission while revising the domestic tariff has determined the tariff under Category II as Rs. 2.50 per unit for 0-150 units meaning thereby that the slab benefit shall be given to all the consumers in Category II consuming up to 800 units per month. It is worth mentioning here that the State Government is subsidizing consumption only up to 500 units. The Commission may look in to this aspect.

##### 1.3. Error apparent in calculation of Power Purchase Cost for FY 2020-21.

- a) That the Commission in its Tariff Order dated 01.06.2020 has approved Power Purchase cost amounting to Rs. 24052.66 Crores (Fixed cost = Rs. 6643.57 Crores, Variable Cost = Rs. 14224.13 Crores and Transmission and SLDC Charges = Rs. 3184.96 Crores) for FY 2020-21. However, the following inconsistencies are apparent in the Tariff order:
- b) That the fixed cost is Rs. 6852 crores at page no. 177 and Rs. 6643.57 crore at page no. 179.
- c) Total variable cost of sold units of DISCOMs shown as Rs. 14224.13 crore (Page no. 179). However, the same does not conform to the calculations made in the table of calculation of energy balance (page no. 178).

#### 1.4. Interest Cost on HVPNL Bonds and FRP Bonds (FY 2018-19)

That the Hon'ble Commission in its Tariff Order dated 01.06.2020 while approving interest on UDAY Bonds, FRP Borrowings and HVPNL Bonds for the FY 2018-19 has stated at page 148 that

*“the commission observes that since the interest on HVPNL bonds and FRP borrowings did not form part of the ARR petition for the FY 2018-19, filed by the licensees, the same cannot be allowed on true up in accordance with the MYT Regulations.”*

However, in the petition filed by UHBVNL and DHBVNL on dated 30.11.2017 for the FY 2018-19, the interest on HVPNL bonds and FRP Borrowings are mentioned at page no. 55 and 62/63. Further, the same are also part of ARR order (Page No. 203 of HERC Order dated 15.11.2018) under heading interest cost over and above normative amounting to the tune of Rs. 404.80 Crores and Rs. 215.56 Crores for UHBVNL and DHBVNL respectively. As such, the same be considered and allowed in the true up.

#### 1.5. AP Subsidy for FY 2018-19

As per the Corrigendum dated 29.06.2020, the subsidy for FY 2018-19 has been corrected as Rs. 6450 Cr. whereas as per calculation at page 158 of the Tariff Order, the actual amount of AP Subsidy is Rs. 6450.66 Cr. Accordingly, the subsidy for FY 2018-19 may be corrected as Rs. 6450.66 Cr.

#### 1.6. Commercial issues

- a) **Note No.14 (Bank Guarantee)** – that the provision of 1.5 times Bank Guarantee On Page 289 is not in sync with the relevant provision as notified recently by HERC in its 1st amendment to Duty to Supply Electricity Regulations-2020. As per the fresh amendment, developer has to submit BG equivalent to the estimated cost of phase wise work as per approved electrification plan before commencement of work. On failure to complete the work in the given time, Developer may request for extension by furnishing BG equivalent to 1.5 times of the estimated cost of the work of such phase. This may please be clarified.
- b) **ToD / Concessional tariff:-**
  - i) A small typographical error is found on page No. 272, para No. 4(a) of the Order wherein the figure 50 kW/kVA is mentioned as 50 kW/MVA.
  - ii) On Page 273, under the head concessional tariff the time period mentioned as 22:00 Hrs. to 04:00 Hours is not in line with that approved by the Commission in its Order No. 822-823/HERC/Tariff dated 13.12.2020. It is actually 21:00 to 05:30 Hours as the energy meters do not have the TOD slot for time period of 22:00 Hrs. to 04:00 Hours and off-peak period also lasts upto 05:30 Hrs.

iii) It was categorically recorded at Chapter-7 i.e. Time of Use tariff/Time of Day at page No.345 of the last year ARR/Tariff Order dated 07.03.2019 that *the ToD tariff shall not be applicable to the consumers, who source their power from Captive Generation or Open Access at any point of time after 15.06.2019*. However, this provision appears to be left in the current ARR/Tariff order for FY 2020-21. There appears no logical reason for withdrawal of such restriction in the Order for FY 2020-21. The rationale for not extending the benefit of ToD tariff to Consumers sourcing power from Open Access or captive generation is just and reasonable. As if the Time of the Day sensitive pricing is made applicable to such consumers, it will defeat the very objective of the introduction of ToD/ToU tariff which is intended to reform the load curve. Thus, the ToD tariff should only be applicable to the consumers who are constantly and uniformly drawing energy from Discoms. In view of the above, it is humbly prayed that the Hon'ble Commission may pass an order specifically extending the non-applicability of ToD tariff to the consumers sourcing power from Open Access or captive generation.

In view of the aforesaid submissions, the Petitioners have requested that the Hon'ble Commission may:

- Review the issues given above and make necessary changes in the Tariff Order for True-Up for FY 2018-19, Annual (mid-year) Performance Review for FY 2019-20, Aggregate Revenue Requirement of UHBVNL & DHBVNL for the MYT control period FY 2020-21 to FY 2024-25 and Distribution & Retail Supply Tariff for FY 2020-21, dated, 01.06.2020 to the extent of the submissions made by the Petitioner in the present Review Petition and determine the Revenue Gap;
- Condone any inadvertent omissions/errors/shortcomings and permit the Petitioner to add/change/modify/alter this filing and make further submissions as may be required;
- Pass such Order, as the Hon'ble Commission may deem fit and appropriate keeping in view the facts and circumstances of the case submitted by the Petitioner.

## 2. RA 7 of 2020

2.1 The petitioner, Faridabad Industries Association (FIA), has submitted that the Tariff Order dated 01.06.2020 was neither communicated to the petitioner, nor was the tariff schedule published in newspapers upto 09.06.2020. It was only through the local newspapers that the petitioner came to know of the issuance of the Tariff Order on 09.06.2020. The Hon'ble Supreme Court, vide its order dated 23.03.2020 passed in Suo Moto Writ Petition (Civil) No. 3/2020 has directed that period of limitation prescribed, in general law or special law, shall stand extended w.e.f. 15.03.2020 till further orders to be passed by the Hon'ble Supreme Court. The present review petition, therefore, has been filed by the petitioner within the period of limitation and this Hon'ble Commission may kindly admit the review petition.

That the issues raised by the petitioners under the present review petition are in terms of the provisions contained in Order 47 Rule 1 of the Civil Procedure Code, 1908. This Hon'ble Commission is, therefore, requested to review the Tariff order and pass appropriate order in the matter.

**ISSUES FOR REVIEW****2.2 COMPUTATION OF WHEELING CHARGES**

- a) That in the tariff order dated 01.06.2020 the Hon'ble Commission, while determining the 'cost of losses in the system' has taken the 'Distribution system losses (Technical)' @10.31%, which accounts for both, the 'HT Loss' (6.39%) as well as the 'LT Loss' (12.17%) combined together. However, it is respectfully submitted that the consumers at HT level cannot be subjected to LT losses.
- b) The word 'wheeling' has been defined under Section 2(76) of the Electricity Act, 2003 (hereinafter referred to as the '2003 Act') as under: -

*"(76) "Wheeling" means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under Section 62.*

Further, Regulation 62 of the HERC (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2019 (hereinafter referred to as the 'Tariff Regulations, 2019'), which provides for calculations of 'wheeling charges' is being reproduced hereunder for a ready reference: -

**62.1.** *The consumers availing wheeling services for 'open access', will be charged a wheeling tariff as determined under these Regulations;*

*The wheeling charge payable to the distribution licensee by long-term & medium-term open access consumers shall be in Rs. / MW and shall be computed by dividing the approved ARR of the licensee for wheeling business by peak load demand in MW served by the licensee in the preceding year.*

*Provided that wheeling charges shall be payable by the long-term and medium-term open access consumers on the basis of contracted capacity in MW and by short-term open access consumers on the basis of scheduled energy transactions cleared by the relevant Load Despatch Centre.*

*Provided further that wheeling charges (Rs. /kWh) payable by the short-term open access consumers during a financial year shall be worked out by dividing the approved ARR (in Rs.) for wheeling business for that year by the gross volume of energy wheeled (kWh) during the relevant year as approved by the Commission.*

*Provided further that the Distribution Licensee shall be allowed to recover the approved level of wheeling losses arising from the operation of the distribution system, as stipulated in the respective Tariff Order from the short term open access consumers in addition to the wheeling charges as determined above.*

- c) That the consumers at HT level and LT level form two different classes in them as both of them use different distribution system i.e. HT and LT. The word 'wheeling' as defined under the 2003 Act would mean usage of 'distribution system' for conveyance of electricity. Further, Regulation 62 as reproduced above also provides for recovery of 'wheeling losses arising from the operation of distribution system'. Since, the distribution systems at HT

Level and LT level are different from each other and consumers of these respective categories are practically treated as separate categories in terms of tariff, charges etc., therefore, taking into account, both HT losses and LT losses, for the purpose of computing 'Wheeling losses' and thereby burdening the consumers at HT level, with the effect of LT losses, is an error apparent on the face of it.

- c) That in fact, this Hon'ble Commission while determining the 'Wheeling Charges' for all the past years up to FY 2019-2020 had taken into account only the HT Losses (5.93%) for computing the 'Distribution System Losses (technical)'. The above formula, which was followed by this Hon'ble Commission for the previous FY has not been challenged or disputed by the respondents (Discoms) even in the petitions filed by them and therefore, there was no occasion for this Hon'ble Commission to revisit or deviate from the practice being followed in the previous years. Further, there has been no change even in the regulations to call for such deviation in the practices of the Hon'ble Commission. Therefore, the 'Wheeling losses' may kindly be revised by taking into account only the 'HT Losses' and consequently, the 'Wheeling Charges' may also be revised.

## 2.2. LEVYING OF WHEELING CHARGES ON 66KV AND ABOVE CONSUMERS

- 2.2.1 That this Hon'ble Commission, vide the Tariff Order dated 01.06.2020 has approved levy of Wheeling Charges @ Rs. 0.47/unit on the consumers of Discoms drawing power at 66 kV and above. It is respectfully submitted that Wheeling Charges are applicable on the open access consumers only on the use of distribution system. In this regard, Regulation 19(3) of the HERC (Terms and Conditions for grant of connectivity and open access for intra-State transmission and distribution system), Regulations, 2012 as amended by its 2013 1st Amendment therein, provides that an Open Access Consumer using Intra-State distribution system shall pay wheeling charges to the distribution licensee for the '**usage of the distribution system**'. Regulation 19(3) is being reproduced hereunder for a ready reference:

19(3) - *Open access consumer using intra-State distribution system **shall pay wheeling charges to the distribution licensee (s) for usage of the distribution system** as determined by the Commission for the relevant financial year as per the provisions of Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012, or its statutory re-enactments, as amended from time to time.*

*The wheeling charge payable to the distribution licensee by long-term & medium-term open access consumers shall be in Rs./MW and shall be computed by dividing the approved ARR of the licensee for wheeling business by peak load demand in MW served by the licensee in the preceding year.*

*Provided that wheeling charges shall be payable by the long-term and medium-term open access consumer on the basis of contracted capacity in MW and by short-term open*

*access consumers on the basis of scheduled energy transactions cleared by the relevant Load Despatch Centre.*

*Provided further that wheeling charges (Rs/kWh) payable by the short-term-open access consumers shall be as determined by the Commission in the ARR/ Tariff order for the relevant financial year.*

*Provided also that where a dedicated distribution system has been constructed for exclusive use of an open access consumer at the cost of the licensee, the wheeling charges for such dedicated system shall be worked out by distribution licensee and got approved from the Commission and shall be borne entirely by such open access consumer till such time the surplus capacity is allotted and used for by other persons or purposes after which these charges shall be shared in the ratio of the allotted capacities.”*

- 2.2.2 That, a bare reading of the above regulation as well as the definition of 'Wheeling' as envisaged under the 2003 Act, the 'Wheeling Charges' are payable by open access consumers only for use of the distribution system and since, the consumers above 66kV are connected with the STU and are not using the distribution system of the Discoms, therefore, levying of 'Wheeling Charges' on such consumers is contrary to the provisions contained in 2003 Act as well as regulations issues by this Hon'ble Commission. Apart from that, no such issue was raised or proposed by the respondents/Discoms in their respective petitions. Thus, such a levy is an error apparent on the face of it and is liable to be corrected/reviewed.

### **3. COMPUTATION OF CROSS SUBSIDY SURCHARGE**

- 3.1 That vide the Tariff Order dated 01.06.2020, this Hon'ble Commission has approved the levy of CSS @ Rs. 0.62 per unit for HT-Industry category, however, while computing the CSS, the Hon'ble Commission has not followed its own methodology, as has been consistently followed by the Hon'ble Commission in the past years including during FY 2019-20. While determining the 'Aggregate of transmission, distribution and commercial losses applicable to the relevant voltage level', the Hon'ble Commission failed to take into consideration the transmission losses to be allocated on the HT & LT levels. This is an inadvertent error on the part of the Hon'ble Commission since it has deviated from its own approach used consistently in the past orders.

The above said approach of working out the allocation of transmission losses for HT & LT level, using the same to evaluate the cost of service and working out the CSS basis the same has been followed by the Hon'ble Commission in the previous years as well, including the Tariff Order for FY 2019-20, wherein it had considered the impact of transmission losses on the cost of supply for determining the CSS.

- 3.2 That the petitioner seeks indulgence of this Hon'ble Commission to lay before it a comparative statement of the computation of CSS on the methodology adopted by the Hon'ble Commission in the Tariff Order for FY 2020-21 and the methodology followed by the Hon'ble Commission in the Tariff Order for the FY 2019-20. The difference in both the methodologies is evident from below tables extracted from the Order of FY 2019-20 and the impugned order.

S.	Voltage wise Losses	FY 2019-20 [Page no. 330 of Order dated 7 <sup>th</sup> March, 2019]			FY 2020-21 [Page no. 249 of Order dated 1 <sup>st</sup> June, 2020]		
		UHBVN	DHBVN	Haryana	UHBVN	DHBVN	Haryana
1a	HT Sales	5070	8837	13907	4682.29	6175.49	10857.78
1b	LT Sales	11622.36	16257.09	27879.45	10905.3	16710.56	27615.86
1	Total Sales	16692.36	25094.09	41786.45	15587.59	22886.05	38473.64
2	Losses (%)						
2a	HT	7.92%	4.75%		6.04%	6.65%	
2b	LT	14.18%	10.23%		11.80%	12.41%	
3	Loss Units						
3a	HT	436.08	440.69	876.77	300.99	439.93	740.9152
3b	LT	1920.36	1852.62	3772.98	1458.99	2367.60	3826.585
4	Sales grossed up by Technical losses						
4a	HT	5506.08	9277.69	14783.77	4983.28	6615.42	11598.7
4b	LT	13542.72	18109.71	31652.43	12364.29	19078.16	31442.45
5	Combined Technical Losses						
5a	HT			5.93%			6.39%
5b	LT			11.92%			12.17%
5	Total			10.01%			10.61%
6	Total Distribution Losses	2749.01	4132.66	6881.67	4201.15	4532.24	8733.39
7	Total Commercial Losses	392.57	1839.35	2231.92	2441.17	1724.72	4165.889
8	Commercial losses allocated to HT and LT based on grossed up units (4)						
8a	HT	113.47	623.09	736.56	701.25	444.07	1145.323
8b	LT	279.10	1216.26	1495.36	1739.92	1280.65	3020.567
9	Total Voltage Level Distribution losses (3+8)						
9a	HT	549.55	1063.78	1613.33	1002.24	883.99	1886.238
9b	LT	2199.46	3068.88	5268.34	3198.91	3648.25	6847.152
10	Combined Technical and Commercial losses at Distribution level						
10a	HT			10.39%			14.80%

S.	Voltage wise Losses	FY 2019-20 [Page no. 330 of Order dated 7 <sup>th</sup> March, 2019]			FY 2020-21 [Page no. 249 of Order dated 1 <sup>st</sup> June, 2020]		
		UHBVN	DHBVN	Haryana	UHBVN	DHBVN	Haryana
10b	LT			15.89%			19.87%
10	<b>Total</b>			14.14%			18.50%
11	Units sent out after accounting for Technical and Commercial Losses (4+8)						
11a	HT	5619.55	9900.78	15520.33	5684.53	7059.48	12744.02
11b	LT	13821.82	19325.97	33147.79	14104.21	20358.81	34463.01
11	<b>Total</b>	19441.37	29226.75	48668.12	19788.74	27418.29	47207.03
12	Transmission Loss						
12a	Inter state	234.59	352.67	587.26			
12b	Intra state	482.15	724.83	1206.98			
12	<b>Total Transmission Losses</b>	716.74	1077.5	1794.24			
13	Transmission Losses allocated to HT & LT based on grossed up units (4)						
13a	HT	207.17	365.01	572.19			
13b	LT	509.57	712.49	1222.05			
14	Total Losses (Transmission & Distribution)						
14a	HT	756.73	1428.79	2185.52			
14b	LT	2709.02	3781.37	6490.40			
14	<b>Total</b>	3465.75	5210.16	8675.91			
15	Total Units purchased incl. transmission losses						
15a	HT	5826.73	10265.79	16092.52			
15b	LT	14331.38	20038.46	34369.85			
15	<b>Total</b>	20158.11	30304.25	50462.36			
16	Voltage Level total loss percentage						
16a	<b>HT</b>	12.99%	13.92%	13.58%			
16b	<b>LT</b>	18.90%	18.87%	18.88%			
16	<b>Total</b>	17.19%	17.19%	17.19%			

Inadvertent omission by the Hon'ble Commission in FY 2020-21

The comparative statement of CSS worked out based on the 2019-20 approach and that worked out by the Hon'ble Commission in the impugned order is being annexed herewith as **Annexure P-4**.

- 3.3 That as is clear from the above comparative statement that if the formula in question is followed for the FY 2020-21, the CoS would come to Rs. 7.16 per unit, whereas the Tariff remains at Rs. 7.59 per unit. The CSS would thus come to Rs. 0.43 per unit for HT- Industry instead of Rs. 0.62 per unit as has been approved by the Hon'ble Commission.
- 3.4. That the Hon'ble Commission ought to compute the CSS in accordance with the methodology used by the Commission while computing CSS for FY 2019-20, vide Tariff order for FY 2019-20 dated 7<sup>th</sup> march, 2019. The order does not disclose the reason for deviating from the practice and formula being followed in the previous years and therefore, no justification is coming forth from the order for the change in the formula. It appears that the error has crept in due to oversight rather than an intentional change made after due application of mind. The error, being an error apparent on the face of it is required to be corrected and accordingly, the CSS is required to be revised in terms of the above submission.
4. That the petitioner submits that it has not filed any appeal against the Tariff Order dated 01.06.2020 qua which the present review is being sought. The petitioner further undertakes that in case it files an appeal against the Tariff Order dated 01.06.2020, it shall immediately inform the Hon'ble Commission in this regard.

5. **PRAYER**

In view of the aforesaid submissions, the petitioner most respectfully prays the Hon'ble Commission to: -

- a. Review and make necessary changes in the Tariff Order dated 01.06.2020 for **True-Up for FY 2018-19, Annual (Mid-Year) Performance Review for FY 2019-20, Aggregate Revenue Requirement of UHBVNL and DHBVNL for the MYT Control Period 2020-21 to FY 2024-2025 and Distribution & Retail Supply Tariff for The FY 2020-21**, to the extent of the submissions made by the petitioner in the present review petition.
- b. Condone any inadvertent omissions/errors/shortcoming and permit the petitioner to add/change/amend/modify/alter this filing and make further submissions as may be required.
- c. Pass such order, as this Hon'ble Commission may deem fit and appropriate keeping in view the facts and circumstances of the case submitted by the petitioner.

**3. RA 8 of 2020- Petition filed by M/s Jindal Stainless (Hisar) Limited**

- 3.1 That the petitioner is a limited company incorporated under the provisions of the Companies, Act 1956 having its registered office situated at Jindal Centre, Bhikaji Cama Place, New Delhi and works situated on OP Jindal Marg, Hisar (hereinafter referred to as "Company").
- 3.2 That the petitioner "Company" is a large supply industrial consumer of the Respondent Nigam with a sanctioned contract demand of 125 MVA and is getting power supply on 220 kV through an

independent feeder. The Petitioner Company is one of the largest manufacturers of stainless steel in the country and produces Oxygen gas used for Defence installations.

- 3.3 That the Petitioner Company is an embedded consumer of Respondent No. 1 and buys power from the State Power Utility as well as from Indian Energy Exchange (IEX) through collective transaction. While doing so it is guided by the Open Access Regulations framed by Hon'ble Central Electricity Regulatory Commission (CERC) for Inter-State Open Access and Hon'ble Haryana Electricity Regulatory Commission (HERC) for intra-State Open Access transactions.
- 3.4 That the Hon'ble Commission notified the ARR & Distribution and Retail Tariff order for FY 2020-21 dated 01.06.2020 in Petition Nos. HERC/PRO-59 of 2019 and HERC/PRO-60 of 2019 filed by the Respondents.
- 3.5 That the Petitioner Company is aggrieved by the aforesaid impugned order and accordingly most humbly requests the Hon'ble Commission to review the order under the enabling powers vested under S.94(1)(f) of Electricity Act, 2003 and the Reg. 57(1) of HERC (Conduct of Business) Regulations, 20219. The said Regulation reads as under,

***“Review of the decisions, directions, and orders”***

*78 (1) All relevant provisions relating to review of the decisions, directions and orders as provided in the Code of Civil Procedure 1908, as amended from time to time, shall apply mutatis mutandi for review of the decisions, directions and order of the Commission.*

*Provided that the Commission may on the application of any party or person concerned, filed within a period of 45 days of the receipt of such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission may deem fit.*

*(2) No application for review shall be considered unless an undertaking has been given by the applicant that he has not preferred appeal against the decision, direction, or order, sought to be reviewed, in any Court of Law.*

*(3) No application for review shall be admitted/ considered unless an undertaking has been given by the applicant that in case he files an appeal of the decision, direction or order of which review is pending adjudication, he shall immediately inform the Commission regarding the fact of filing the appeal.*

- 3.6 That in view of the requirement of this Regulation, reproduced above, the Petitioner hereby undertakes and confirms the following,
- (i) That the Petitioner has not preferred appeal against the impugned order of the Hon'ble Commission, sought to be reviewed, in any Court of Law.
- (ii) That the Petitioner further undertakes and confirms that in case the Petitioner files an appeal of the order, of which review is pending adjudication, the Petitioner will immediately inform the Commission regarding the fact of filing the appeal.
- 3.7 That the Petitioner is of the considered view that some of the parts of the impugned order are not even supported by the relevant provisions of the Electricity Act, 2003, Tariff Policy and the Regulations framed by Hon'ble Commission. Specific points which are proposed to be submitted before the Hon'ble Commission with reference to the observations made in the impugned order are dealt hereunder with a request to the Hon'ble Commission to consider the facts as are set out herein below and to schedule the instant Review Petition for early hearing afresh.

### 3.8 Determination of Wheeling Charges for Embedded open access consumers getting power supply at 66 kV and higher voltages:

3.9 That the impugned order, while dealing with 'Wheeling Charges for FY 2020-21 in Chapter 6.1, (Page-248/249) mentioned as under,

- a. Network establishment and operation cost of the distribution licensees for FY 2020-21 - Rs. 22414.18 Million
- b. Allowed gross volume of power purchase by the Discoms at State Periphery excluding inter-State sales = 47207.03 MUs
- c. Network establishment and operation expenses = Rs. 0.47/kWh

The last paragraph under Sr. No. 6.1 of the order reads as under,

*"The Commission observes that the embedded open access consumers of the Discom's drawing power at 66kV or above imposes cost which is being borne by the Discoms. Hence besides the intra state transmission loss as determined by the Commission for FY 2020-21 in the ARR/Tariff order of HVPNL, such open access consumers shall also be liable to pay the distribution system network cost as determined above i.e. Rs. 0.47 per Unit."* **(Page-249)**

3.9.1 Hon'ble Commission allowed recovery of the above distribution system network cost from the embedded open access consumers drawing power at 66 kV and above voltages. This decision suffers from patent error on the following grounds,

- a) The embedded open access consumers getting power supply at 66 kV and above voltages are not using the distribution network at any stage and as such are not liable to pay the distribution network establishment and operation cost.
- b) The embedded open access consumers getting power supply at 66 kV and above voltages are using the transmission network only and accordingly paying the transmission wheeling charges as determined by Hon'ble Commission. In all other States also, the open access consumers are charged wheeling charges on the above principle and this has been done in the same manner in Haryana so far prior to the impugned order.
- c) The distribution network cost is already reflected in the computation of Fixed Charges and the open access consumers are paying the fixed charges to the distribution company irrespective of the fact that the energy drawn by them is only a part of the total consumption. Thus, these consumers are already paying for distribution system network cost through the Fixed Charges.
- d) It may further be appreciated that the entire network establishment and operation cost of the distribution licensee is fully recovered by way of wheeling charges on the sale of energy by the distribution licensee through the distribution system. No revenue from the proposed levy of 47 Ps/unit from the embedded open access consumers getting power supply on 66 kV & above voltages has neither been determined nor accounted for in the ARR.
- e) Hon'ble Supreme Court in the case of Northern India Iron & Steel Co. vs State of Haryana and Another dated 01.11.1975 - 1976 SCR (3) 677, **(Annex P-2)** took note of the well-known systems of tariff and mentioned as under,

*"There are two well-known systems of tariffs-one is the flat rate system and the other is known as the two-part tariff system. Under the former a flat rate is charged on unit of*

energy consumed. The letter system is meant for big consumers of electricity and it comprised of (1) demand charges to cover investment, installation and the standing charges to some extent and (2) energy charges for the actual amount of energy consumed.

The Board has framed in exercise of its power under section

49 of the 1948 Act certain terms and conditions and procedure in regard to supply of electricity to its consumers. They are applicable in the cases of the appellants also. Demand Charge has been defined in clause 1(h) thus:

"Demand charge" shall mean the amount chargeable per month in respect of Board's readiness to serve the consumer irrespective of whether he consumes any energy or not, and is based upon the connected load, the maximum demand or the contract demand, as the case may be and as prescribed in the relevant schedule of tariff.

And in sub-clause (1) "Energy Charge" has been defined thus:

"Energy charge" shall mean the charge for energy actually taken by the consumer and is applicable to the units consumed by him in any month. This is in addition to any demand charge, if applicable."

f) The above part of the order of Hon'ble Supreme Court relating to definition of fixed charges was thereafter referred to in the Hon'ble Allahabad High Court order dated 16.01.2014 in Pashupati Castings Limited. Vs State of UP & others. It was clarified that the 'Demand Charges' recovered from large consumers cover the investment, installation and the standing charges of the distribution licensee.

g) It needs to be appreciated that due to levy of this new charge on the open access consumers (getting power supply at 66 kV and above voltages) there has been increase in the cost of open access power making it uneconomical for the consumers to avail open access. Thus, the EHV open access consumers are required to pay Rs.3.50/unit over and above the cost of IEX power. The break-up of these charges for open access consumers for IEX power is as follows:-

(i)	CTU Transmission Charges	33 Ps/unit
(ii)	RPO liability	20 Ps/unit
(iii)	State Transmission wheeling charges	24 Ps/unit
(iv)	State Transmission network losses	12 Ps/unit
(v)	Cross Subsidy Surcharge	62 Ps/unit
(vi)	Additional Surcharge	115 Ps/unit
(vii)	Fixed charges paid to Distribution Utility	35 Ps/unit
(viii)	Newly added Distribution network cost	47 Ps/unit
(ix)	IEX and State SLDC charges	02 Ps/unit
	<b>Total open access charges payable</b>	<b>350 Ps/unit</b>

h) This is totally against the spirit of Tariff Policy notified by the Government of India. The Policy reads as under:-

"8.5.1 National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access.

A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the cross-subsidy surcharge. The computation of cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access.

A consumer would avail of open access only if the payment of all the charges leads to a benefit to him.

While the interest of distribution licensee needs to be protected it would be essential that this provision of the Act, which requires the open access to be introduced in a time-bound manner, is used to bring about competition in the larger interest of consumers.

- i) There is no such distribution network establishment cost being recovered from open access consumers (getting supply through transmission system) in any other State in the country. Such levy by the Hon'ble Commission amounts to denying the benefit of open access to the EHV consumers in Haryana State.
- j) Determination of tariff is regulated by the HERC MYT Tariff Regulations. Even in these Regulations there is no provision for levy of distribution network cost from EHV consumers other than by way of the fixed charges. The embedded EHV open access consumers are already paying the transmission wheeling charges, transmission losses in addition to the Cross-Subsidy Surcharge and the Additional Surcharge.

- k) The Regulation 3.61 of MYT Regulations, 2019 defines Wheeling Business as under:-

*“3.61 “wheeling business” means the business of operating and maintaining a distribution system for conveyance of electricity in the area of supply of the distribution licensee;”*

The Distribution Utility is in the distribution wheeling business for its distribution system only and not for the transmission system. The open access consumers are already paying for the transmission business through transmission charges and the transmission losses.

- l) A reference to Regulation 19(3) of HERC (Terms and Conditions for grant of connectivity and open access for intra-State transmission and distribution system) (1st Amendment) Regulations, 20133 which deals with the ‘Open Access Charges’ would also support the above contention of the Petitioner, which reads as under:-

*19. Transmission charges and wheeling charges. –*

*(3) Open access consumer using intra-State distribution system **shall pay wheeling charges to the distribution licensee (s) for usage of the distribution system** as determined by the Commission for the relevant financial year as per the provisions of Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012, or its statutory re-enactments, as amended from time to time.*

*The wheeling charge payable to the distribution licensee by long-term & medium-term open access consumers shall be in Rs./MW and shall be computed by dividing the approved ARR of the licensee for wheeling business by peak load demand in MW served by the licensee in the preceding year.*

*Provided that wheeling charges shall be payable by the long-term and medium-term open access consumer on the basis of contracted capacity in MW and by short-term open access consumers on the basis of scheduled energy transactions cleared by the relevant Load Dispatch Centre.*

*Provided further that wheeling charges (Rs/kWh) payable by the short-term-open access consumers shall be as determined by the Commission in the ARR/ Tariff order for the relevant financial year.*

*Provided also that where a dedicated distribution system has been constructed for exclusive use of an open access consumer at the cost of the licensee, the wheeling charges for such dedicated system shall be worked out by distribution licensee and got approved from the Commission and shall be borne entirely by such open access consumer till such time the surplus capacity is allotted and used for by other persons or purposes after which these charges shall be shared in the ratio of the allotted capacities.”*

**Thus, it is very clear that only those open access consumers who are using intra-State distribution system shall pay wheeling charges to the distribution licensee (s) for usage of the distribution system and not those who are not using the distribution system.**

- m) The entire intra-State transmission system is owned, operated & maintained by the Transmission Licensee. The incidental transmission charges are determined by the Hon'ble Commission through ARR of the Transmission Licensee and the open access consumers getting electricity supply on 66 kV and/or higher voltages are paying the transmission charges so determined towards open access charges.
- n) This newly introduced levy of distribution wheeling charges on the EHV consumers is nothing but charging the cost of transmission & distribution network from the embedded open access consumers twice i.e. first as transmission wheeling charges paid to the Transmission Licensee and fixed charge paid to the Distribution Licensee and then again as distribution wheeling charges, without using any part of the distribution network.
- o) That the Hon'ble Commission has committed an error in determining the cost of wheeling losses by accounting for the HT and LT losses. The HT open Access consumers cannot be subjected to any LT losses. The terms and conditions of Tariff Regulations 2019 talk of wheeling charges on the basis of approved level of wheeling losses. Regulation-62 does not authorize recovery beyond the approved level. The approved level of wheeling loss for FY 2020-2021 is 6.39 percent and as such, the HT consumers could not be burdened with the wheeling charges at the rate of 10.31 percent.
- p) That the wheeling loss has been worked on the basis of average bulk supply rate of the Discom. The aforesaid rate includes the fixed cost of power purchase of Discom as well as the transmission/SLDC charges. The cost of wheeling loss is equivalent to the cost of purchase of energy and not the price of sale of energy. The market rate of wheeled energy to Open Access Consumer is lower than the supply rate of the Discom. Resultant there is also an error on the factual aspect in determining the wheeling loss and levy thereof. The aforesaid submission is without prejudice to the contention that the petitioner has no obligation to pay the aforesaid charges to the distribution licensee since the petitioner being an HT Consumer at 66 KV is not using the distribution system of the distribution licensee.
- q) That the Hon'ble Commission stands in conflict with its own approved methodology and regulations while fastening the wheeling losses on the HT Consumers without any

supporting any actual data and merely on the basis of conjectural assumptions. The fastening of additional liability to over burdening the HT Consumer for a loss which is not attributable to it and in essence amounts to extending a cross subsidy to the LT Consumers under the garb of wheeling losses.

### 3.10 Determination of Additional Surcharge:-

3.10.1 That in the impugned order of the Hon'ble Commission did not determine the Additional Surcharge based on the actual data for the past 6 months as required under the Open Access Regulations. The order reads as under:- (Page - 253)

*“ADDITIONAL SURCHARGE: The Commission has taken note of the proposal of the Discoms on quantification and levy of additional surcharge for the 2nd Half of the FY 2019-20 in line with Regulation 22 of the HERC (Terms and Conditions for Grant of Connectivity & Open Access for Intrastate Transmission and Distribution System) Regulations 2012 as may be amended from time to time. The Discoms have accordingly proposed to levy an additional surcharge of Rs. 1.15 / kWh from the Open Access Consumers. Given the voluminous data and objections filed by the stakeholders The Commission shall take up the issue separately. Till the time Discoms may continue to levy Additional Surcharge in vogue i.e. @ 1.15 / Unit.”*

3.10.2 That Regulation 22 of the Open Access Regulations HERC/25/2012 framed by the Hon'ble Commission read as under,

(2) *This additional surcharge shall become applicable only if the obligation of the licensee in terms of power purchase commitments has been and continues to be stranded or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. However, the fixed costs related to network assets would be recovered through wheeling charges.*

(3) *The distribution licensee shall submit to the Commission, on six monthly basis the details regarding the quantum of such stranded costs and the period over which these remained stranded and would be stranded. The Commission shall scrutinize the statement of calculation of such stranded fixed costs submitted by the distribution licensee and determine the amount of additional surcharge.*

*Provided that any additional surcharge so determined shall be applicable to all the consumers availing open access from the date of determination of same by the Commission.*

3.10.3 That the impugned order passed by Hon'ble Commission is ad hoc and not based on the factual data. As per the above Regulation the Additional Surcharge shall be applicable from the date of determination of this charge. As the Hon'ble Commission did not determine the Addl. Surcharge for the period commencing 01.06.2020 based on the supporting data furnished by the Utility, it could not have been applied based on earlier computation.

3.10.4 That the computation of Addl. Surcharge is based on the figures of stranded power for the previous year and recovered over the next 6 months. This is not a fixed charge which could be recovered all the time without co-relating with the stranded power. On this account also, the order passed by the Hon'ble Commission to continue with the past computation suffers from valid justification and hence needs to be withdrawn.

3.10.5 That the Hon'ble Commission was required to determine whether the stranded power/back-down power was attributable to Open Access Consumer or was attributable to the mis-match of purchase obligations created by the Discom. The petitioner submits with the responsible that the Discom has been contracting Power Purchase Agreements on the premise of power deficit

but has been backing down power on the pretext of un-useable energy. Both the situation cannot exit. Invariably the methodology was adopted by the Discom for assessment of load requirement and the contract demand is incorrect and not updated resulting in huge mismatch in the peak demand/sanctioned load. The petitioner urges the Hon'ble Commission to ask the distribution licensee to supply data with respect to the peak load consumption against the sanctioned load. The petitioner submits that the variance in the peak load consumption and the sanctioned load is more than double. As a result of such gross mismatch, the Discom has been contracting power which was never required in the State and thus creating huge account of power required to be back-down or is stranded.

- 3.10.6 That the object of additional surcharge is to indemnify the Discom for the loss occasioned and attributable to the consumer. It is not compensatory in nature to be burdened upon the consumer even when such loss is not attributable to the OA Consumer. The Discom cannot be permitted to seek compensation for its faults.
- 3.10.7 That the distribution licensee has, over the year, been tying up power citing need for the same. Invariably, if there was need to tie up power despite having stranded power in the preceding years, the Discom is highly unjustified in its action and would not be justified to seek recompense from the petitioner.
- 3.10.8 That the petitioner would even go to the extent that the total amount of stranded power cannot in any case be burdened beyond the power drawn by the OA Consumer through Open Access. When the stranded power still exceeds, it clearly establishes that the back-down of power is not a creation of OA Consumer. The Hon'ble Commission as a guardian of interest of all consumers has to carefully analysis the aforesaid situation and understands the play which lies below.
- 3.10.9 That the orthodox of method of calculation of sanctioned load not only cause in procuring power than required but also burden the consumer with additional financial liability in the form of ACD.
- 3.10.10 That as a general reference, even the individual consumers under various categories may not be consuming upto the sanctioned load and it would have invariably caused escalation in the stranded power. It is thus essential that the cause of the same be ascertained, identified and plugged rather than fastening the liability upon the Industry.
- 3.10.11 That the Hon'ble Commission may kindly reconsider its order in this background so that the consumers are not unnecessarily burdened by these charges. Moreover, due to COVID-19 there will be considerable impact on the energy consumption/purchase of power through open access which will totally change the scenario of chargeable amount. Therefore, there is valid reason to determine the Additional Surcharge based on actual data.

### **3.11 Time of Use Tariff:**

- 3.11.1 That the Hon'ble Commission, while considering the imposition of Time of Use Tariff, under Para-8.3.1 has observed on **Page 267** as under,

*"The Commission has considered the submissions of the Intervener mostly related to the conditionalities attached with the existing ToD as well as the reply of DHBVNL on the issue of smart metering. The Commission observes that installing smart meter has now become a national agenda. Hence, the same shall remain a pre-requisite for availing ToD tariff. The*

*same, if not installed by the Discoms, can be installed by the Consumers as per CEA norms. The meters should have appropriate registers to record the consumption during ToD hours for commercial ToD accounting. However, the dispensation of smart grid and rooftop solar related additional incentive shall be done away with."*

That the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 are for regulating the installation and operation of meters. As per Regulation 3 of these Regulations, the Meter Regulations are applicable to (i) Interface meters, (ii) Consumer meters, and (iii) Energy accounting and audit meters.

3.11.2 That Regulation 6(2) deals with the ownership of consumer meters and reads as under,  
(2) **Consumer meters**

(a) Consumer meters shall generally be owned by the licensee.

(b) If any consumer elects to purchase a meter, the same may be purchased by him. Meter purchased by the consumer shall be tested, installed and sealed by the licensee. The consumer shall claim the meter purchased by him as his asset only after it is permanently removed from the system of the licensee.

3.11.3 Thus, the ownership of the consumer meters is with the licensee and the consumer has a choice whether he want to have his own meter or not. Accordingly, the Smart Meter, even if it is to be installed, it has to be primarily owned & installed by the licensee.

3.11.4 That the Tri-vector meters presently installed by majority of the Large Supply Industrial consumers are static meters having facility to record power consumption in 7 registers spread over, 18:30 hrs. to 22:00 hrs., 22:00 hrs. to 05:30 hrs., and 05:30 to 18:30 hrs. However, these meters are not capable for remote reading. The Licensee is getting these meters changed with DLMS meters, which have the remote metering facility and the required registers as well. The DLMS meters are designed to (Device Language Message Specification) which is the suite of standards developed and maintained by the DLMS User Association. The DLMS User Association has established a D Type liaison with IEC TC13 WG14, responsible for international standards for meter data exchange and establishing the IEC 62056 series.

3.11.5 That the responsibility to get the meters of desired configuration installed rest with the Utility. Hon'ble Commission may kindly consider to issue suitable directions to the Licensees to install smart meters at their own cost unless the consumers themselves opt to have their own meters at their own cost.

### 3.12 **ASSESSMENT OF CATEGORY-WISE POWER SALES:**

3.12.1 It is evident that due to National Lockdown imposed by the Govt. of India/ State Govt. on account of COVID-19 since March 24, there was huge impact on the power consumption of the Industrial & Commercial consumers in the State. There was direct slowdown of economic activities and even after the Lockdown withdrawn in phases after June 2020, the resultant impact would continue for nearly first six months of the current financial year. The power consumption of these consumers would be minimum reduced by 30-40% of the normal anticipated consumption.

3.12.2 That the computation made by Hon'ble Commission has an apparent error which would be evident from the following figures as projected by Distribution Licensees and approved by Hon'ble Commission, (**Page – 167**)

Energy Sales Estimates of UHBVN (MUs)

Category	HERC Approved FY 2019-20	Proposed FY 2020-21	HERC Approved FY 2020-21	Change (%)
Domestic	4636	4813	4632	(-) 1
Non-Domestic	1474	1017	1160	(-) 21
HT Industry	4678	3814	3837	(-) 18
LT Industry	1024	689	738	(-) 28
Bulk	302	335	348	15

#### Energy Sales Estimates of DHBVN (MUs)

Category	HERC Approved FY 2019-20	Proposed FY 2020-21	HERC Approved FY 2020-21	Change (%)
Domestic	5418	7090	6449	19
Non-Domestic	3138	2294	2574	(-) 18
HT Industry	7583	4343	4464	(-) 41
LT Industry	1101	695	754	(-) 32
Bulk	952	1136	1201	26

3.12.3 While COVID-19 has resulted in large reduction in energy sales to commercial and Industrial consumers, it has increased power demand of the domestic sector. Abrupt increase in Bulk Supply sales is not supported by any reasoning. The sales estimates do not reflect the ground reality and moreover, the impact seems widely varying in the two Discoms. It needs to be appreciated that error in estimates of category-wise sales directly affects the revenue determination and other ARR parameters.

#### 3.13 INTER-STATE TRANSMISSION LOSSES:

3.13.1 That Hon'ble Commission, while drawing annual 'Energy Balance' in the Distribution ARR orders, has been assuming interstate transmission losses @ 3.82% for the last 8 years whereas these losses have been reduced over the years and now it is in the range of 1.5-1.75%. These losses would make a direct impact on the energy available to the State. (**Page - 178/179**)

#### 3.14 INTRA-STATE DISTRIBUTION LOSSES:

3.14.1 That there has been a sharp increase in the 'Distribution Losses' assumed in the annual 'Energy Balance' this year over the previous year for the two Discoms. The figures taken are, (**Page – 178**)

#### Distribution Losses (%)

Year	UHBVN	DHBVN	State
2019-20	14.14	14.14	14.14
2020-21	21.23	16.53	18.50

3.14.2 That Hon'ble Commission while determining the 'Wheeling Charges' for the year 2020-21 has mentioned a figure of 10.61% for distribution losses. Whereas, in the ARR order for FY 2019-20, it was 5.93%. This is direct increase of 4.68% in absolute terms in the distribution losses or 78% increase over the previous year. Hon'ble Commission has been giving perpetual directions to the

Discoms to reduce distribution losses and huge capital expenditure plans have been approved to achieve the desired reduction. (**Page –249**)

3.14.3 That the facts and figures show a totally negative picture. Such abrupt increase in distribution losses is totally uncalled for and unrealistic. Hon'ble Commission may kindly re-examine these figures as these are going to make a huge impact on energy balance of the Utilities and resultant cost of power to the consumers.

**3.15 PROVISIONS FOR INTERSTATE SALES/BANKING:**

3.15.1 That the Hon'ble Commission has while considering annual Energy Balance for the years 2019-20 & 2020-21 has approved following provisions for 'Interstate sales/Banking', (**Page – 178**)

Description	2019-20	2020-21
Gross energy procured from outside the State sources (MUs)	24,382.28	29,321.12
Interstate sales/banking (MUs)	9,008.85	14,870.22
Extra purchase from outside sources (%)	36.9	50.7

3.15.2 Such extra purchase of power by the Discoms from outside the State sources and ultimate sale outside the State through Exchange at rates lower than the purchase rate is nothing but a direct loss and affects the cost of power and tariff of the consumers. Moreover, the surplus power shown as 'Banking' is a misnomer. Once the power is banked, it comes back to the State with premium and is available for sale to the consumers. This fact has not been taken into account in the ARR order. Hon'ble Commission may kindly have a close look at these figures which have adverse impact to the consumers.

**3.16 COMPUTATION OF CROSS SUBSIDY SURCHARGE:**

3.16.1 That while comparing the computation of Cross Subsidy Surcharge, as carried out/approved by Hon'ble Commission in the ARR orders for FY 2019-20 and 2020-21, it has been found that the values assumed for HT/LT losses are at quite variant. The impact of interstate and intrastate transmission losses seems to have been inadvertently omitted. This fact is going to make a huge impact on the determination of Cross Subsidy Surcharge to the Industrial consumers. (**Page – 252**). It is prayed that the Hon'ble Commission may kindly examine this error apparent and make necessary correction in the values of CSS for different categories of consumers.

**3.17 PRAYER:**

3.17.1 In view of the afore-mentioned facts and circumstances, it is most respectfully prayed that the Hon'ble Commission may kindly review the order passed in Petition No. HERC/PRO-59 & 60 of 2019 dated 01.06.20 and grant the following reliefs,

- a) The cost of distribution network, as recently levied on embedded open access consumers getting power supply at 66 kV and above voltages through the impugned order may kindly be withdrawn from the very date of issue of the impugned ARR order;
- b) The ad hoc determination of Additional Surcharge for FY 2020-21 may kindly be withdrawn till the actual amount of Addl. Surcharge is worked out based on the factual supporting data;
- c) The Distribution Utilities may kindly be directed to replace the existing Tri-vector Meters with Smart Meters at their own cost and not to link the application of ToU tariff with condition of installation of smart meter;
- d) The estimates of category-wise energy sales may kindly be made more realistically looking at the impact of COVID-19;

- e) The assumption on account of inter-State transmission losses may kindly be made based on approved losses by Hon'ble CERC;
- f) The computation of intra-State distribution losses in the assessment of 'Energy Balance' and 'Wheeling Charges' may kindly be re-examined in view of the issues raised above;
- g) The figures of 'Interstate sales/Banking' of power may kindly be re-examined and the purchase of such huge surplus power by the Discoms may kindly be re-examined;
- h) May kindly re-assess the Cross-Subsidy Surcharge based on the methodology mentioned in Tariff Policy and as adopted in the last ARR order;
- i) Any other relief which might be decided by the Hon'ble Commission.

#### 4. Review Petition filed by M/s Pankaj Bhalotia

##### 4.1 MOST RESPECTFULLY SHOWETH IN THE APPLICATION:

1. The Commission recently on June 1, 2020 passed Tariff Order for Financial Year 2020-2021 and such Tariff Order was effective from June 1, 2020 onwards.
2. Subsequently the Commission issued Corrigendum dated: June 29, 2020 to the Tariff Order dated: June 1, 2020.
3. There are certain issues and grievances, which are as discussed herein in this review application, which the applicant requests the Commission to review and reconsider for making necessary changes in the Tariff Order and accordingly filing this review application before the Commission under the provisions Regulation 57 (1) and (2) of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulation, 2019.
4. I tried to get these certain issues and grievances to be picked up by the Commission as suo-motu, through my email to the Commission, but I got advice/message from the Commission to file a review application in accordance with provisions of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulation, 2019, if I wish my grievances in this regard to be addressed by the Commission.
5. There has been some delay in filing this review application after the permissible time period, which I would like Commission to condone and admit this review application, because I being a working professional have my professional and official responsibility as well and also I was expecting Commission to pick my grievances suo-motu and decide based on my email in accordance with point 4 above and I shall be obliged to the Commission, in same regard.
6. In view of the above, the applicant requests the Commission to review, revisit and reconsider the certain issues and aspects of the Tariff Order dated: June 1, 2020 and Corrigendum dated: June 29, 2020 and correct the same. The grievances which I would like Commission to take up in the review application are specified in following sections.

#### A. SEEKING REVIEW AND CLARIFICATION

The Applicant requests the Commission to review the grievances described in below-

1. Through Serial no. 5 of the Corrigendum dated: 29-June-2020, the Commission said that **"It is clarified that subsidized DS rate shall be applicable for consumption up to 500 units per month."** However, Commission has not specified any reference to Tariff Order dated June 01, 2020 as what was wrong or error there resulted into such Corrigendum on Serial number 5.

##### Grievance/Issue

- 1.1 This Serial Number 5 of the Corrigendum dated: 29-June-2020 does not mention anything that for this Corrigendum, which page and serial number of the Tariff Order dated: June 1, 2020 one has to refer back for clarification. Basically, the clarification provided through corrigendum is against which order, serial number or Table that was incorrect at first place in the Tariff Order dated: June 01, 2020 has not been specified by the Commission while making this Corrigendum and accordingly requires a clarification/correction from the Commission.
- 1.2 How this Serial no. 5 co-relates to Commission Tariff Order dated: 01-June-2020, because The Commission while giving Tariff Order on 01-June-2020 has only reduced tariff till 150 units (and that is not a subsidized rate too), so which subsidized DS rate Commission is talking about upto 500 units per month, requires clarification from the Commission.

2. On Page 275 of the Order dated 01-June-2020, the table mentioned over there as revised Domestic Supply Tariff says it is w.e.f 01.04.2020, whereas the Annexure A on Schedule of Tariff and Charges on Page 285 says revised Domestic Supply Tariff is applicable from 01.06.2020.

**Grievance/Issue**

2.1 Please correct the applicability date as 01.06.2020 in place of 01.04.2020 on the table given on Page 275.

3. On Page 274 of the Order dated: 01-June-2020 the Commission talked about making rationality of MMC under Domestic Supply (DS) Tariff and accordingly said that **“The Commission observes that a lot of DS consumers fall in Category – I of the existing schedule of tariff. Considering the fact that a high percentage of such consumers are being billed at the MMC rate i.e. Rs. 115 per month of the connected load up to 2 KW and Rs. 70 / KW per month above 2 KW. It is felt that MMC rates trigger in the consumption of a consumer falls below the threshold level i.e about 93 Units per month or even if the consumption is nil. In effect the MMC indirectly encourages wasteful consumption. Keeping these factors in mind the Commission, in order to make attractive billing on the basis of tariff instead of MMC and also to provide some relief to the DS Consumers at the margin given the impact of COVID – 19 Pandemic and its impact on employment, income and earnings of the small DS Consumers, has considered it appropriate to revise the tariff applicable for such consumers.”**

**Grievance/Issue**

3.1 However, in the Tariff structure that was issued for Domestic Supply (DS) Categories in the Tariff Order dated: June 1, 2020, there is no reduction or removal of MMC from previous year tariff structure. The MMC has been kept at same level and structure. Is there any inadvertent errors that has occurred with respect to not reducing or not removing MMC while issuing the tariff order dated: June 1, 2020 and now the Commission would like to correct it?

3.2 How keeping the MMC at same rate and structure as previous tariff structure, justify the Commission observations and direction on Page 274 that

a. **In effect the MMC indirectly encourages wasteful consumption.**

b. **in order to make attractive billing on the basis of tariff instead of MMC**

Since the commission has reduced the domestic supply tariff but kept MMC at same rate and structure, so will there be no increase in wasteful consumption due to MMC kept at same rate and structure, as noted and observed by the Commission on Page 274.

3.3 On MMC, I had filed a petition (case number HERC/PRO 03 of 2018) earlier on the similar grounds as observed and noted by the Commission in the Order dated: 01-June-2020 on Page 274, but that petition had gone in vain wherein everyone had misunderstood it including the Commission.

3.4 The Commission should make the Correction in MMC either by removing it or by reducing it so as to justify its observations on Page 274 of the Tariff Order dated: June 1, 2020 that MMC actually results into wasteful consumption of the Electricity.

4. There is no reduction in tariff for Bulk Supply Domestic Category correspondingly as reduction in tariff has been made for Domestic Supply (DS) Category. The tariff for Bulk Supply Domestic Category has been kept at the same rate as it was in the previous tariff structure. So by keeping the tariff for bulk supply domestic category same as previous tariff, Is the Commission not depriving all the residents of the group housing society to avail the benefit of such reduction in tariff for domestic supply (DS) category who are in fact domestic supply consumers in nature but are on bulk supply domestic/Single Point supply. Is a resident under bulk supply domestic not entitle to avail the benefit and relief of reduction in tariff in domestic supply (DS) for his/her individual use of electricity inside his/her Apartment? For a resident like me who lives in a group housing society and getting supply of electricity under bulk supply domestic, the reduction in tariff for domestic supply (DS) category is not going to provide any relief and saving on my pocket. Because the difference between total bill amount raised by DHBVN under bulk supply domestic and amount recovered by RWA from resident for his/her individual consumption inside his/her

apartment become part of common area electricity. So no change on the pocket for a bulk supply domestic category consumer.

**Grievance/Issue**

- 4.1 Whenever there is a reduction in Tariff for a DS Category consumer, similar reduction in tariff should also be made in Bulk Supply Domestic Category consumer so as to pass on the benefits of reduction in Tariff in DS Category to a resident of a group housing society.
- 4.2 I will explain this through an example below-  
Let's say the monthly electricity bill of the housing society for June month was Rs. 10 Lakhs and out of that Rs. 10 lakhs bill, 50% (Rs. 5 Lakhs was for individual consumption inside the flat on which DS tariff was applicable) and balance 50% was for common area use. Now, after the Tariff Order dated: June 01, 2020 and due to reduced DS Category Tariff the share of individual consumption has got reduced to 40% from earlier 50% and consequently the common area share got increased to 60% from earlier 50%, whereas common area share should have remained same to 50%. The Question is Why reduction in DS category Tariff would result into increase in share of common area electricity for a resident of a group housing society? And accordingly commission should reduce the tariff for a bulk supply domestic category consumer in this case because of reduction in Tariff for a DS Category consumer, so that a resident of a Group Housing Society should also get benefit of reduction in Tariff in DS category.
- 4.3 Attaching copy of notice issued by **RWA of my housing society as Annexure -1**, to elaborate more on the issue that how a reduction in DS category tariff, is resulting into increase in share of common area electricity and accordingly, isn't it unfair and requires correction by the Commission?
- 4.4 On this very similar point, I have a review petition with the Commission registered as HERC/RA – 10 of 2019 and pending adjudication.
- 4.5 Whenever there is reduction in tariff or rebate/concession/discount/subsidy provided for DS Category consumer, similar reduction in tariff or rebate/concession/discount/subsidy should also be made for a domestic bulk supply category consumer for those who are living in a group housing society.
- 4.6 We all agree that a resident living in a group housing society is in the nature of a DS category consumer and all the benefits/scheme/subsidy as available to such a DS Category consumer should also be available to a resident of a group housing society for his/her individual consumption inside the flat. And such benefits/scheme/subsidy should not have a bearing on increasing the share in common area electricity charges.

**B. PRAYER**

In view of the aforesaid submission, the applicant most respectfully prays before the Hon'ble Commission:

- i. That the review application, in its present form, may kindly be accepted and taken on record.
- ii. Condone any inadvertent omissions/errors/shortcomings and permit applicant to add/change/modify/alter this application and make further submissions as may be required at a future date.
- iii. To decide the review application as per merit and keeping and protecting interest of a resident of a group housing society at large of the state in mind.
- iv. To review and examine the issues and grievances brought in through this review application and as discussed above and make necessary changes in the Tariff Order dated: 01-June-2020 and Corrigendum dated: 29-June-2020 in case number HERC/PRO-59 of 2019 and HERC/PRO-60 of 2019, in the matter of True – up for the FY 2018-19, Annual (Mid-year) Performance Review for the FY 2019-20, Aggregate Revenue Requirement of UHBVNL and DHBVNL for the MYT Control Period FY 2020-21 to FY 2024-25 and Distribution & Retail Supply Tariff for the FY 2020-21 to the extent submissions made by me as applicant.

- v. To pass any such other order/s and/or direction/s which the Hon'ble Commission may deem fit and proper in the facts and circumstances of this 3<sup>rd</sup> addendum application.

## 1. Proceedings

- 1.1 The matter was initially heard by the Commission on 06.10.2020 through virtual court due to covid pandemic, wherein the Commission observed that the submissions made by the counsel for petitioner in RA 6 of 2020 are very general and not specific. The petitioner was asked to give submissions explaining in great detail, with reference to every page, the short coming therein and what according to the petitioner should be the actual figures mentioned there. The logic for the same may also be given. The Commission also desired for the petitioner to provide loss anticipated on account of these errors and to share the revised figures of Revenue Gap as per their calculations.
- 1.2 The Discoms were also directed to provide the month wise - consumer category wise sales and corresponding revenue realized w.e.f. 01.04.2020 to 30.09.2020.
- 1.3 The case was next heard by the Commission on 28.10.2020 through virtual court wherein the Ld. Advocate appearing for HPPC/Discoms pleaded for three days' time to file written reply to the issues raised by the petitioners in RA 7 of 2020 and RA 8 of 2020 and the Counsel Sh. R K Jain appearing for M/s Jindal Stainless (Hisar) Limited also sought time to file rejoinder to the submissions of HPPC/Discoms on the review petitioners under consideration.
- 1.4 Upon hearing the parties, the Commission directed the Discoms/HPPC to file reply within two days from today with an advance copy to the opposite parties. Thereafter, the petitioners in RA 7 of 2020 and RA 8 of 2020, may also file rejoinders, if any, within three days' time, with an advance copy to the respondent Discoms/HPPC.
- 1.5 The case was heard by the Commission on 10.11.2020 through virtual court, as scheduled where at the onset, the Commission took cognizance of the fact that the Commission, vide Order dated 28th October 2020 had directed Discoms/HPPC to file its reply within two days with an advance copy to the opposite parties. However, as intimated by the Ld. Advocate, appearing for HPPC, the same has been done only yesterday due to administrative reasons. The Commission took strong exception to the casual conduct of HPPC leading to the in-ordinate delay in filing the requisite response. Resultantly, the Commission imposed fine of Rs. 5000/- on HPPC. The fine to be deposited in the Commission's account within two days from today and the same ought not to be claimed by HPPC/Discoms in the ARR or otherwise.
- 1.6 The Commission heard the parties at some length on all the issues raised by the review petitioners as well as HPPC/Discom's stand on the same. As the Counsel Sh. R K Jain, appearing for M/s Jindal Stainless (Hisar) Limited, sought some time to file rejoinder,

the same was allowed. All the parties were directed to file their arguments/reply/rejoinder etc. within a week's time.

- 1.7 Rejoinder was filed by the review petitioners in RA 7 on 17.11.2020 and the petitioner in RA 8 on 18.11.2020 mainly reiterating the contents of their petition, which for the sake of brevity are not being reproduced here.

## 2. Commission's Analysis & Order

In Order to examine the scope of review jurisdiction, the Commission has perused the provision of Regulation 57 & 58 of the HERC (Conduct of Business) Regulations, 2019, which empowers the Commission to exercise review jurisdiction. The relevant regulation is reproduced below:-

### **"REVIEW OF THE DECISIONS, DIRECTIONS, AND ORDERS:**

*57 (1) All relevant provisions relating to review of the decisions, directions and orders as provided in the Code of Civil Procedure 1908, as amended from time to time, shall apply mutatis mutandi for review of the decisions, directions and order of the Commission.*

*Provided that the Commission may on the application of any party or person concerned, filed within a period of 45 days of the receipt of such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission may deem fit*

*(2) No application for review shall be considered unless an undertaking has been given by the applicant that he has not preferred appeal against the decision, direction, or order, sought to be reviewed, in any Court of Law.*

*(3) No application for review shall be admitted/ considered unless an undertaking has been given by the applicant that in case he files an appeal of the decision, direction or order of which review is pending adjudication, he shall immediately inform the Commission regarding the fact of filing the appeal.*

*58 The Commission may on its own motion or on the application of any party correct any clerical or arithmetical errors in any order passed by the Commission."*

Further, the Commission has also perused the judgment of Hon'ble Delhi High Court in Aizaz Alam Versus Union of India & Others (2006 (130) DLT 63: 2006(5) AD (Delhi) 297. The relevant extract from the aforesaid judgment is reproduced below:-

*"We may also gainfully extract the following passage from the decision of the Supreme Court in Meera Bhanja V. Nirmala Kumari Choudhury, where the Court, while dealing with the scope of review, has observed:*

*The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. The review petition has to be entertained on the ground of error apparent on the face of record and not on any other ground (emphasis added). An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivable be two opinions. The limitation of powers of courts under Order 47 Rule 1, CPC*

*is similar to the jurisdiction available to the High Court while seeking review of the Orders under Article 226.*

*Applying the above principles to the present review petition, there is no gainsaying that the review of the Order passed by this Court cannot be sought on the basis of what was never urged or argued before the Court (emphasis added). The review must remain confined to finding out whether there is any apparent error on the face of the record. As observed by the Supreme Court in Lily Thomas and Ors.V Union of India & Ors., the power of review can be used to correct a mistake but not to substitute one view for another (emphasis added). That explains the reason why Krishna Iyer, j. described a prayer for review as “asking for the moon” M/s Northern India Caterers (India) Ltd. V. Lt. Governor of Delhi”.*

3. The Commission has examined the review sought, issue wise, by the petitioner including maintainability tested on the anvil of the aforesaid Regulations / Case Laws as under:-
4. Maintainability of petition filed by Sh Pankaj Bhalotia

Sh. Pankaj Bhalotia had filed a petition vide email dated 24.08.2020, which, not being in the prescribed format, was returned to the petitioner, with an advice to follow the prescribed procedure for seeking intervention of the Commission on any issue or review of an earlier Order. Though the petitioner, in response, has filed a petition, it was observed that the same was not accompanied by the prescribed fee as per the HERC Fee Regulations in vogue. The matter was considered by the Commission and decided that prescribed fee was required to be paid for the petition to be considered by the Commission. The Order was duly communicated to Sh. Bhalotia. Since the petitioner has failed to deposit the requisite fee, the Commission declines to admit the petition. However, the comments/ suggestions given by Sh. Bhalotia are, instead, treated as public comments and duly considered while passing the present Order.

**(A) Issues relating to error apparent**

RA-6

- a) Calculation of revenue gap for the FY 2020-21:

The petitioner has pointed out certain inconsistencies/ errors that may have resulted in erroneous calculation of Revenue Gap for FY 2020-21 as given below:

- (i) That while calculating Energy Balance as well as revenue gap for FY 2020-21 at current tariff, total sales are taken as 38473.64 MUs (page no.178 & 209) as against approved sales of 37176.62 MUs (page no. 167).
- (ii) That the Revenue amounting to Rs. 5162 crore (page no. 277) is neither on the basis of existing tariff nor on revised tariff as for the slabs 0-50 & 51-100 the revised tariff is

considered i.e. Rs. 2/kWh & Rs. 2.5/kWh and for 0-150 existing tariff i.e. Rs.4.50/kWh has been considered.

- (iii) That at page no. 274, the Commission has observed that the revenue from DS consumers for the FY 2020-2021 shall be about 6019 Crores @ Rs. 5.06 per unit which is contrary to the statement on page 277 of the Order.
- (iv) That the Commission has calculated the subsidy as the difference between revised tariff Rs. 5162 crores and subsidized tariff of Rs. 4697 crores i.e. Rs. 465 crores. In these calculations also, there is apparent calculation error as mentioned in point (ii) above.
- (v) That the Commission in its Tariff Order dated 01.06.2020 has approved Power Purchase cost amounting to Rs. 24052.66 Crores (Fixed cost = Rs. 6643.57 Crores, Variable Cost = Rs. 14224.13 Crores and Transmission and SLDC Charges = Rs. 3184.96 Crores) for FY 2020-21. However, the following inconsistencies are apparent in the Tariff order:
  - (vi) That the fixed cost is Rs. 6852 crore at page no. 177 and Rs. 6643.57 crore at page no. 179.
  - (vii) Total variable cost of sold units of DISCOMs shown as Rs. 14224.13 crore (Page no. 179). However, the same does not conform to the calculations made in the table of calculation of energy balance (page no. 178).
  - (viii) AP Subsidy for FY 2018-19. As per the Corrigendum dated 29.06.2020, the subsidy for FY 2018-19 has been corrected as Rs. 6450 Cr. whereas as per calculation at page 158 of the Tariff Order, the actual amount of AP Subsidy is Rs. 6450.66 Cr. Accordingly, the subsidy for FY 2018-19 may be corrected as Rs. 6450.66 Cr.

The Commission, before considering the review petition, observed that the submissions made by the counsel for petitioner in RA 6 of 2020 are very general and not specific. The petitioner was asked to give submissions explaining in great detail, with reference to every page, the short coming therein and what according to the petitioner should be the actual figures mentioned there. The logic for the same may also be given. The Commission also desired for the petitioner to provide loss anticipated on account of these errors and to share the revised figures of Revenue Gap as per their calculations.

The petitioners provided the requisite information vide their filing dated 19.10.2020.

The Commission has considered the submission of the Discoms regarding restating the revenue gap and observes that the ARR for the ensuing year is calculated based on the best estimate basis and due to this very reason that the True up exercise is held after the actual figures are available. The cost and revenue calculated based on certain assumptions will always be at variance with the actual figures. Moreover, given COVID-19 pandemic, the sales and revenue thereto in FY 2020-21 is highly unrealistic, depending on various extraneous factors including the response of HT/LT as well as NDS consumers to the phased unlocking of the economy. It is also to be noted that the trued up amount is allowed to be recovered along with carrying cost so that any revenue loss caused to the Discoms on account of lesser recovery is made good.

Nonetheless, the Commission has examined the errors pointed out by the petitioner Discoms and finds that there is some inadvertent variance in the sales figures that have been used to calculate the revenue and those used to calculate cost. The Commission observes that though it would tantamount to substituting one set of assumed figures with another, even then a uniformity is required to be maintained in the calculations. Accordingly, the Commission, based on the approved sales figures of 371762.62 MU, has recalculated the Revenue Gap for the FY 2020-21 to arrive at a figure of Rs. 1105.07 crores. However, this does not take into account the domestic subsidy of estimated Rs. 296 crores. Accordingly, after taking into account the domestic subsidy as per Discoms calculations, the resultant revenue gap for the FY 2020-21 is estimated at Rs. 809.07 crores. The amount of AP subsidy may be read as Rs. 6450.66 crores. Having observed as above, the Commission has taken a serious note of the fact that in response to the Commission's letter dated 11.08.2020, seeking commitment of RE Subsidy as quantified by the Commission, the State Government has, so far not provided the requisite commitment. This is in violation of Section 65 of the Electricity Act, 2003. Moreover, as reported by the Discoms, the subsidy released by the State Government during the last three quarters of the financial year is short by Rs. 3192.21 crores, leading to an avoidable borrowing of Rs. 1250 crores by the Discoms. The Discoms are directed to follow up with the State Government, under intimation to the Commission.

The Commission has also examined the revenue calculations submitted by the Discoms as part of their filings dated 19.10.2020 and observes that for consumer categories other than domestic consumers, the difference in revenue is negligible and that too due to difference in connected load as estimated by the Discoms and that approved by the Commission. Accordingly, the Commission sees no justification in revising the revenue figures for consumer categories other than domestic. The revenue from the Domestic consumers for the revised calculations is taken as submitted by the Discoms vide their filing dated 19.10.2020. The resultant revised revenue from sales as approved by the Commission is as given below:

### **Approved revenue for the FY 2020-21**

Domestic (DS)	4986
Non Domestic (NDS)	2915.13
HT Industry	7072.86
Lift Irrigation	242.33
LT Industry	1198.77
AP Tube well Supply	108.99
Bulk Supply	1131.76
Railway Traction / DMRC	63.44
Street Lighting	133.92
MITC	3.87
PWW	1040.75
<b>TOTAL</b>	<b>18897.82</b>

The approved power purchase cost based on approved sales of 37,176.62 MU and the resultant ARR for the two Discoms is asunder:

<b>Energy available for Sale to the Distribution Licensees for the FY 2020-21</b>					
<b>Sr. No.</b>	<b>Particulars</b>	<b>Units</b>	<b>UHBVNL</b>	<b>DHBVNL</b>	<b>Total</b>
1	Gross energy procured from outside the state sources	MUs	12334.38	17024.90	29359.28
2	Interstate sale / banking	MUs	6955.95	9601.16	16557.11
3	Energy procured from outside the state sources net of interstate sale / banking	MUs	5378.43	7423.74	12802.17
4	Inter-state transmission losses	%	3.82%	3.82%	3.82%
5	Inter-state transmission losses	MUs	205.46	283.59	489.04
6	Net energy available from outside the state	MUs	5172.97	7140.15	12313.12
7	Add energy generated within the state	MUs	14413.11	19894.14	34307.25
			42.01%	57.99%	46620.37
8	Net energy available for use in Haryana/ Total energy at Haryana Boundary	MUs	19586.09	27034.29	46620.37
9	Intra-state transmission losses	%	2.15%	2.15%	2.15%
10	Intra-state transmission losses	MUs	421.10	581.24	1002.34
11	Energy at Discom Boundary	MUs	19164.99	26453.05	45618.04
12	Distribution loss	%	21.23%	16.53%	18.50%
13	Distribution loss units	MU	4068.73	4372.69	8441.42
14	Units available for sale by DISCOMS/ Discom approved sales	MU	15096.26	22080.36	37176.62
	Total energy purchase		26747.50	36919.03	63666.53
	Power purchase cost	Rs. Mil	105879.86	146143.86	252023.72
	Average rate		3.96	3.96	3.96

	Total power purchase cost				
	Fixed cost				68520.00
	Total Variable cost of sold units of DISCOMS				135781.75
	Total Cost of Power		85830.97	118470.78	204301.75
	Total Transmission and SLDC Charges		13592.57	18256.99	31849.56
	Total Cost		99423.54	136727.77	236151.31
	Units purchased for units sold by Discoms		19791.54	27317.87	47109.42
	Average bulk supply rate		5.02	5.01	5.01

<b>HERC Approved ARR of UHBVN</b>		<b>FY 2020-21</b>
<b>Sr.No</b>	<b>Particulars</b>	<b>Approved</b>
<b>1</b>	<b>Total Power Purchase Expense</b>	<b>9,942.35</b>

1.1	Power Purchase Expense	8,583.10
1.2	Interstate transmission Charge	830.40
1.3	Intrastate transmission charges and SLDC charges	528.86
<b>2</b>	<b>Operations and Maintenance Expenses</b>	<b>1,307.28</b>
2.1	Employee Expense	740.76
2.2	Administration & General Expense	115.60
2.3	Repair & Maintenance Expense	146.93
2.4	Terminal Liability	303.99
<b>3</b>	<b>Depreciation</b>	<b>325.49</b>
<b>4</b>	<b>Return on Equity Capital</b>	<b>-</b>
<b>5</b>	<b>Other Expenses</b>	<b>-</b>
<b>6</b>	<b>Interest on Actual Loans</b>	<b>312.91</b>
6.1	Interest on UDAY bonds payable to the State Government	-
6.2	Interest on WC loans including CC/OD limits	95.93
6.3	Interest on CAPEX loans	136.71
6.4	Interest Cost on Consumer Security Deposit	70.27
6.5	Guarantee Fees	10.00
6.6	Interest Cost of Jind Loans	-
<b>7</b>	<b>Total Expenditure (Actual)</b>	<b>11,888.04</b>
<b>8</b>	<b>Less: Non Tariff Income</b>	<b>221.56</b>
<b>9</b>	<b>Net Aggregate Revenue Requirement</b>	<b>11,666.48</b>

S.No.	Particulars	FY 2020-21
		Approved
<b>1.00</b>	<b>Power Purchase Expenses</b>	<b>13,672.78</b>
1.10	Power Purchase Cost	11,847.08
1.20	Transmission Charges (PGCIL)	1,216.80
1.30	Transmission Charges (HVPN + SLDC)	608.90
<b>2.00</b>	<b>Operation &amp; Maintenance Expenses</b>	<b>1,596.27</b>
2.10	Employee Expenses (net)	938.93
2.20	Administration & General Expenses (net)	121.22
2.30	Repair & Maintenance Expenses	176.11
2.40	Terminal Benefits	360.00
3.00	Depreciation	325.23
<b>4.00</b>	<b>Interest &amp; Finance Charges</b>	<b>438.27</b>
4.10	Interest on Long Term Loan	181.25
4.20	Interest on Working Capital	155.06
4.30	Interest on UDAY Bonds	-
4.40	Interest on Consumer Security Deposit	75.89
4.50	Other Interest & Finance Charges	16.08
4.60	Guarantee Fee	10.00
6.00	Return on Equity Capital	-
7.00	Prior period expenses & other expenses	-
8.00	Other Debts, (including wealth tax)	-
9.00	Provisions for bad and doubtful debt	-
<b>10.00</b>	<b>Aggregate Revenue Requirement</b>	<b>16,032.55</b>
11.00	Less: Non Tariff Income	307.66
<b>13.00</b>	<b>Aggregate Revenue Requirement from Retail Tariff</b>	<b>15,724.88</b>

Based on the revised ARR and revenue figures, the Revised Approved Revenue Gap is worked out as given below:

### Revenue Gap for FY 2020-21 at current tariff

			HERC Revenue gap at current tariff
	Total ARR for FY 2020-21		
	UHBVNL	Rs. Crore	11666.48
	DHBVNL	Rs. Crore	15724.88
	Total ARR for FY 2020-21	Rs. Crore	27391.36
	Revenue at current tariff on intrastate sale		18897.82
	Total Sales for FY 2020-21	MU	37176.70
	COS at LT level		7.33
	AP sales for the FY 2020-21		9217.55
	Estimated Revenue from AP sales		108.99
	Subsidy for AP supply at LT COS		6450.66
	Total revenue incl Subsidy		25348.48
	Revenue surplus/(Gap) for FY 2019-20 at current tariff		-2042.88
	Revenue surplus for FY 2018-19		817.09
	Holding cost for 1.5 years @ 9.5%		120.72
	Net Revenue Surplus for the FY 2020-21		-1105.07
	Distribution loss		18.50%

#### A. Issues relating to Typographical errors

- (i) A small typographical error is found on page No. 272, para No. 4(a) of the Order wherein the figure 50 kW/kVA is mentioned as 50 kW/MVA.

The Commission has examined the submissions of the Discoms and finds the same in Order. Accordingly figure of 50 kW/MVA at para No. 4(a) of the Order may be read as 50 kW/kVA.

- (ii) On Page 273, under the head concessional tariff the time period mentioned as 22:00 Hrs. to 04:00 Hours is not in line with that approved by the Commission in its Order No. 822-823/HERC/Tariff dated 13.12.2020. It is actually 21:00 to 05:30 Hours as the energy meters do not have the TOD slot for time period of 22:00 Hrs. to 04:00 Hours and off-peak period also lasts upto 05:30 Hrs.

The Commission has examined the submissions of the licensee and finds the same in order. The time period of concessional tariff at page no 273 of the order may be read as 21:00 to 05:30 Hours in place of 22:00 Hrs. to 04:00 Hours.

- (iii) Note no 14 ( Bank Guarantee)

The Discoms have submitted that the provision of 1.5 times Bank Guarantee on Page 289 is not in synch with the relevant provision as notified recently by HERC in its

1st amendment to Duty to Supply Electricity Regulations-2020. As per the fresh amendment, developer has to submit BG equivalent to the estimated cost of phase wise work as per approved electrification plan before commencement of work. On failure to complete the work in the given time, Developer may request for extension by furnishing BG equivalent to 1.5 times of the estimated cost of the work of such phase.

The Commission has examined the submissions of the petitioners and the relevant regulations and finds the contention of the Discoms in Order. The relevant provisions of the regulations regarding bank guarantee shall prevail.

- (iv) Corrigendum dated 29.12.2020 (Sr. no. 5); applicability of subsidised domestic rate: Sh. Pankaj Bhalotia has pointed out that the Commission has not specified that the correction is made against which error. Accordingly, it is observed that the corrigendum refers to the subsidy provided by the State Government to the domestic consumers.
- (v) Date of applicability of Domestic Supply Tariff (inconsistency in the date of applicability as per pages 275 and 285 of the Tariff Order dated 01.06.2020): as pointed out by Sh. Pankaj Bhalotia: The Commission has examined the relevant portions of the Order and in view of the discrepancy, observes that the date of applicability of revised Tariff shall be the date mentioned in the schedule of Tariff i.e. 01.06.2020.
- (vi) MMC on Domestic consumers: The Commission has examined the issue of MMC on domestic consumers as pointed out by Sh Pankaj Bhalotia, and is of the considered view that the only alternative to the MMC is to introduce a two-part tariff, which may not be financially viable for the small DS consumers at present.

#### **B. Interest on HVPNL Bonds and FRP bonds**

The Commission in its order dated 01.06.2020, while disallowing the interest on HVPNL bonds and FRP bonds had observed as under:

*“the Commission observes that since the interest on HVPNL bonds and FRP borrowings did not form part of the ARR petition for the FY 2018-19, filed by the licensees, the same cannot be allowed on true up in accordance with the MYT Regulations.”*

The petitioners in RA 6, UHBVNL and DHBVNL have submitted that in the petition filed by UHBVNL and DHBVNL on 30.11.2017 for the determination of ARR for the FY 2018-19, the interest on HVPNL bonds and FRP Borrowings are mentioned at page no. 55 and 62/63. Further, the same are also part of ARR order (Page No. 203 of HERC Order dated 15.11.2018) under heading interest cost over and above normative amounting to the tune of Rs. 404.80 Crores and Rs. 215.56 Crores for UHBVNL and DHBVNL respectively.

The Commission has examined the filing dated 30.11.2017, made by the petitioners and the Commission’s Order thereto and observes that the petitioner had not raised any specific claim for interest on HVPNL bonds and FRP bonds therein. The table 34 wherein amounts claimed by the petitioner comprising the ARR for the FY 2018-19 at page 61 of the filing and that approved by the Commission had no claims by the name of Interest on HVPNL bonds and FRP bonds. Upon

further examination, it is observed that the petitioners had raised a claim for interest on UDAY bonds which was inclusive of HVPNL Bonds and FRP bonds. The Commission, in its order dated 30.11.2018, while dealing with the petition dated 30.11.2017, on the issue of UDAY Bonds had observed as under:

*The Discoms have proposed to recover all their interest costs from the consumers by way of interest on borrowings for capital expenditure and the balance through interest on working capital borrowings inclusive of UDAY bonds. However, the Commission observes that the interest cost borne by the licensee is recovered from the consumers of the state by way of interest on borrowings for capital expenditure, interest on working capital borrowings; interest on Advanced Consumption Deposit and also some interest is recovered as part of FSA. The interest being recovered as part of FSA has not been accounted for by the licensees while calculating the financial burden of interest as part of the UDAY scheme.*

**Interest on UDAY borrowings for the FY 2018-19**

*As per the information provided by the Discoms the interest payable for UDAY bonds for the FY 2018-19 is as under:-*

<i>Rs. Crore Interest to State Govt. for UDAY Bonds</i>	<i>UHBVNL</i>	<i>DHBVNL</i>	<i>Total</i>
	377.02	239.76	616.78

*The total cost for the FY 2018-19 adds up to Rs. 616.78 Crore. The same shall be met out of OFR available under the UDAY*

The petitioners, aggrieved by the Commission's Order in the matter, sought review and thereupon, after due considerations, the Commission, in its order dated 22.02.2019 in RA 1 of 2019, observed as under:

*The Commission has examined the submissions of the Petitioners and observes that the issue of disallowance of interest on UDAY bond was part of the review petition filed by the DISCOMs in case no. RA-06 of 2017, on the same grounds. The matter has been discussed in detail in the impugned order dated 15.11.2018 as well as in Order dated 14.12.2018. In this regard, the relevant extract of the Order of the Commission dated 14.12.2018 is given as under:-*

*"It is evident from the above discussions that the entire gamut of allowing interest on UDAY bonds was well within the knowledge of the all stakeholders including this Commission and the same was specifically dealt with in the impugned Order dated 11.07.2017. The Petitioner has not placed on record any new facts or error apparent on the face of record that may merit review on this issue. Therefore, the review sought on this issue is rejected as devoid of merit and also beyond the scope of review jurisdiction of this Commission."*

*Accordingly, the Commission is of the considered opinion that the ibid Order would apply to the instant case as well. Hence, the issue raised is rejected as being devoid of merit and also beyond the scope of review jurisdiction of this Commission.*

From a perusal of the record it is apparent that the petitioners had not claimed Interest on HVPNL Bonds and FRP bonds individually, but were claimed as part of the interest on UDAY bonds. Further, the petitioners had raised no objections to the Commission's Order treating the interest on HVPNL Bonds and FRP Bonds as part of UDAY Bonds. Contrary to this, in the true up

petition, the petitioners have claimed the interest on HVPNL Bonds and FRP bonds in addition to the interest on UDAY bonds, which led the Commission to observe that the interest on these bonds did not form part of the ARR petition for the FY 2018-19. Therefore, though it can be stated that interest on HVPNL Bonds and FRP bonds did form part of the ARR petition for the FY 2018-19, albeit under the head of UDAY bonds, therefore the same treatment as approved by the Commission on the Interest on UDAY Bonds shall also apply to the True up exercise on the interest on HVPNL Bonds and FRP Bonds.

The Commission, in its order dated 15.11.2018, while disallowing recovery of interest on UDAY bonds through ARR, had ordered that the same is to met out of Operational Funding Requirement (OFR) under the UDAY scheme. The same has been reiterated by the Commission in its Order dated 01.06.2020, while dealing with the true up of the interest cost on UDAY Bonds for the FY 2018-19 as below:

*“The Commission observes that the UDAY scheme, if implemented properly, will result in all round benefit, ultimately resulting in lower tariff to the consumers once the State Government completes the committed infusion of funds by way of equity and grant by the end of five years. **However, the Commission observes that as per the terms of MoU dated 11.03.2016, the Operational Funding (OFR) has to be provided by the State Government.** The interest on the UDAY bonds, HVPNL Bonds and FRP borrowings as quantified and claimed by UHBVNL & DHBVNL for the FY 2018-19 is Rs. 490.67 Crore & Rs. 287.74 Crore. **The Commission has examined the contention of the licensees and observes that all these claims are part of the borrowings that are already covered under the UDAY scheme and are, accordingly, part of such OFR to be funded by the State Government.**”*

*Besides the above, the Commission has retained the working capital borrowings to the normative or actual level, whichever is lower. The interest cost on borrowings which are not part of the expenses to be allowed as per MYT Regulations are to be treated in accordance with the relevant order of the Commission i.e the order dated 15.11.2018 wherein the Commission had directed that that the interest on UDAY bonds is required to be met through the OFR available under the UDAY scheme in view of the fact that interest cost relating to the distribution and retail supply business is being met through interest on capex borrowings, working capital borrowings and interest on consumer security deposit. “*

It is further observed that the petitioners, in their review filed against the order dated 15.11.2018, did not seek any differential treatment for the interest on HVPNL Bonds and FRP bonds and also did not seek separation of interest on these bonds from the interest on UDAY bonds and therefore, the interest on these bonds does not merit any separate treatment on true up also. Based on these facts and the previous orders of the Commission, which have attained finality, it is apparent that the HVPNL Bonds and FRP Bonds are part of UDAY bonds not yet taken over by the State Governments. The petitioners have not claimed to the contrary.

Accordingly, as part of UDAY Bonds these borrowings are part of OFR to be funded by the State Government. The review on this matter is decided accordingly.

- C. Applicability of ToD tariff on Open Access Consumers: the Discoms have submitted that it was categorically recorded at Chapter-7 i.e. Time of Use tariff/Time of Day at page No.345 of the last year ARR/Tariff Order dated 07.03.2019 that *the ToD tariff shall not be applicable to the consumers, who source their power from Captive Generation or Open Access at any point of time after 15.06.2019*. However, this provision appears to be left in the current ARR/Tariff order for FY 2020-21. There appears no logical reason for withdrawal of such restriction in the Order for FY 2020-21. The rationale for not extending the benefit of ToD tariff to Consumers sourcing power from Open Access or captive generation is just and reasonable. As if the Time of the Day sensitive pricing is made applicable to such consumers, it will defeat the very objective of the introduction of ToD/ToU tariff which is intended to reform the load curve. Thus, the ToD tariff should only be applicable to the consumers who are constantly and uniformly drawing energy from Discoms. In view of the above, it is humbly prayed that the Hon'ble Commission may pass an order specifically extending the non-applicability of ToD tariff to the consumers sourcing power from Open Access or captive generation.

The Commission has examined the submissions of the Discoms and observes that no actual data has been submitted by the petitioners that extension of such facility to Consumers sourcing power from Open Access or captive generation has a detrimental effect either on the revenue or the load curve of the Discoms. However, in view of the reservations expressed by the Discoms, they are directed to compile and submit data in support of their arguments in order to enable the Commission to take view in the matter in the next ARR Petition. As far as the review is concerned, the Commission hold that the same is not maintainable.

**D. COMPUTATION OF WHEELING CHARGES FOR THE FY 2020-21; CALCULATION OF COST OF LOSSES IN THE DISTRIBUTION SYSTEM.**

- i) The review petitioner in RA 07, Faridabad Industries Association has submitted that in the tariff order dated 01.06.2020 the Hon'ble Commission, while determining the '**cost of losses in the system**' has taken the '**Distribution system losses (Technical)**' @10.31%, which accounts for both, the 'HT Loss' (6.39%) as well as the 'LT Loss' (12.17%) combined together. However, it is respectfully submitted that the consumers at HT level cannot be subjected to LT losses.
- ii) The word 'wheeling' has been defined under Section 2(76) of the Electricity Act, 2003 (hereinafter referred to as the '2003 Act') as under: -

*"(76) "Wheeling" means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under Section 62.*

Further, Regulation 62 of the HERC (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2019 (hereinafter referred to as the 'Tariff Regulations,

2019'), which provides for calculations of 'wheeling charges' is being reproduced hereunder for a ready reference: -

**62.1.** *The consumers availing wheeling services for 'open access', will be charged a wheeling tariff as determined under these Regulations;*

*The wheeling charge payable to the distribution licensee by long-term & medium-term open access consumers shall be in Rs. / MW and shall be computed by dividing the approved ARR of the licensee for wheeling business by peak load demand in MW served by the licensee in the preceding year.*

*Provided that wheeling charges shall be payable by the long-term and medium-term open access consumers on the basis of contracted capacity in MW and by short-term open access consumers on the basis of scheduled energy transactions cleared by the relevant Load Despatch Centre.*

*Provided further that wheeling charges (Rs. /kWh) payable by the short-term open access consumers during a financial year shall be worked out by dividing the approved ARR (in Rs.) for wheeling business for that year by the gross volume of energy wheeled (kWh) during the relevant year as approved by the Commission.*

*Provided further that the Distribution Licensee shall be allowed to recover the approved level of **wheeling losses arising from the operation of the distribution system**, as stipulated in the respective Tariff Order from the short term open access consumers in addition to the wheeling charges as determined above.*

- iii) That the consumers at HT level and LT level form two different classes in them as both of them use different distribution system i.e. HT and LT. The word 'wheeling' as defined under the 2003 Act would mean usage of 'distribution system' for conveyance of electricity. Further, Regulation 62 as reproduced above also provides for recovery of 'wheeling losses arising from the operation of distribution system'. Since, the distribution systems at HT Level and LT level are different from each other and consumers of these respective categories are practically treated as separate categories in terms of tariff, charges etc., therefore, taking into account, both HT losses and LT losses, for the purpose of computing 'Wheeling losses' and thereby burdening the consumers at HT level, with the effect of LT losses, is an error apparent on the face of it.
- iv) That in fact, this Hon'ble Commission while determining the 'Wheeling Charges' for all the past years up to FY 2019-2020 had taken into account only the HT Losses (5.93%) for computing the 'Distribution System Losses (technical)'. The above formula, which was followed by this Hon'ble Commission for the previous FY has not been challenged or disputed by the respondents (Discoms) even in the petitions filed by them and therefore, there was no occasion for this Hon'ble Commission to revisit or deviate from the practice being followed in the previous years. Further, there has been no change even in the regulations to call for such deviation in the practices of the Hon'ble Commission. Therefore, the 'Wheeling losses' may kindly be revised by taking into account only the 'HT Losses' and consequently, the 'Wheeling Charges ' may also be revised.
- v) The respondent Discoms, in their reply have submitted as below:

- a) The contention of the Review Petitioner that the Hon'ble Commission has committed an error in determining the cost of wheeling losses by accounting for the HT and LT losses is devoid of any merit. In this regard, it is submitted that proviso of Regulation 62.1 of the HERC (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2019 allow licensee to recover approved level of wheeling losses from the open access consumers arising from the operation of the distribution system, relevant excerpt of Regulation 62.1 is reproduced here as under:
- “Provided further that the Distribution Licensee shall be allowed to recover the approved level of wheeling losses arising from the operation of the distribution system, as stipulated in the respective Tariff Order from the short term open access consumers in addition to the wheeling charges as determined above.”*
- b) Moreover, the license as issued by the Hon'ble Commission to the distribution licensee does not provide distinction within the distribution system in terms of HT distribution system and LT distribution system for HT consumers and LT consumers, as stated by the Petitioner. Thus, the Respondent is not authorised to differentiate between the HT distribution network and LT distribution network for HT consumers and LT consumers. Hence, the argument of the Review Petitioner is ex-facie incorrect and deserves to be rejected.
- c) The review petitioner, FIA have also filed their rejoinder to the reply filed by the respondent Discoms in RA 7 of 2020 and RA 8 of 2020, reiterating their original submissions.
- d) The Commission has considered the submissions made by the review petitioners arguing against the methodology of calculating the cost of losses levied on consumers of wheeling, arguing mainly that the burden of LT losses cannot be foisted upon the HT consumers since, the distribution systems at HT Level and LT level are different from each other and consumers of these respective categories are practically treated as separate categories in terms of tariff, charges etc., therefore, taking into account, both HT losses and LT losses, for the purpose of computing 'Wheeling losses' and thereby burdening the consumers at HT level, with the effect of LT losses, is an error apparent on the face of it.
- e) the Commission has also considered the argument put forth by the respondent discom drawing support from the Electricity Act, 2003, as also the definition of Distribution system as provided in the Electricity Rules, 2005. The Commission observes that, drawing support from the relevant provisions of the Electricity Act, 2003, and the Electricity Rules, 2005, this Commission has already, vide order dated 17.06.2020 in PRO 11 of 2017, deliberated on the recovery of technical losses from consumers for usage of Distributions System at all and any voltage level as below:

*“The Commission observes that the Electricity Rules, 2005 defines a distribution system as “4. Distribution System.- The distribution system of a distribution licensee in terms of sub-section (19) of section 2 of the Act shall also include electric line, sub-station and electrical plant that are primarily maintained for*

*the purpose of distributing electricity in the area of supply of such distribution licensee notwithstanding that such line, substation or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines; or used incidentally for the purposes of transmitting electricity for others". Hence, it can be seen from the ibid Rules that a distribution system also includes high pressure cables used for transmitting electricity.*

Accordingly, the Commission is of the considered view that the recovery of technical losses from the wheeling consumers ought to be for the system as a whole and not voltage wise. The review of HERC Order dated 01.06.2020 on this issue is denied.

#### **E. LEVYING OF WHEELING CHARGES ON 66KV AND ABOVE CONSUMERS**

- i) The review petitioner in RA 7 of 2020, FIA, and in RA 8 of 2020, Jindal Stainless (Hisar) Ltd are aggrieved with levy of Wheeling Charges @ Rs. 0.47/unit on the consumers of Discoms drawing power at 66 kV and above, vide the Tariff Order dated 01.06.2020. the petitioners have submitted that Wheeling Charges are applicable on the open access consumers only on the use of distribution system. The petitioners have cited the Regulation 19(3) of the HERC (Terms and Conditions for grant of connectivity and open access for intra-State transmission and distribution system), Regulations, 2012 as amended by its 2013 1st Amendment therein, provides that an Open Access Consumer using Intra-State distribution system shall pay wheeling charges to the distribution licensee for the '**usage of the distribution system**'. Regulation 19(3) is being reproduced hereunder for a ready reference: -

*19(3) - Open access consumer using intra-State distribution system **shall pay wheeling charges to the distribution licensee (s) for usage of the distribution system** as determined by the Commission for the relevant financial year as per the provisions of Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012, or its statutory reenactments, as amended from time to time.*

*The wheeling charge payable to the distribution licensee by long-term & medium-term open access consumers shall be in Rs./MW and shall be computed by dividing the approved ARR of the licensee for wheeling business by peak load demand in MW served by the licensee in the preceding year.*

*Provided that wheeling charges shall be payable by the long-term and medium-term open access consumer on the basis of contracted capacity in MW and by short-term open access consumers on the basis of scheduled energy transactions cleared by the relevant Load Despatch Centre.*

*Provided further that wheeling charges (Rs/kWh) payable by the short-term-open access consumers shall be as determined by the Commission in the ARR/ Tariff order for the relevant financial year.*

*Provided also that where a dedicated distribution system has been constructed for exclusive use of an open access consumer at the cost of the licensee, the wheeling charges for such dedicated system shall be worked out by distribution licensee and got approved from the Commission and shall be borne entirely by such open access consumer till such time the surplus capacity is allotted and used for by other persons or purposes after which these charges shall be shared in the ratio of the allotted capacities.”*

ii) That, a bare reading of the above regulation as well as the definition of 'Wheeling' as envisaged under the 2003 Act, the 'Wheeling Charges' are payable by open access consumers only for use of the distribution system and since, the consumers above 66kV are connected with the STU and are not using the distribution system of the Discoms, therefore, levying of 'Wheeling Charges' on such consumers is contrary to the provisions contained in 2003 Act as well as regulations issues by this Hon'ble Commission. Apart from that, no such issue was raised or proposed by the respondents/Discoms in their respective petitions. Thus, such a levy is an error apparent on the face of it and is liable to be corrected/reviewed.

iii) The respondent Discoms, in their reply have submitted as below:

a) It is submitted that the grievance of the Petitioner is mis-founded. In this regard, reliance is placed on the definition of distribution system provided under section 2 (19) of the Electricity Act 2003 which states that distribution system is the system of wires and associated facilities between delivery points on the transmission lines or the generating station and the point of connection to the consumers. Relevant excerpt of section 2 (19) is reproduced here as under:

*"distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;"*

b) In view of the above, any system of wires & associated facilities between the transmission lines/generating station and point of connection to the consumer are the part of the distribution system. Thus, system of wires and associated facilities for connections at 66 KV & above voltage level between STU and point of connection at the consumer installation are the part of distribution system and open access consumers connected at such voltage level are utilising distribution system for respective consumption through open access.

c) Further, the definition of Distribution System as provided in Electricity Rules, 2005 categorically includes high pressure cables.

*"4. Distribution System.- The distribution system of a distribution licensee in terms of sub-section (19) of section 2 of the Act shall also include electric line, sub-station and electrical plant that are primarily maintained for the purpose of distributing electricity in the area of supply of such distribution licensee notwithstanding that such line, substation or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines; or used incidentally for the purposes of transmitting electricity for others"*

- d) In a similar situation in the case of Northern Railways in PRO 66 of 2017 the Hon'ble Commission had observed as under:
- “The Commission observes that the Electricity Rules, 2005 defines a distribution system as “4. Distribution System.- The distribution system of a distribution licensee in terms of sub-section (19) of section 2 of the Act shall also include electric line, sub-station and electrical plant that are primarily maintained for the purpose of distributing electricity in the area of supply of such distribution licensee notwithstanding that such line, substation or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines; or used incidentally for the purposes of transmitting electricity for others”. Hence, it can be seen from the ibid Rules that a distribution system also includes high pressure cables used for transmitting electricity. The Commission after due deliberations is of the considered view that NR, as a Medium-Term Open Access consumer, as per the ibid Rules is using, incidentally, the distribution system of UHBVNL and DHBVNL. NR is not an embedded Open Access Consumer. Hence, wheeling charges determined by the Commission are not recoverable from NR. However, NR is liable to bear, besides intra state transmission loss, the distribution system network cost as determined by the Commission for the relevant year i.e. Rs. 0.47 per Unit for FY 2020-21 in the ARR/Tariff order of HVPNL (STU).”*
- e) Hence, levying of distribution system network cost on embedded open access consumers taking supply at 66 KV or above is in line with the provisions of the Electricity Act 2003. In any case, revenue from open access charges are accounted for in the ARR as per the provisions of the HERC MYT Regulations, 2019.
- f) The contention of the Review Petitioner that since no such issue was raised or proposed by the respondents/Discoms therefore such levy is an error is completely incorrect. It is submitted that the Hon'ble Commission has suo moto powers in terms of Section 61 (d) of the Electricity Act and regulation 12 of Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019. Thus, there is no error on the part of the Hon'ble Commission.
- iv) The petitioners, in their rejoinder to the submissions by the respondent have reiterated the contents of their review petition.
- v) The Commission has examined the arguments put forth by the review petitioners and observes that the open access regulations quoted by the petitioners, empower the Commission to calculate and levy wheeling charges on the open access consumers of the Distribution licensee. An examination of the impugned regulations makes it clear that the regulations prescribe levy of separate wheeling charges for use of transmission system and for the Distribution system. Regulation 19(2) deals with the levy of charges for the use of transmission system of the transmission licensee(s) and regulation 19(3) for the use of Distribution System. The regulation also prescribes the methodology of calculation of such wheeling charges separately for the short term open access consumers and for the medium and long term open access consumers. The regulations further prescribe the methodology for calculation of charges for those consumers

*where a dedicated distribution system has been constructed for exclusive use of an open access consumer at the cost of the licensee and for consumers other than those for whom a dedicated distribution system has been constructed for exclusive use of an open access consumer at the cost of the licensee.*

Thus, upon examination of the open access regulations, it is apparent that all consumers who are availing open access from the Distribution Licensees, are obliged to pay for use of the distribution system of the Distribution Licensee in accordance with the relevant regulations. Though different methodology of recovery is prescribed, no waiver is prescribed for any type of distribution consumer; be it at any voltage level. Accordingly, on an examination of the relevant regulations it is held that all open access consumers are to pay wheeling charges, irrespective of the voltage level **at which they are connected**. Further, since none of the open access consumers are availing medium term or long-term open access, where the levy of the wheeling charges has to be calculated in Rs/MW, the Commission has continued to calculate the wheeling charges based on Energy. In view of the above discussions, the review sought on this account is denied.

#### **F. COMPUTATION OF CROSS SUBSIDY SURCHARGE**

- i) The review petitioners in RA 7 of 2020, FIA, have submitted that vide the Tariff Order dated 01.06.2020, the Commission has approved the levy of CSS @ Rs. 0.62 per unit for HT-Industry category, however, while computing the CSS, the Hon'ble Commission has not followed its own methodology, as has been consistently followed by the Hon'ble Commission in the past years including during FY 2019-20. While determining the 'Aggregate of transmission, distribution and commercial losses applicable to the relevant voltage level', the Commission failed to take into consideration the transmission losses to be allocated on the HT & LT levels. This is an inadvertent error on the part of the Commission since it has deviated from its own approach used consistently in the past orders.
- ii) The above said approach of working out the allocation of transmission losses for HT & LT level, using the same to evaluate the cost of service and working out the CSS basis the same has been followed by the Hon'ble Commission in the previous years as well, including the Tariff Order for FY 2019-20, wherein it had considered the impact of transmission losses on the cost of supply for determining the CSS. The petitioners have submitted an alternate calculation of Rs. 0.43 per unit for HT- Industry instead of Rs. 0.62 per unit as has been approved.
- iii) The review petitioner in RA 8 of 2020, Jindal Stainless (Hisar) Ltd is also aggrieved by the order of the Commission and has supported the arguments of Review petitioner in RA 7 of 2020.
- iv) The respondent Discoms have submitted a reply to the submissions of the review petitioners as below:

So far as computation of Cross subsidy surcharge is concerned, it is submitted that the Hon'ble Commission is a quasi-judicial body under the Electricity Act 2003 and the charges as determined by the Hon'ble Commission is binding for the licensee to levy on the consumers.

- v) The respondents in their rejoinder have reiterated the contents of their review petition.
- vi) The Commission has examined the calculations submitted by the petitioners and observes that the methodology used by the Commission for arriving at voltage level losses to arrive at a voltage wise cost of service was constructed at by the Commission in the absence of a cost of service study to be provided by the Discoms. The methodology was adopted by the Commission subsequent to the judgement Dated 30th May, 2011 of the Hon'ble Appellate Tribunal of Electricity in Appeal Nos. 102, 103 & 112 of 2010 in the matter of Tata Steel Limited Versus Orissa Electricity Regulatory Commission, wherein the Appellate Court, in great detail, prescribed a methodology to calculate cost of service in the absence of adequate data. Hon'ble Appellate Tribunal observed as below:

*"31. We appreciate that the determination of cost of supply to different categories of consumers is a difficult exercise in view of non-availability of metering data and segregation of the network costs. However, it will not be prudent to wait indefinitely for availability of the entire data and it would be advisable to initiate a simple formulation which could take into account the major cost element to a great extent reflect the cost of supply. There is no need to make distinction between the distribution charges of identical consumers connected at different nodes in the distribution network. It would be adequate to determine the voltage-wise cost of supply taking into account the major cost element which would be applicable to all the categories of consumers connected to the same voltage level at different locations in the distribution system. Since the State Commission has expressed difficulties in determining voltage wise cost of supply, we would like to give necessary directions in this regard.*

*32. Ideally, the network costs can be split into the partial costs of the different voltage level and the cost of supply at a particular voltage level is the cost at that voltage level and upstream network. However, in the absence of segregated network costs, it would be prudent to work out the voltage-wise cost of supply taking into account the distribution losses at different voltage levels as a first major step in the right direction. As power purchase cost is a major component of the tariff, apportioning the power purchase cost at different voltage levels taking into account the distribution losses at the relevant voltage level and the upstream system will facilitate determination of voltage wise cost of supply, though not very accurate, but a simple and practical method to reflect the actual cost of supply.*

*33. The technical distribution system losses in the distribution network can be assessed by carrying out system studies based on the available load data. Some difficulty might be faced in reflecting the entire distribution system at 11 KV and 0.4 KV due to vastness of data. This could be simplified by carrying out field studies with representative feeders of the various consumer mix prevailing in the distribution system. However, the actual distribution losses allowed in the ARR which include the commercial losses will be more than the technical losses determined by the system studies. Therefore, the difference between the losses allowed in the ARR and that determined by the system studies may have to be apportioned to different voltage levels in proportion to the annual gross energy consumption at the respective voltage level. The annual gross energy consumption at a voltage level will be the sum of energy consumption of all*

*consumer categories connected at that voltage plus the technical distribution losses corresponding to that voltage level as worked out by system studies. In this manner, the total losses allowed in the ARR can be apportioned to different voltage levels including the EHT consumers directly connected to the transmission system of GRIDCO. The cost of supply of the appellant's category who are connected to the 220/132 KV voltage may have zero technical losses but will have a component of apportioned distribution losses due to difference between the loss level allowed in ARR (which includes commercial losses) and the technical losses determined by the system studies, which they have to bear as consumers of the distribution licensee.*

*34. Thus Power Purchase Cost which is the major component of tariff can be segregated for different voltage levels taking into account the transmission and distribution losses, both commercial and technical, for the relevant voltage level and upstream system. As segregated network costs are not available, all the other costs such as Return on Equity, Interest on Loan, depreciation, interest on working capital and O&M costs can be pooled and apportioned equitably, on pro-rata basis, to all the voltage levels including the appellant's category to determine the cost of supply. Segregating Power Purchase cost taking into account voltage-wise transmission and distribution losses will be a major step in the right direction for determining the actual cost of supply to various consumer categories. All consumer categories connected to the same voltage will have the same cost of supply. Further, refinements in formulation for cost of supply can be done gradually when more data is available."*

Subsequent to the above pronouncement by the Hon'ble Appellate Tribunal, the allocation of voltage wise losses, on the pattern prescribed, was initiated by the Commission. However, subsequently, the Commission came to observe that the earlier methodology suffered from a serious error whereby the impact of interstate and intrastate transmission losses was being loaded more than once while calculating the cost of service; first by way of including the losses while arriving at the cost of power at the Discom boundary and also by way of allocating the transmission losses on the voltage wise losses of the Distribution consumers. This was apparently a contradiction in the approach, when per unit power purchase cost at state periphery is used for working out of cost of supply then how can the technical losses beyond the state periphery can be accounted for calculating the ultimate cost of supply at HT and LT voltage level. The Commission considered this anomaly and is of the considered view that the appropriate way to factor-in the transmission losses, both inter state and intra state, while calculating the voltage wise cost of service, was to adjust the cost of power at the Discom boundary. Since the transmission losses lead to lower units of power received at the Discom boundary as against payments made to the generators for a higher number of units (balance units being lost as transmission losses), this results in a higher cost per unit of power received at the Discom boundary. Further on, the Discoms provide the same power to their consumers at different voltage levels. The consumers at different voltage levels impose different losses on the Distribution System, which ultimately leads to a different cost of service at different voltage level, however, rising from the same basic power purchase cost at the Discom boundary. The transmission losses have no bearing on the voltage wise losses of the distribution consumers.

Therefore, the existing methodology of allocating the transmission losses to the voltage wise losses of the Distribution consumers was found to be faulty by the Commission and therefore a correction in the allocation of losses while calculating cost of service was called for, which has now been appropriately done vide order dated 01.06.2020.

In view of the above discussions, the Commission declines any review of the order dated 01.06.2020 on the issue of calculation of cross subsidy surcharge, maintaining that there is no error in the calculation of voltage wise losses.

**F. Determination of Additional Surcharge:**

- i) The review petitioner in RA 8 of 2020, Jindal Stainless (Hisar) Ltd, in addition to the above points have also sought a review of the HERC Order dated 01.06.2020 on the issue of calculation of additional surcharge.
- ii) That in the impugned order of the Hon'ble Commission did not determine the Additional Surcharge based on the actual data for the past 6 months as required under the Open Access Regulations. The order reads as under:- (Page - 253)

*“ADDITIONAL SURCHARGE: The Commission has taken note of the proposal of the Discoms on quantification and levy of additional surcharge for the 2nd Half of the FY 2019-20 in line with Regulation 22 of the HERC (Terms and Conditions for Grant of Connectivity & Open Access for Intrastate Transmission and Distribution System) Regulations 2012 as may be amended from time to time. The Discoms have accordingly proposed to levy an additional surcharge of Rs. 1.15 / kWh from the Open Access Consumers. Given the voluminous data and objections filed by the stakeholders The Commission shall take up the issue separately. Till the time Discoms may continue to levy Additional Surcharge in vogue i.e. @ 1.15 / Unit.”*

- iii) That Regulation 22 of the Open Access Regulations HERC/25/2012 framed by the Hon'ble Commission read as under,

*(2) This additional surcharge shall become applicable only if the obligation of the licensee in terms of power purchase commitments has been and continues to be stranded or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. However, the fixed costs related to network assets would be recovered through wheeling charges.*

*(3) The distribution licensee shall submit to the Commission, on six monthly basis the details regarding the quantum of such stranded costs and the period over which these remained stranded and would be stranded. The Commission shall scrutinize the statement of calculation of such stranded fixed costs submitted by the distribution licensee and determine the amount of additional surcharge.*

*Provided that any additional surcharge so determined shall be applicable to all the consumers availing open access from the date of determination of same by the Commission.*

- iv) That the impugned order passed by Hon'ble Commission is ad hoc and not based on the factual data. As per the above Regulation the Additional Surcharge shall be applicable from the date of determination of this charge. As the Hon'ble Commission did not determine the Addl. Surcharge for the period commencing 01.06.2020 based on the supporting data furnished by the Utility, it could not have been applied based on earlier computation.

- v) That the computation of Addl. Surcharge is based on the figures of stranded power for the previous year and recovered over the next 6 months. This is not a fixed charge which could be recovered all the time without co-relating with the stranded power. On this account also the order passed by the Hon'ble Commission to continue with the past computation suffers from valid justification and hence needs to be withdrawn.
- vi) That the Hon'ble Commission was required to determine whether the stranded power/back-down power was attributable to Open Access Consumer or was attributable to the mis-match of purchase obligations created by the Discom. The petitioner submits with the responsible that the Discom has been contracting Power Purchase Agreements on the premise of power deficit but has been backing down power on the pretext of un-useable energy. Both the situation cannot exist. Invariably the methodology was adopted by the Discom for assessment of load requirement and the contract demand is incorrect and not updated resulting in huge mismatch in the peak demand/sanctioned load. The petitioner urges the Hon'ble Commission to ask the distribution licensee to supply data with respect to the peak load consumption against the sanctioned load. The petitioner submits that the variance in the peak load consumption and the sanctioned load is more than double. As a result of such gross mismatch, the Discom has been contracting power which was never required in the State and thus creating huge account of power required to be back-down or is stranded.
- vii) That the object of additional surcharge is to indemnify the Discom for the loss occasioned and attributable to the consumer. It is not compensatory in nature to be burdened upon the consumer even when such loss is not attributable to the OA Consumer. The Discom cannot be permitted to seek compensation for its faults.
- viii) That the distribution licensee has, over the year, been tying up power citing need for the same. Invariably, if there was need to tie up power despite having stranded power in the preceding years, the Discom is highly unjustified in its action and would not be justified to seek recompense from the petitioner.
- ix) That the petitioner would even go to the extent that the total amount of stranded power cannot in any case be burdened beyond the power drawn by the OA Consumer through Open Access. When the stranded power still exceeds, it clearly establishes that the back-down of power is not a creation of OA Consumer. The Hon'ble Commission as a guardian of interest of all consumers has to carefully analysis the aforesaid situation and understands the play which lies below.
- x) That the orthodox of method of calculation of sanctioned load not only cause in procuring power than required but also burden the consumer with additional financial liability in the form of ACD.
- xi) That as a general reference, even the individual consumers under various categories may not be consuming upto the sanctioned load and it would have invariably caused escalation in the stranded power. It is thus essential that the cause of the same be ascertained, identified and plugged rather than fastening the liability upon the Industry.

xii) That the Hon'ble Commission may kindly reconsider its order in this background so that the consumers are not unnecessarily burdened by these charges. Moreover, due to COVID-19 there will be considerable impact on the energy consumption/purchase of power through open access which will totally change the scenario of chargeable amount. Therefore, there is valid reason to determine the Additional Surcharge based on actual data.

xiii) The respondent discoms, in their reply, have submitted as below:

- a) The contention of the Review Petitioner that the Hon'ble Commission did not determine the additional surcharge based on actual data for the past 6 months is devoid of any merit. In this regard, it is pertinent to note that the additional surcharge is legitimately recoverable from the open access consumers in terms of the provisions of section 42 (4) of the Electricity Act-2003 read with Regulation No. 22 of HERC Open Access Regulations 2012 to compensate the Discoms on account financial loss for stranded power under long term PPA and stranding of assets as per details of backed down energy and open access scheduled energy filed with the Hon'ble Commission and as per the methodology already approved by the Hon'ble Commission.
- b) It is noteworthy that although all relevant required data was submitted by the Discom for determination of additional surcharge, the Hon'ble Commission observed that since the data and objections filed were voluminous, the Hon'ble Commission will take up the issue of additional surcharge separately in separate proceedings and till that time the Discoms were allowed to continue to levy the additional surcharge in vogue i.e. @Rs. 1.15 /Unit.
- c) It is thus submitted that the said levy was allowed only as an interim measure till the separate proceedings for determination of additional surcharge are carried out. As a matter of fact, the separate proceedings for determination of additional surcharge have already been undertaken in PRO 34 of 2020 wherein the Hon'ble Commission after hearing the submissions of Discoms as well as the objectors and has passed Order dated 24.09.2020 determining additional surcharge of Rs 1.01/kWh applicable from date of the Order. Thus, no prejudice is caused to the Review Petitioner in any manner.
- d) Further, it is settled principle that the tariff determined by the Commission shall continue to be applicable till it is modified / amended or revised by the Commission. The same has also been incorporated in the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2019 in Regulation 4.8. Even in the last order dated 06.03.2020 passed in PRO 40 of 2019 and PRO 1 of 2020, the Hon'ble Commission while determining additional surcharge held that *"The Additional Surcharge @ Rs. 1.15/kWh, to be levied with effect from 22.10.2019 shall remain effective until these are revised / amended by*

*the Commission and shall be applicable to the consumers of Uttar Haryana Bijli Vitran Nigam (UHBVN) and Dakshin Haryana Bijli Vitran Nigam (DHBVN) who avail power under the Open Access mechanism in terms of Haryana Electricity Regulatory Commission (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012, from any source other than the distribution licensees.”*

- e) Hence, in this context, there is no error on the part of the Hon’ble Commission in continuing to allow levy of additional surcharge in vogue until determined in a separate proceeding.

xiv) The respondents in their rejoinder have reiterated the contents of their review petition.

xv) The Commission has considered the submissions made by the review petitioner as well as the reply filed by the Respondent Nigam. The Commission observes that given the long-term commitment of power purchase of the Discoms to meet its universal service obligation to supply power on demand, in the short to medium term, some quantum of power will continue to be stranded; a fact also corroborated by the empirical data that was submitted by the Discoms. Hence, as an interim measure and in accordance with the Order of the Commission i.e. *“till the time tariff and charges are amended/ modified, the prevailing rates will continue “*, the additional surcharge in vogue has continued. On completion of the scrutiny of the relevant data and proceedings in PRO 34 of 2020, the applicable additional surcharge was modified. Resultantly, the Commission finds no merit in the review sought on this issue and accordingly, rejects the same.

**G. Time of Use Tariff:**

- i) That the Hon’ble Commission, while considering the imposition of Time of Use Tariff, under Para-8.3.1 has observed on **Page 267** as under,  
*“The Commission has considered the submissions of the Intervener mostly related to the conditionalities attached with the existing ToD as well as the reply of DHBVNL on the issue of smart metering. The Commission observes that installing smart meter has now become a national agenda. Hence, the same shall remain a pre-requisite for availing ToD tariff. The same, if not installed by the Discoms, can be installed by the Consumers as per CEA norms. The meters should have appropriate registers to record the consumption during ToD hours for commercial ToD accounting. However, the dispensation of smart grid and rooftop solar related additional incentive shall be done away with.”*
- ii) That the Tri-vector meters presently installed by majority of the Large Supply Industrial consumers are static meters having facility to record power consumption in 7 registers spread over, 18:30 hrs. to 22:00 hrs., 22:00 hrs. to 05:30 hrs., and 05:30 to 18:30 hrs. However, these meters are not capable for remote reading. The Licensee is getting these meters changed with DLMS meters, which have the remote metering facility and the required registers as well. The DLMS meters are designed to (Device Language Message Specification) which is the suite of standards developed and maintained by the DLMS User Association. The DLMS User Association has established a D Type liaison with IEC TC13 WG14, responsible for international standards for meter data exchange and establishing the IEC 62056 series.
- iii) That the responsibility to get the meters of desired configuration installed rest with the Utility. Hon’ble Commission may kindly consider to issue suitable directions to the Licensees to install smart meters at their own cost unless the consumers themselves opt to have their own meters at their own cost.
- iv) The respondent discoms, in their reply, have submitted as below:

The Review Petitioner is aggrieved by the observations of the Hon'ble Commission in the Tariff Order that the smart meters if not installed by the Discoms can be installed by the consumers as per the CEA Norms. In this regard, it is submitted Discoms are already undertaking installation of smart meters as per the Commission's directives under MoU with EESL based on the availability of smart meters with EESL. Smart Metering is being implemented by the Discom in Gurugram and Faridabad cities under pilot project. DHBVN has planned to roll out 5 Lakhs smart meters through EESL under OPEX mode by March'2021. The smart metering project is expected to get commissioned by the end of FY 2020-2021. However, since this a time taking process, the Hon'ble Commission rightly afforded an option to the consumers to install smart meters if not yet done by the Discoms. Thus, there is no error in the said observation of the Hon'ble Commission.

- v) The Commission has considered the submissions made by the petitioner and is of the considered view that the matter regarding installation of meters is appropriately covered under the relevant regulations, codes and orders of the Commission and need no reconsideration or directions to this effect.

#### H. ASSESSMENT OF CATEGORY-WISE POWER SALES:

- i) It is evident that due to National Lockdown imposed by the Govt. of India/ State Govt. on account of COVID-19 since March 24, there was huge impact on the power consumption of the Industrial & Commercial consumers in the State. There was direct slowdown of economic activities and even after the Lockdown withdrawn in phases after June 2020, the resultant impact would continue for nearly first six months of the current financial year. The power consumption of these consumers would be minimum reduced by 30-40% of the normal anticipated consumption.
- ii) That the computation made by Hon'ble Commission has an apparent error which would be evident from the following figures as projected by Distribution Licensees and approved by Hon'ble Commission, (**Page – 167**)

Energy Sales Estimates of UHBVN (MUs)

Category	HERC Approved FY 2019-20	Proposed FY 2020-21	HERC Approved FY 2020-21	Change (%)
Domestic	4636	4813	4632	(-) 1
Non-Domestic	1474	1017	1160	(-) 21
HT Industry	4678	3814	3837	(-) 18
LT Industry	1024	689	738	(-) 28
Bulk	302	335	348	15

Energy Sales Estimates of DHBVN (MUs)

Category	HERC Approved FY 2019-20	Proposed FY 2020-21	HERC Approved FY 2020-21	Change (%)
Domestic	5418	7090	6449	19
Non-Domestic	3138	2294	2574	(-) 18
HT Industry	7583	4343	4464	(-) 41
LT Industry	1101	695	754	(-) 32
Bulk	952	1136	1201	26

- iii) While COVID-19 has resulted in large reduction in energy sales to commercial and Industrial consumers, it has increased power demand of the domestic sector. Abrupt increase in Bulk Supply sales is not supported by any reasoning. The sales estimates do not reflect the ground reality and moreover, the impact seems widely varying in the two Discoms. It needs to be appreciated that error in estimates of category-wise sales directly affects the revenue determination and other ARR parameters.
- iv) The respondent Discoms, in their reply, have submitted as below:
- a) The contentions of the Review Petitioner are based on conjectures and surmises which are devoid of merit and accordingly need to be rejected. The issue of Covid pandemic and the resultant expected decrease in sales has been considered by the Hon'ble Commission while arriving at the projected sales approved by the Hon'ble Commission. The relevant paragraph of the Tariff Order is extracted below for ease of reference:
- "4.6 Sales Projections (other consumer categories)*
- The sales for consumer categories other than AP was originally proposed by the Discoms based on CAGR of the past data. However, given the impact of COVID – 19 Pandemic and the resultant lockdown, the Discoms, vide supplementary Petition dated 05.05.2020 revised the projected consumer category wise sales based on the actual energy sales of the FY 2019-20...*
- The Commission has considered the sales projection methodology adopted by the Discoms and observes that the impact of COVID – 19 including the manner in which the Economy is being opened up in a staggered manner cannot be determined with certainty. It is possible that given the pump priming of the Economy by almost 10% of the GDP announced by the GoI may speed up the recovery process in the Industrial and Commercial segments. Hence, the Commission, while agreeing with the general approach of sales projection adopted by the Discoms, is of the considered view (including the generation and sales data available for April 2020) that the impact on sales for HT Industry, LT Industry, NDS and Railway / DMRC (Traction) may be a reduction of 15% over the actual sales figures of the FY 2019-20. The Commission has also examined alternative methods of sales projection based on Gross Value Addition and Income of the Industrial and Commercial (Services) sectors to the GDP of Haryana and observes that though the statistical correlation between sales and GVA / Income is significant but the macro indicators for the FY 2019-20 as per the figures published by the Department of Economic and Statistical Analysis, GoH, 2020 provides quick estimates for the FY 2018-19 and advance estimates for the FY 2019-20 only. In the absence of any estimates for the FY 2020-21 including the changed circumstances due to the lockdown, establishing statistical correlation may yield spurious results. Hence, the Commission has reduced sales of HT Industry, LT Industry, Railways / DMRC and NDS categories by 15% of the actual 2019-20 sales. While for the remaining consumer categories the Commission has continued with the CAGR methodology with some adjustments in the DS Consumer categories.*
- b) It is submitted that although owing to COVID-19 situation, it was difficult to estimate the category wise power sales. However, same has been submitted in compliance with the

direction of the Hon’ble Commission considering the fact that majority of the bulk consumption will be in the single point connection residential societies.

**I. INTER-STATE TRANSMISSION LOSSES:**

- i) That Hon’ble Commission, while drawing annual ‘Energy Balance’ in the Distribution ARR orders, has been assuming interstate transmission losses @ 3.82% for the last 8 years whereas these losses have been reduced over the years and now it is in the range of 1.5-1.75%. These losses would make a direct impact on the energy available to the State. **(Page - 178/179)**

**J. INTRA-STATE DISTRIBUTION LOSSES:**

That there has been a sharp increase in the ‘Distribution Losses’ assumed in the annual ‘Energy Balance’ this year over the previous year for the two Discoms. The figures taken are, **(Page – 178)**

Distribution Losses (%)

Year	UHBVN	DHBVN	State
2019-20	14.14	14.14	14.14
2020-21	21.23	16.53	18.50

- i) That Hon’ble Commission while determining the ‘Wheeling Charges’ for the year 2020-21 has mentioned a figure of 10.61% for distribution losses. Whereas, in the ARR order for FY 2019-20, it was 5.93%. This is direct increase of 4.68% in absolute terms in the distribution losses or 78% increase over the previous year. Hon’ble Commission has been giving perpetual directions to the Discoms to reduce distribution losses and huge capital expenditure plans have been approved to achieve the desired reduction. **(Page –249)**
- ii) That the facts and figures show a totally negative picture. Such abrupt increase in distribution losses is totally uncalled for and unrealistic. Hon’ble Commission may kindly re-examine these figures as these are going to make a huge impact on energy balance of the Utilities and resultant cost of power to the consumers.
- iii) The respondent Discoms, in their reply, have submitted as below:

The averments made by the Review petitioner in respect of reduction of inter-state transmission losses and alleged abrupt increase of Intra-State Distribution Losses are baseless and unsubstantiated which therefore needs to be rejected. The interstate losses have been submitted as per the approved interstate losses. The rationale for rise in the estimated distribution loss is due to the fact that COVID-19 situation led sudden shift in estimated consumption pattern of low technical loss voltage levels to high technical loss voltage levels, disrupting the past consumption patterns increasing the total distribution loss. The Discoms have been taking concrete steps for reduction of distribution losses which are duly informed to the Hon’ble Commission as well which has been considered while passing the Tariff Order.

**K. PROVISIONS FOR INTERSTATE SALES/BANKING:**

- i) That the Hon’ble Commission has while considering annual Energy Balance for the years 2019-20 & 2020-21 has approved following provisions for ‘Interstate sales/Banking’, **(Page – 178)**

Description	2019-20	2020-21
Gross energy procured from outside the State sources (MUs)	24,382.28	29,321.12
Interstate sales/banking (MUs)	9,008.85	14,870.22
Extra purchase from outside sources (%)	36.9	50.7

- ii) Such extra purchase of power by the Discoms from outside the State sources and ultimate sale outside the State through Exchange at rates lower than the purchase rate is nothing but a direct loss and affects the cost of power and tariff of the consumers. Moreover, the surplus power shown as ‘Banking’ is a misnomer. Once the power is banked, it comes back to the State with premium and is available for sale to the consumers. This fact has not been taken into account in the ARR order. Hon’ble Commission may kindly have a close look at these figures which have adverse impact to the consumers.

- iii) The respondent Discoms, in their reply, have submitted as below:
- a) The contention of the Review Petitioner that the surplus power shown as 'banking' is a misnomer is vehemently denied. The Discoms procure power on long term basis only after due approval from the Hon'ble Commission. All PPAs which has been entered into have the approval of Hon'ble Commission. The Hon'ble Commission while approving the sources asked for the details of demand/availability projections for the next 5 to 10 years and only after satisfying itself that the additional power needs to be tied up, approves the source. Therefore, the objection that Discoms are making indiscriminate power purchase or are buying surplus power is without any basis/merit.
  - b) Further, it is submitted that Discoms are committed to provide 24X7 electricity supply to all consumers as per the National Tariff Policy as also as per the vision of the Central Government. Therefore, it is obligatory on the part of Discoms to tie up power from long terms sources to meet the peak demand after taking into account the power which could be made available through banking. It is in this background that procurement of power from these approved inter-state sources have provisions of banking for optimum utilization of the power being procured so that the demand throughout the year can be met. Surplus power which remains unutilised due to reduction of energy demand is banked with neighbouring states or other power deficit states and availed during the peak seasons to avoid the power deficit scenario in paddy season. Surplus power after banking, will be traded off in power exchange and the revenue from the same has been computed at average variable power purchase cost of generating stations.

#### **L. COMMISSION ORDER ON POINTS NO H, I, J AND K**

The estimated sales for the FY 2020-21, approved by the Commission for the purpose of calculating the ARR, have been calculated based on the CAGR methodology, adjusted for the change in consumption pattern due to the lockdown imposed by the Central/ State Government. It was further adjusted for the revival in consumption of various categories, observed by the Commission post the lockdown period and accordingly the sales were arrived at. The methodology adopted by the Commission has been explained in detail at para 4.6 ( page 166) of the Order dated 01.06.2020. Additionally, the consumer mix and the quantum of energy sales in UHBVNL and DHBVNL including the rate of sales growth are different. Hence, comparison, as such, is flawed. The change in consumption pattern is expected to lead to an increase in distribution losses, as the categories, having consumption at higher voltage levels, were expected to show a decline in the first half of the FY 2020-21. However, the Commission is seized of the importance in reduction of losses and this is reflected in the action taken by the Commission in ensuring strict compliance of directives issued by the Commission in its orders, both current and for the previous years. The higher losses of the FY 2020-21 are an aberration and the same are expected to be on lower trajectory from the next year onwards. The Commission has also considered the submissions made by the petitioner regarding inter state transmission losses and observes that the same are approved as proposed subject to true up based on actual losses, the same being dependent on the quantum of energy sourced from

outside the state. However, in light of the submissions made by the petitioner, the Commission directs the Distribution licensees to ensure appropriate correction in the ARR projections for the coming years. The review petitioner may note that all these figures of sales and interstate losses are projected figures, based on assumptions, including past trend, and subject to true up based on audited accounts being uncontrollable items as per MYT Regulations.

In terms of the above findings / decisions on each issue, the review petition preferred by the petitioners against the Commission's Order dated 01.06.2020 (Case No. HERC/PRO-59 of 2019 & HERC/PRO-60 of 2019) is disposed of.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 29<sup>th</sup> December, 2020.

**Date: 29.12.2020**  
**Place: Panchkula**

**(Pravindra Singh Chauhan)**  
**Member**

**(Naresh Sardana)**  
**Member**