

Filing of Additional submission for allowing the impact of Hon'ble APTEL's Order dated 7th April, 2016 in the cumulative FSA determined vide Order dated 19.3.2015 by Uttar Haryana Bijli Vitaran Nigam Limited pursuant to the Hon'ble Commission's Interim Order dated 27.07.2016

1. The National Tariff Policy, publication in Government Gazette dated 6th January 2006, mentions under clause 5 (h) (4) that all uncontrollable costs should be speedily recovered from consumers so that future consumers are not burdened with past costs. The terms 'uncontrollable costs' would include but not be limited to fuel costs, costs on account of inflation, taxes and cess, variation in power purchase unit costs including on account of hydro-thermal mix in case of adverse natural events. The excerpt from the National Tariff Policy, 2006 is presented below

5(h) (4)

"...Uncontrollable costs should be recovered speedily to ensure that future consumers are not burdened with past costs. Uncontrollable costs would include (but not limited to) fuel costs, costs on account of inflation, taxes and cess, variations in power purchase unit costs including on account of hydro-thermal mix in case of adverse natural events..."

Further, under the "Framework for revenue requirement and costs" of the National Tariff Policy, 2006, all power purchase costs shall have to be considered legitimates unless there is violation of merit order principle or power purchase has been undertaken at unreasonable rates. The excerpt is presented below for reference

8.2.1

"...(1) All power purchase costs need to be considered legitimate unless it is established that the merit order principle has been

violated or power has been purchased at unreasonable rates. The reduction of Aggregate Technical & Commercial (ATC) losses needs to be brought about but not by denying revenues required for power purchase for 24 hours supply and necessary and reasonable O&M and investment for system up-gradation. Consumers, particularly those who are ready to pay a tariff which reflects efficient costs have the right to get uninterrupted 24 hours supply of quality power. Actual level of retail sales should be grossed up by normative level of T&D losses as indicated in MYT trajectory for allowing power purchase cost subject to justifiable power purchase mix variation (for example, more energy may be purchased from thermal generation in the event of poor rainfall) and fuel surcharge adjustment as per regulations of the SERC...”

2. In continuation to the above, the Haryana Electricity Regulatory Commission has formulated HERC (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012 dated 5th December 2012 vide regulation number HERC/26/2012. The HERC regulation directs Discoms to collect Fuel and Power Purchase Cost Adjustment (FSA) on a quarterly basis in a way that FSA accrued during a quarter is recovered in the following quarter. The FSA shall be calculated on the approved power purchase volume including short term purchase from all approved sources based on the approved loss levels. The detailed excerpt of the HERC MYT Regulation follows

“...66. FUEL AND POWER PURCHASE COST SURCHARGE ADJUSTMENT (FSA)

66.1 The distribution licensees shall recover FSA amount on account of increase in fuel and power purchase costs from the consumers on a quarterly basis so as to ensure that FSA accrued in a quarter is recovered in the following quarter without going

through the regulatory process i.e. FSA for the quarter “July to September” is recovered in the following quarter “October to December”.

66.2 FSA shall be calculated only in respect of approved power purchase volume including short term power purchase cost, if any, for the relevant year from all approved sources. Drawl of power under UI mechanism, if any, shall be allowed only when it is not in violation of grid discipline and shall be subject to a price cap of average revenue realisation from all consumer categories for that year.

Average revenue realisation = (Total revenue assessed for electricity supply in Rs + Government Subsidy in Rs) / Total sales in Units.

66.3 For the purpose of recovery of FSA, power purchase cost shall include all invoices raised by the approved suppliers of power and credits received by the distribution licensees during the quarter irrespective of the period to which these pertain for any change in cost in accordance with tariff approved by any regulator/ government agency mentioned in regulation 59.4. This shall include arrears/refunds, if any, not settled earlier. In case data of the last month in a quarter is not available for calculating FSA to be levied in the following quarter, the licensee shall use an estimate based on available data of the first two months of the quarter. On availability of the actual figures, the difference on this account shall form part of FSA of the subsequent quarter. If the actual data for any quarter is not made available by the licensee before the end of the following quarter for this adjustment, the FSA finally allowed for that quarter based on actual figures supplied after the prescribed date shall be limited to the earlier estimated amount or the amount based on the actual figures, whichever is lower.

66.4 In case of negative FSA, the credit shall be given to the consumers by setting off the minus figure against the positive figure of FSA being charged from the consumers. In other words, credit of FSA shall be given only against FSA being charged so that the base tariff determined by the Commission remains unchanged.

66.5 Only the allowed percentage of transmission and distribution losses for the relevant year as per the approved ARR shall be taken into account for working out FSA.

66.6 The amount of FSA shall be recovered by each distribution licensee by charging a uniform FSA (per kWh) across all consumer categories in his area of license.

66.7 For moderation purposes, the recovery of per unit FSA shall be limited to 10% of the approved per unit 'average power purchase cost' or such other ceiling as may be stipulated by the Commission from time to time. For calculating FSA, variations in quarterly purchase volume from an approved source are allowed subject to an overall ceiling of annual approved volume from that source. In case a portion of the FSA for any quarter is not recovered due to the ceiling of 10%, the under recovered amount shall be added to the FSA for the next quarter.

66.8 Per unit rate of FSA (paisa/kWh) shall be worked out after rounding off to the nearest paisa;

66.9 The distribution licensee shall submit details relating to FSA recovery to the Commission for each quarter in the following format by the end of the following quarter.

Table 1: Methodology for FSA Calculation as per HERC

Sl No	Description
(i)	Approved power purchase volume from approved sources (MU)
(ii)	Approved power purchase cost (Rs. million)

(iii)	Actual power purchase volume (MU)
(iv)	Power purchased (MU) from sources not covered under regulation 66.2 giving source wise details and in case of UI the frequency at which UI draws were made. (disallowed power purchase)
(v)	Actual cost of power purchase from all sources except (iv) (Rs. million)
(vi)	Actual cost of disallowed power purchase relating to (iv)(Rs. million)
(vii)	Total FSA estimated to be recovered for the quarter(Rs. million)
(viii)	FSA per unit (Rs/kWh)being recovered during the following quarter
(ix)	Actual FSA recovered/estimated to be recovered out of estimated FSA till the end of the following quarter (Rs. million)
(x)	Under/ over recovered FSA (vii-ix) (Rs. million)
(xi)	Approved sales (Consumer category wise / month wise) for the quarter (MU)

Note:

1. All the source-wise details should be supported with requisite documentary evidence / invoices raised by the generators / suppliers of the power.

2. Actual sales to AP consumers are to be calculated in accordance with the methodology approved by the Commission in the ARR for the relevant year. ...”

3. It is submitted that the FSA is a part of tariff and a surcharge levied to meet the increased cost of generation and purchase of electricity. It is stated that under the Electricity Act, 2003 (hereinafter referred as the “Act of 2003” for the sake of brevity) bodies (like State Electricity Regulatory Commissions) have been constituted and are entrusted with the task of determination of tariff and adjudicate the issues regarding FSA along with the related issues.
4. It is pertinent to mention that –

- The power generation companies pass on the increase of cost of power (produced due to increase in coal/fuel prices on monthly basis based on demand and supply of coal) to the distribution companies which gets legitimately passed on to the consumers.
- SERCs of various states revises the tariffs for electricity periodically (every year or once in every two to three years). The new tariff is set based on the cost of production and distribution of electricity. But the prices of fuel or coal changes throughout the year and the utilities have to manage these uncontrollable cost variations by legitimately passing them to the consumers.
- The amount of FSA is an effect of intermittent increase in the power purchase cost.
- However since the FSA amount is more, the recovery spills over a period of 3-4 years. The HERC also in the past when the FSA was levied after the end of the year after HERC approval allowed the recovery of FSA over 3-4 years; though the DISCOMs incurred and paid the entire cost of power purchase on a regular basis during the year itself
- It is submitted that the DISCOMs - Uttar Haryana Bijli Vitaran Nigam (UHBVN) and Dakshin Haryana Bijli Vitaran Nigam (DHBVN) apply Fuel Surcharge Adjustment as a pass-through cost to its consumers in accordance with HERC (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012 on a quarterly basis. Accordingly, per unit fuel cost pass through gets calculated based on the norms and guidelines laid down by Haryana Electricity Regulatory Commission.
- The FSA up to 10% of the approved cost of power purchase for the respective financial year is automatically passed through to the consumers; on a quarterly basis by the DISCOMs.

- It is submitted that DISCOMs, have been furnishing the calculations pertaining to FSA, to the Hon'ble Commission. It is submitted that Uttar Haryana Bijli Vitran Nigam Ltd. has been submitting the details of FSA to the Hon'ble HERC on behalf of both the distribution licensees within the State of Haryana.
 - It is further submitted that according to section 62(4) of the Act of 2003, the tariff may not ordinarily be amended more frequently than once in a financial year, except any changes expressly permitted in terms of the fuel surcharge formula specified by the Appropriate Commission. Variation in price of fuel of a generator supplying power to a distribution licensee will affect the Power Purchase Cost of the distribution licensees. Thus the change in Power Purchase Cost due to variation in fuel cost could be permitted by amending tariff in terms of the fuel surcharge formula specified by the State Commission more frequently than once in a financial year.
5. It is submitted that currently the following FSA's are being levied across different categories of consumers
- i) Recovery of FSA of order dated 19.03.2015
 - ii) Concurrent FSA @ 40 paise per unit
6. It is hereby submitted that before the order of Hon'ble Commission dated 19.03.2015 following FSA were levied:
- i) FSA order dated 14.6.2010
 - ii) FSA order dated 12.8.2011
 - iii) FSA order dated 26.6.2012 and dated 29.12.2014
 - iv) True up of FSA for FY 2011-12
 - v) True up of FSA for FY 2012-13
 - vi) True up of FSA for FY 2013-14
7. The consumers of Haryana were paying for these FSA's as per rates based on different Orders/ Regulations of the Commission The

Hon'ble Commission vide order dated 19.03.2015 directed that the recovery of these FSA's to be continued at the existing rate till such time the total amount as determined above, is fully recovered.

8. The Hon'ble Commission vide its order dated 19.03.2015 determined the unrecovered amount at the end of FY 2013-14 as Rs. 5,066.82 Crores with a recovery of Rs. 1863.58 Crore from April-2014 to December-2014 leaving a net unrecovered amount of Rs. 3591.52 Crore, which was further based on the prorated sales of the 3rd quarter of FY 2014-15 i.e. Oct-14 to Dec-14.
9. However, the Nigam based on the worked out per unit FSA from the annual audited accounts for FY 2014-15 have re-estimated the recovery from April – 2014 to March – 2015, which works out to Rs. 2297.01 Crores, leaving a net unrecovered amount of Rs. 3271.33 Crore including holding cost as on March, 2015
10. It is estimated that an amount of around Rs 2705.19 Crore has been recovered from per unit FSA as consolidated by Hon'ble Commission vide order dated 19.03.2015, leaving a net unrecovered amount of Rs. 805.98 Crore including holding cost as on 31.03.2016. Further, during the 1st quarter the unrecovered amount has been estimated to be around Rs. 657.14 Cr leaving a net unrecovered amount of Rs. 154.92 Crore including holding cost at the end of 1st Quarter of FY 2016-17, i.e. as on 30.06.2016.
11. Further, in addition to above the Hon'ble APTEL in its Judgment dated 7th April, 2016 has allowed certain generators like Adani Power, GMR Kamalganga, Sasan Power Ltd and CGPL recoveries on account of force majeure / change in law / date of COD etc.

12. The Licensee in its earlier submissions dated 25.05.2016 and 12.07.2016 vide Memo No. Ch-25/GM/RA/N/F-25/Vol-62 and Ch-37/GM/RA/N/F-54/Vol-XI (A) respectively has submitted before the Hon'ble Commission that the aforesaid Judgment is expected to have an implication of Rs. 1240.90 cr on account of recovery of arrears which has now been revised to around Rs. 1463.955 Cr alongwith an anticipated monthly liability of Rs. 53 Cr in future.

13. In view of Hon'ble APTEL Judgment dated 7th April, 2016, following generators have raised their claims on account of change in law / COD:

Sr.No	Party	Change in Law & Compensatory Tariff	COD	Expected monthly impact
1	ADANI	2524.44		30.00
2	CGPL	32.90		8.00
3	JPL		648.00	
4	SASAN	127.56	126.00	10.00
5	GMR KAMALNAGA	115.43		5.00
	Total	2800.33	774.00	

14. It is submitted that the CERC vide its Order dated 25.01.2016 has allowed Jhajjar Power Limited to recover the capacity charges, transit losses etc. in the matter of disputes pertaining to the composite scheme of supply for power accordingly, Jhajjar Power Limited has already submitted a claim of Rs. 648.005 Cr to the Licensee.

15. It is submitted that out of Rs. 2524.44 Cr the Adani power has raised a claim of Rs. 1605.22 Cr on account of Change in law while Rs. 919.22 Cr is on account of compensatory tariff. With regards to claim made towards change in law the amount towards allowed components by CERC and other regulators works out to Rs. 414.06 Cr.

16. Further, with regards to claims of Rs. 127.56 Cr made by Sasan Power on account of change in law, the Licensee has already made a

payment of Rs. 105.72 Cr. While against the claim of Rs. 126 Cr on account of COD, the Licensee has already made payment of Rs. 50.89 Cr in two instalments and the other two instalments are yet to be paid.

17. Further, with regards to claims of Rs. 115.43 Cr made by GMR (Kamalganga) on account of change in law, the Licensee has already made a payment of Rs. 99.07 Cr provisionally.
18. Thus, from the above it is clear that the out of the claimed liability of Rs. 3574.33 Cr, confirmed liability which the Licensee has to pay as on date works out Rs. 1463.96 Cr. which may further increase based on the respective Orders/ Judgments in this regards.
19. It is further submitted that since the aforementioned amount pertain to the power purchase cost of the previous years it needs to be included in the FSAs pertaining to the period before 31.03.2014 which are to be recovered in terms of Order dated 19.03.2015. Further, after considering the confirmed liability of Rs. 1463.96 Cr out of the total anticipated amount of Rs. 3574.33 Cr, the FSA amount pertaining to the period prior to FY 2014-2015 as on 30.06.2016 (at the end of 1st quarter of FY 2016-17) is Rs. 1618.87 Cr (154.92 + 1463.96) which has to be recovered from the consumers under the order dated 19.03.2015.
20. It is submitted that since the above costs are a confirmed liability on the Licensee and since these claims have already been made by the generators and approved by Regulators, the licensee is bound to pay such costs to generators under law. However, complete denial of such costs without having heard the Licensee's say on the matter will be highly unjustifiable and against the principle of natural justice.

21. Natural justice is a concept of common law and represents higher procedural principles developed by the courts, which every judicial, quasi-judicial and administrative agency must follow while taking any decision adversely affecting the rights of a private individual. Natural justice implies fairness, equity and equality.
22. The principle of natural justice encompasses following two rules: -
 1. *Nemo iudex in causa sua* - No one should be made a judge in his own cause or the rule against bias.
 2. **Audi alteram partem** - Hear the other party or the **rule of fair hearing or the rule that no one should be condemned unheard.**
23. That it is the settled principle of law that any enquiry, regulatory, quasi judicial or judicial has to be conducted in accordance with the principles of natural justice. In *Canara Bank Vs. A.K. Awasthi* reported at (2005) 6 SCC 321 it was held that adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The learned Commission should thereby give opportunity to enable the appellant to make its representation.
24. That in *S.N. Mukherjee Vs. Union of India* reported in (1990) 4 SCC 594, the Hon'ble Supreme Court further held that right to be heard is an elementary principle of fair hearing which is one of the basic features of natural justice. 'Natural Justice' means a fair process. A fair process essentially must exclude arbitrariness and exclusion of arbitrariness would ensure equality and equal treatment before law.
25. That further in *A.R. Antulay Vs. R.S. Nayak* reported in (1988) 2 SCC 602, the Hon'ble Supreme Court further held that no prejudice need to be proved in enforcing the fundamental right. Violation of the

fundamental right itself renders the impugned order void. So also the violation of the principles of natural justice renders the act a nullity

26. Also, if the above cost is passed on to the consumers at a later stage i.e. in the ARR of the ensuing years the same will increase the power purchase cost exorbitantly which will further increase the ARR and thereby giving a tariff shock to the consumers. In order to avoid any such tariff shock to the consumers, it is proposed to recover the aforementioned amount of Rs. 1618.87 Cr by including the same in the previous FSAs to be recovered in terms of the Order dated 19.03.2015 and further giving relief of 25 paisa per unit as proposed in its earlier submission.

27. In view of the above the outstanding recovery of FSA as per Order dated 19th March, 2015 are given in the table below:

Table 2: Recovery of FSA based on audited accounts of FY 2014-15 and provisional accounts of FY 2015-16 (Rs. Crore)

	FSA order dt 14.6.2010	FSA order dt 12.8.2011	FSA order dt 26.6.2012 and dt 29.12.2014	True up of FSA for FY 2011-12	True up of FSA for FY 2012- 13	True up of FSA for FY 2013-14	TOTAL
Rate of Interest per annum	8%	8%	12.50%	12.5%	12.5%	12.5%	
FSA determined as per order	1,505.29	562.36	1,037.77	1,819.19	1,481.25	1,938.09	8,343.95
Recovery during FY 2010-11	251.56	0.00	0.00	0.00	0.00	0.00	251.56
Balance unrecovered 31.3.2011	1,253.73	0.00	0.00	0.00	0.00	0.00	1,253.73
Holding Cost for FY 2010-11	110.36	0.00	0.00	0.00	0.00	0.00	110.44
Unrecovered amount at the end of FY 2010-11 incl holding cost	1,364.09	0.00	0.00	0.00	0.00	0.00	1,364.09
Recovery during FY 2011-12	361.43	78.80	0.00	0.00	0.00	0.00	440.23
Balance unrecovered as on 31.3.2012	1,002.65	483.56	0.00	1,819.19	0.00	0.00	3,305.40
Holding Cost for FY 2011-12	94.67	41.84	0.00	113.70	0.00	0.00	250.49
Unrecovered amount at the end of FY 2011-12 incl holding cost	1,097.32	525.40	1,037.77	1,932.89	0.00	0.00	4,593.38
Recovery during FY 2012-13	371.45	119.23	323.52	0.00	353.78	0.00	1,167.97
Balance unrecovered as on 31.3.2013	725.88	406.17	714.25	1,932.89	1,127.47	0.00	4,906.66
Holding Cost for FY 2012-13	72.93	37.26	109.50	241.61	70.47	0.00	532.30
Unrecovered amount at the end of FY 2012-13 incl holding cost	798.81	443.43	823.75	2,174.50	1,197.94	0.00	5,438.43
Recovery during FY 2013-14	426.21	136.79	489.99	647.28	681.88	504.81	2,886.96
Balance unrecovered as on 31.3.2014	372.60	306.64	333.76	1,527.22	516.06	1,433.28	4,489.55
Holding Cost for FY 2013-14	46.86	30.00	72.34	231.36	107.12	89.58	577.80
Unrecovered amount at the end of FY 2013-14 incl holding cost	419.45	336.65	406.10	1,758.58	623.18	1,522.86	5,066.82
	36.09%	28.97%	34.94%		29.04%	70.96%	
	35.13%				64.87%		
FSA Recoverable during FY 2014-15							
Recovery during FY 2014-15 upto Sept 2014	142.25	114.17	137.72	0.00	211.34	516.46	1,121.95
Unrecovered amount as on Oct-2014	277.20	222.48	268.38	1,758.58	411.84	1,006.40	
Amount recovered from Oct-14 to Dec-14	77.36	62.09	74.89	0.00	114.93	280.85	610.12
Unrecovered Amount as on Dec-14	199.84	160.39	193.48	1,758.58	296.91	725.55	3,334.75
Holding Cost	12.50%	12.50%	12.50%	12.50%	12.50%	12.50%	12.50%
Holding Cost from April to Dec-14	29.03	23.30	28.11	164.87	43.13	105.39	393.82

	FSA order dt 14.6.2010	FSA order dt 12.8.2011	FSA order dt 26.6.2012 and dt 29.12.2014	True up of FSA for FY 2011-12	True up of FSA for FY 2012- 13	True up of FSA for FY 2013-14	TOTAL
Unrecovered Amount + Holding Cost as on Dec-14	228.87	183.69	221.59	1923.45	340.04	830.94	3728.58
Amount recovered from Jan-15 to March-15	71.63	57.49	69.35	0.00	106.42	260.05	564.94
Unrecovered Amount as on March-15	157.24	126.20	152.24	1923.45	233.62	570.89	3163.64
Holding Cost	12.50%	12.50%	12.50%	12.50%	12.50%	12.50%	12.50%
Holding Cost for Dec-14 to March-15	6.03	4.84	5.84	60.11	8.96	21.90	107.69
Unrecovered Amount + Holding Cost as on March-15	163.28	131.05	158.08	1983.55	242.58	592.79	3271.33
FSA Recoverable in FY 2015-16							
Amount recovered from April-15 to March-15							2,705.19
Unrecovered Amount as on Mar-15							566.14
Holding Cost							12.50%
Holding Cost for April to Mar-15							239.84
Unrecovered Amount + Holding Cost as on Mar-15							805.98
Amount to be recovered from Apr-16 to June -16							657.14
Unrecovered Amount as on Q1 FY 2016-17							148.84
Holding Cost							12.50%
Holding Cost for April to Mar-15							6.07
Unrecovered Amount + Holding Cost as on							154.92
Additional Liability on account of APTEL Judgment dated 7 th April, 2016 and various CERC Order							1463.96
Total Amount to be recovered excluding anticipated monthly liability of Rs. 53 crore							1618.87

28. Therefore, the total net unrecovered amount at the end of 1st quarter of FY 2016-17 relating to Order dated 19.03.2015 and Hon'ble APTEL Judgment dated 7th April, 2016 is Rs 1618.87 Cr (154.92 + 1463.96) Cr. excluding anticipated monthly liability of Rs. 53 Cr.
29. Moreover, the coal prices have also been increased CIL which will have a direct impact on the landed cost of power purchase which in turn will have to be recovered from FSA. The anticipated additional impact of this increase in coal prices works out to approximately Rs. 849.00 Cr
30. However, it may be noted that the FSA of FY 2014-15, FY 2015-16 and continuing monthly impact of Hon'ble APTEL's Judgment amounting to Rs. 53 Cr per month and the impact of 20-23 paise per unit due to increase in coal prices will be met through the concurrent FSA @ 40 paise.
31. It is submitted that in accordance with Regulation 66 of the (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012, an automatic FSA is presently being recovered @ 37 paise per unit across all consumer categories.
32. In view of the above it is requested that since the audited accounts of FY 2015-16 are yet to be prepared and finalised hence the Hon'ble Commission may provide one month time period to provide the details of the aforesaid liability and present its case before the Hon'ble Commission in the referred matter.

Prayers

1. Take the accompanying current petition on record and accept the petition for filing including requests for FSA recovery proposal alongwith proposal of continuing the FSA allowed vide Order dated 19.03.2015 after giving a relief of 25 paisa per unit to the consumers.
2. Grant a time period of one month to present its case before the Hon'ble Commission and accordingly, schedule a hearing in matter.
3. Treat the FSA recovery filing as complete in view of substantial compliance as also the specific requests for waivers with justification placed on record.
4. Condone any inadvertent omissions/errors/shortcomings and permit UHBVN to add/change/modify/alter this filing and make further submissions as may be required at a future date.
5. To condone the delay in filing the appeal due to reasons unavoidable by the Discoms.
6. To pass necessary order regarding allocation of recovery of FSA between the two Discoms.

