

**BEFORE THE HON'BLE HARYANA ELECTRICITY REGULATORY
COMMISSION, AT PANCHKULA
PETITION NO. HERC/PRO-14 OF 2016**

IN THE MATTER OF:

Uttar Haryana Bijli Vitran Nigam Limited (UHBVN) and Dakshin Haryana Bijli
Vitran Nigam Limited (DHBVN)

... Petitioners

**WRITTEN SUBMISSIONS ON BEHALF OF DISTRIBUTION
LICENSEES IN PRO 14 OF 2016 - PETITION UNDER S.42 OF THE
ELECTRICITY ACT, 2003 READ WITH REGULATION 22 OF THE
HARYANA ELECTRICITY REGULATORY COMMISSION (TERMS
AND CONDITIONS FOR GRANT OF CONNECTIVITY AND OPEN
ACCESS FOR INTRA-STATE TRANSMISSION AND DISTRIBUTION
SYSTEM) REGULATIONS, 2012 FOR APPROVAL OF ADDITIONAL
SURCHARGE TO THE DISCOMS – UHBVN AND DHBVN ON
REFERENCE TO THE OPEN ACCESS FOR FY 2015-16 TO BE
RECOVERED DURING THE FY 2016-17.**

MOST RESPECTFULLY SHOWETH:

1. That the present written submissions are being filed pursuant to hearing held before this Hon'ble Commission on 14.07.2016.
2. That the distribution licensees, i.e. the Petitioners, namely, Uttar Haryana Bijli Vitran Nigam Limited (hereinafter referred to as "**UHBVN**" for sake of brevity) and Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter referred to as "**DHBVN**" for sake of brevity), filed the revised data and methodology for computation of additional surcharge before this Hon'ble

Commission. It is submitted that as per the methodology adopted by the Petitioners only such power surrendered is taken for calculating additional surcharge, which corresponds to power stranded because of open access consumers.

3. That the lower quantum of open access power per slot and surrendered power for corresponding slot is taken as quantum for the stranded power for slot due to open access. Further, the Petitioners have calculated slot wise stranded power due to open access and also the open access power availed in that particular time slot. Further, based on the slot-wise quantum eligible for the calculation of additional surcharge and slot wise open access power availed, the corresponding slot wise units have been calculated for all the days in first half of FY 2015-16 and thereafter the Petitioners have calculated total units in million units which correspond to the stranded power due to open access and total open access units availed for the first half of FY 2015-16. Correspondingly, the total additional surcharge for the FY 2015-16 (in Rs. Crores) is calculated over the units of power (in million units) evaluated above for the first half of FY 2015-16 considering the per unit effective fixed charge approved by this Hon'ble Commission. Finally, the per unit additional surcharge applicable on the open access consumers in FY 2016-17 owing to open access in FY 2015-16 (Rs./unit) is calculated considering the total open access units estimated for FY 2016-17 (considering same open access scenario as in FY 2015-16 in million units) and the additional surcharge (in Rs. Crores) determined by dividing the total additional surcharge with the estimated open access units for FY 2016-17 (considering same open access scenario as in FY 2014-15) in million units.
4. That the Hon'ble Commission may allow an additional surcharge of paisa per unit on the open access consumers; as calculated based on the details of slot wise surrendered power and slot wise open access power

considering data of all days of first half of FY 2015-16. It is submitted that the Petitioners have already provided details of the source wise power purchase quantum and actual rates per unit to the Hon'ble Commission as a part of the ARR and APR filings. It is submitted that there has been no power procurement done from any un-approved sources of power. It is pertinent to mention that during peak hour season the Haryana Power Purchase Cell has to purchase power at extra high rate to meet the requirement of consumers. Moreover, there is an annual increase in the fixed component of the power purchase due to escalations in the cost index and the same is approved by the Hon'ble Central Commission and is passed on to the distribution licensees.

5. 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. It is submitted that the Haryana Power Purchase Centre has been procuring power based on the merit order dispatch which is further subjected to the availability and technical minimum of the generating stations. It is submitted that Haryana Power Purchase Centre is not procuring any additional power from any other source except for fulfilling the RPO Obligation as set by the Hon'ble Commission.
6. That the many of the contentions and arguments raised by the objectors are already covered and considered by the judgment of Hon'ble Appellate Tribunal for Electricity (hereinafter referred to as "**Hon'ble Tribunal**" for sake of brevity) vide its common judgment dated 28.04.2016 in Appeal No. 269 of 2014, Appeal No. 204 of 2014 and Appeal No. 216 of 2015. It is submitted that the judgment of the Hon'ble Tribunal is a complete answer to the issues raised by the objectors herein.

7. That the provision of open access on transmission and distribution on payment of legitimate charges to the distribution licensee has been introduced under the Electricity Act, 2003 (hereinafter referred to as “**Electricity Act**” or “**the Act**” for sake of brevity) in order to enable number of players utilizing these capacities and transmit power from generation to the load centre. This will mean utilization of existing infrastructure and easing of power shortage with no losses to be borne by the power discoms who shall remain revenue neutral towards the movement of consumers from the licensee to a second source of power under the provision of open access. The principle provision in this regard is Section 42 (2) and (4) of the Electricity Act.
8. That the National Tariff Policy, both 2006 and 2016, firstly, are not binding on the Hon’ble Commission in light of the judgment dated 24.03.2015 passed by the Hon’ble Tribunal in Appeal No. 103 of 2012, Maruti Suzuki India Ltd. v. HERC & Anr. (Paragraphs 49 and 52). However, both the National Tariff Policies, 2006 and 2016, provide that the computation of additional surcharge needs to be done in a manner that it compensates the distribution licensees. The National Electricity Policy also recognizes that to make the power sector sustainable, there is an urgent need for ensuring recovery of cost of service from consumers (Point 5.5). In order to ensure viability and sustainability in operations of the distribution licensees, it is necessary that both cross subsidy surcharge and additional surcharge are imposed on the open access consumers. The Hon’ble Tribunal while interpreting section 42 of the Act has held that additional surcharge is payable not only when the stranded capacity is proved (Appeal No. 1 of 2006 vide its judgment dated 11.07.2006 – Para 28).
9. That Regulation 63 of 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, 2012 (hereinafter referred to as “**2012 Regulations**” for sake of brevity) provides for calculation of Additional Surcharge read with Regulation 22 (3) of Open Access Regulations. As per the regulations framed by the Hon’ble Commission additional surcharge becomes applicable only if the obligation of the licensee in terms of power purchase commitments has been and continues to be stranded. Under the 2012 Regulations the question that arises is who is liable to pay for the stranding of power of the utility, whether the larger set of consumers or in terms of the regulations framed by the Hon’ble Commission, the open access consumers. It is submitted that the power purchase cost is part of the ARR of the distribution licensees as per the 2012 Regulations and the additional surcharge determined by the Hon’ble Commission is deducted from the ARR as an income. Therefore, if no additional surcharge is determined by this Hon’ble Commission then the power purchase cost along with the fixed cost due to backing down, clearly attributable to open access consumers, will become payable by the larger set of consumers within Haryana and as such the same is inequitable and contrary to the principles enshrined under the Act. It is submitted that the distribution licensees have an obligation to supply power and therefore, they have to enter into agreements for purchase of power from various generating stations for meeting the entire demand of the state well in advance. As such, when these embedded consumers draw power from any other person under open access, the fixed cost of the supply taken by these consumers from elsewhere is still payable by the licensees, making it a stranded capacity for the distribution licensees. The additional surcharge is payable for the stranded capacity of the distribution licensees. In the event of the open access consumers moving out of the system of the distribution licensees, the distribution licensee have to bear stranding of assets which causes financial losses to the distribution licensees and the same needs to be

compensated by way of additional surcharge, as has been allowed by the Hon'ble Commission in the past.

10. That Haryana also has surplus power left owing to continuous increase in open access consumers not purchasing power from licensees and thus the distribution companies have to surrender huge quantum of power every day. Consequently, the distribution companies have to bear fixed charges over the surrendered power to the power suppliers along with UI charges at the time of already existing surplus power in the system and high frequency. The distribution licensees are bound to sell the surplus power in the power exchanges at cheaper rates in order to prevent hefty financial losses because of the consumers opting for open access. Thus, these consumers may in fact be buying the same power from the power market at cheaper rates and practicing gaming of power. The open access consumers in fact are purchasing power both from the discoms and the power exchange in the real time on random basis in order to get the cheapest power from where so ever available.
11. That the Petitioners have signed power purchase agreements to meet the increasing demand of power in the State of Haryana, which is eight-ten per cent per annum at State level and 15-20 per cent per annum in industrial and commercial circles like Gurgaon and Faridabad, and thus the Haryana government is regularly making all out efforts to create additional capacity of generation along with the power transmission and distribution system simultaneously being strengthened congruently. All this has helped improve the quality of power and also facilitated the discoms to meet the rising need for electricity.
12. That every year the peak load for the discoms reaches high levels of around 9200 MW and thus the arrangement of signing power purchase agreements is valid and justified. It is evident from the fact that the

running hours to various consumer categories especially industrial and commercial have improved at a fast pace. In accordance with the provisions of the Electricity Act the distribution licensees have an obligation to supply power to all the consumers under the respective areas of supply; and correspondingly they have to enter into agreements for purchase of power from various generating stations for meeting the entire demand of the state, well in advance.

13. That as such, when embedded open access consumers draw power from elsewhere apart from the licensee under open access, the fixed cost of the supply taken by these consumers from elsewhere is still payable by the distribution licensees, making it a stranded capacity for the distribution licensees. It is submitted that the additional surcharge is payable for the stranded capacity of the distribution licensee. In the event of the open access consumers moving out of the system of the licensee, the distribution licensee has still to bear stranding of assets which eventually causes financial loss to the distribution licensees and the same can only be compensated by way of additional surcharge, as has already been allowed by the Hon'ble Commission by its MYT tariff order dated 29.5.2014 and the same has already been upheld by the Hon'ble Tribunal by its order and judgment dated 28.04.2016 in Appeal No. 269 of 2014, Appeal No. 204 of 2014 and Appeal No. 216 of 2015.
14. That the fixed charges included in the approved power purchase cost by the Hon'ble Commission is congruent to the estimated sales and revenue approved to the distribution licensees. Thus in the present case, while the open access consumers are procuring power from some other source other than licensee, the distribution licensees have to back down/surrender additional power (other than the power surrendered because of reasons apart from open access consumption) and thus without procuring such power, the fixed charges are to be paid to the

generators. Hence, these fixed charges are paid without any revenue compensation through tariff and thus needs to be allowed as recovery through additional surcharge under the Electricity Act. It is submitted that the fixed costs owing to stranded power is recovered through FSA are recovered through consumers of the discoms. In case the fixed costs owing to stranded power due to open access consumers is to be legitimately allowed to be recovered from open access consumers through additional surcharge and the same shall obviously be excluded in the FSA.

15. That the introduction of fixed charges for certain consumer categories is in line with the two-part tariff principle adopted by all the SERC's across the country. It is submitted that in order to cater to the demand or load, the discoms have to develop a healthy distribution network keeping in view the maximum, minimum load and the load which is likely to come in the near future. The demand charges cover the fixed cost of providing certain level of energy to consumers. The challenge is that the discoms have to maintain enough capacity to satisfy all their consumers' electricity needs at once e.g. a hot day in July when every consumer run their ACs. This requires the discoms to keep a vast array of expensive equipments including transformers, wires and sub-stations on constant standby. Such capacity is extremely expensive to build and demand charges help the discoms to meet such costs. Further, as per the Section 42 of the Electricity Act discoms are required to maintain an effective and efficient distribution system and the same section also provides for the recovery of additional surcharge. Regulation 22 of the Open Access Regulations provides the details and manner in which additional surcharge is recoverable. Additionally, it is submitted that demand charges and additional surcharge are not correlated in any manner. The demand charges are recovered on account of the investments made by the discoms in the distribution network whereas, additional surcharge is meant to compensate the discoms for the fixed cost of the stranded capacity due to

open access consumers. Accordingly, as per Regulation 22 of the Open Access Regulations the discoms have only considered fixed cost of stranded power for calculation of additional surcharge. It is submitted that in order to ensure that only such surrendered power is taken for calculating additional surcharge, which corresponds to power stranded because of open access consumers only, the lower of the open access power per slot and the surrendered power for the corresponding slot has been taken as the quantum of the stranded power for the day due to open access.

16. That additional surcharge is also in the nature of 'compensatory charge' payable to the distribution licensee of the area towards the cost of stranded power attributable to the open access consumers. The additional surcharge becomes leviable if power being drawn by the consumers under open access mechanism is leading to backing down of generation and even after backing down intra-state generation capacity the discoms are under drawing / power as the generation cannot be backed down further.
17. That in light of the public hearing held on 14.07.2016 and the oral submissions made thereto, the data submitted and the petition filed by the Petitioners and in light of the instant written submissions it is submitted that additional surcharge to the tune of Rs. 1.17 per unit may be determined by this Hon'ble Commission for open access consumers. It is prayed accordingly.

For and on behalf of Petitioners

Through Counsel,

DSK Legal,
Advocates & Solicitors,
4 Aradhna Enclave,
R.K. Puram Sector 13,
New Delhi - 110 066, India.