

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT
PANCHKULA**

**Case No. HERC/ RA-06 of 2024
in P.No. 23 of 2023**

**Date of Hearing : 19/05/2026
Date of Order : 09/06/2026**

IN THE MATTER OF:

Application under section 94(1)(f) of the Electricity Act, 2003 read with Regulations 57, 65 to 70 of the HERC (Conduct of Business) Regulations, 2019 seeking review, clarification, modification as well as the removal of difficulty which has arisen in the compliance of the order dated 24.05.2024 passed by the Hon'ble Commission in HERC/Petition no. 23 of 2023.

Petitioner

Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Vidyut Sadan, Vidyut Nagar, Hisar, District Hisar.

VERSUS

Respondent(s)

Sh. B.K. Aggarwal, Flat Owner-cum-Resident of D-503, Park View City-1, Sohana Road, Sector-48, Gurugram.

Proforma Respondents

1. XEN (Operations) DHBVN, Sohana, Gurugram (Haryana).
2. SDO (Operations), Sub-Division, Sohana Road, DHBVN, Gurugram.
3. Consumer Grievance Redressal Forum, Dakshin Haryana Bijli Vitran Nigam, Hetri, Sector 16, IDC Area, Gurugram.

Present

On behalf of the Petitioner

1. Sh Raghujeet Singh Madan, Advocate
2. Sh. Lovepreet Singh, Advocate
3. Ms. Aerika Singh, Advocate

On behalf of the Respondent

None

QUORUM

**Shri Nand Lal Sharma, Chairman
Shri Mukesh Garg, Member
Shri Shiv Kumar, Member**

ORDER

1. **Petition:**

- 1.1 That the Review Applicant- Dakshin Haryana Bijli Vitran Nigam Limited ('DHBVNL') is filing the present application being aggrieved by certain aspects of order dated 24.05.2024 (for brevity 'Impugned Order') passed by this Hon'ble Commission in the petition preferred by Respondent No.1, concerning methodology/ formula adopted by DHBVNL for levy of fixed charges. A true copy of the order dated 24.05.2024 is annexed.
- 1.2 That by way of the present application, DHBVNL is seeking invocation of the powers of the Hon'ble Commission under Section 94(1)(f) of the Electricity Act, 2003 read with Regulations 57, 65 to 70 of the HERC (Conduct of Business) Regulations, 2019 seeking review/ reconsideration/ appropriate modification and clarification and/or removal of difficulties which have arisen in the implementation of certain findings of the impugned order w.r.t. the calculation of fixed charges. The Review Applicant-DHBVNL is aggrieved by the direction given by this Hon'ble Commission to levy fixed charges on monthly basis and make change in the system software within a period of three months.

BACKGROUND OF THE CASE

- 1.3 That the brief facts leading upto the filing of the petition are as under:
 - a. The Respondent No. 1 had filed a complaint, bearing case No. D/CGRF/3681/2021 before the Ld. Consumer Grievance Redressal Forum, Gurugram ('Ld. CGRF') being Respondent No. 4 herein, whereby a number of issues were raised by the Respondent No.1-Complainant. It had been alleged that incorrect bills were raised, surcharge was wrongfully charged, excess ACD was charged, wrong rate of interest was considered by DHBVNL etc. As such, the Respondent No. 1 sought refund of the excess payment made along with interest.

It is submitted that one of the issues raised by the Respondent No.-1-Complainant was with respect to the computation of fixed charges. It had been alleged by the Respondent No. 1 that the fixed charges on the recorded MDI are not being levied as per tariff order passed by this Hon'ble Commission. The recorded MDI is simply to be multiplied by the rate per month, but an unnecessary formula is being applied by DHBVNL.
 - b. The complaint was decided vide order 06.11.2022 passed by the Ld. CGRF whereby the issue with respect to levy of fixed charges was decided as under:

"After going through the above arguments, the Forum observes and decides as under:

...

2. Calculation of fixed charges on the basis of recorded MDI by using an unnecessary formula should immediately stop and that the fixed charges should be calculated simply by multiplying MDI

with the rate. Any excess fixed charges, if levied previously on this account should be refunded with interest in the next billing cycle.”

A copy of the order dated 06.11.2022 passed by the Ld. CGRF is annexed. It is pertinent to mention here that the following formula is being applied by the Review Applicant-DHBVNL for calculation of fixed charges:

$(\text{Rate of Fixed Charges} \times \text{Nos. of billing days} \times 12) / 365$

Further, in case of leap year, the number of days i.e. 365 is substituted with 366. It is further submitted that though the aforesaid formula was being adopted, however no ‘*excess fixed charges*’ were being levied. As such, the direction of the Ld. CGRF that- *“Any excess fixed charges, if levied previously on this account should be refunded with interest in the next billing cycle.”* had become dispensable and had been rendered redundant as no excess amount was charged.

- c. However, despite the fact that no loss was being caused to the Respondent No. 1 on account of the formula being adopted and no amount towards fixed charges was liable to be refunded, the Respondent No. 1 had approached the Ld. Electricity Ombudsman, alleging the non-compliance of order dated 06.11.2022.

- d. When the matter was listed before the Ld. Electricity Ombudsman, the following aspect was brought to the notice of the Ld. Electricity Ombudsman by the DHBVNL:

“As regards issue regarding Computation of fixed Charges based on a formula is concerned, it is submitted that monthly billing in system is based on the difference of the last read date and current read date instead of a calendar month. The formula has been implemented in the system and is uniform for all consumers. With this, there is no scenario of over/ under charging of fixed charges. It is rather advantageous for the consumers whose connection is discontinued in the middle of the month for any reason.

However, the matter has already been conveyed to CBO, Hisar by the office of SDO (OP), S/Divn., Sohana at various occasions and the same is pending at the end of SE/CBO as the billing software is under their control and this issue falls under his pervue.

This fact was also duly intimated to the Appellant in reply filed by DHBVN in Petition No. 29 of 2021.”

The aforesaid submission made by DHBVNL also stands recorded in the subsequent order/ report submitted by the Ld. Electricity Ombudsman, a copy of which is annexed.

- e. However, after hearing the parties, the Ld. Electricity Ombudsman observed as under:

“Upon hearing the parties and perusal of the relevant records, it has been observed as under:

... ..

- *With respect to direction no. 2 of CGRF reproduced above, it was ordered that the Calculation of fixed charges on the basis of*

recorded MDI should immediately stop and that the fixed charges should be calculated by multiplying MDI with the rate as per Regulations. Admittedly, this direction has not been complied by the Respondents. In fact, previously also, this non-compliance has been brought to the notice of the Hon'ble Commission. On this, Respondent had contended that this direction cannot be complied with on account of pending software up-dation by the office of SE/CBO as the billing software is under their control. It was also mentioned by the concerned SDO that various letters have been written to the CBO office in this regard. The SE/CBO shall explain the reason for non-compliance with the regulations of the Commission."

- f. Thereafter, another petition bearing HERC/ Petition No. 23 of 2023 under Section 142 read with Section 146 and 149 of the Electricity Act, 2003 had been filed by the Respondent for issuance of directions to the Review Applicant-DHBVNL to comply with the order dated 06.11.2022 passed by the Ld. CGRF, DHBVNL, Gurugram.
- g. The said petition came to be decided vide the final order dated 24.05.2024 (Annexure RA-1) passed by this Hon'ble Commission. It is submitted that the Review Applicant-DHBVNL herein is aggrieved by the part of the observations made vide the impugned order concerning the levy of fixed charges, which are reproduced below for ready reference:

"d) Fixed charges on the basis of recorded MDI

... ..

The respondents have expressed difficulty in implementation of the same in billing software and contended that the formula implemented in the billing system is uniform for all consumers and amendment is required to be done in the billing logic at the central level and no change can be made for an individual consumer in the centralized billing system.

The commission observes that the calculation of fixed charges on the basis of empirical formula with recorded MDI is not in line with the regulations.

19. In view of the above facts and discussions, the commission observes that the respondent DHBVN has broadly complied with the directions of the CGRF and has tried to address the other issues which were raised by the petitioner during course of hearings. Further, keeping in view of the difficulty expressed by respondent-DHBVN in implementation of the calculation of fixed charges as per regulations, there is no willful disobedience observed on the parts of the respondents. Therefore, no case of willful non-compliance by the respondent under section 142 of Electricity Act, 2003 is made out. However, the respondent DHBVN is directed to levy fixed charges on monthly basis as per prevailing instructions issued under the relevant regulations/ tariff order and make change in the system software, if required, within three

months of this order. The present petition is disposed of, accordingly.”

- 1.4 It is submitted that a perusal of the impugned order shows that though the Hon’ble Commission had taken note of the fact that there is no wilful non-compliance on the part of the DHBVNL, however, it has been directed that the system software is required to be changed as the calculation of fixed charges on basis of empirical formula is not in line with the Regulations.
- 1.5 It is humbly submitted that no loss is being caused to any of the consumer if the formula adopted by the DHBVNL is continued to be applied. On the contrary, the task of changing the billing logic at central level would not only cast financial burden upon DHBVNL but would also entail undue effort and diversion of resources and would, in effect, make no difference to the billing amount. Hence, the present petition is being filed by the Review Applicant-DHBVNL, owing to the following amongst other grounds:

GROUND NECESSITATING THE REVIEW/ CLARIFICATION/ MODIFICATION/ REMOVAL OF DIFFICULTY IN THE IMPLEMENTATION OF THE ORDER DATED 24.05.2024

- 1.6 At the outset, it is submitted that the monthly billing in system is based on the difference of the last read date and current read date instead of a calendar month. The formula which has been adopted by the Review Applicant herein is uniform for all the consumers and is in line with the letter and spirit of Regulation 3.5.5 of The Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2014 reproduced below:
“3.5.5 For the billing cycle in which the supply to a new consumer is commenced, the fixed charges / demand charges, minimum monthly charges, rentals and / or any other similar charges shall be levied pro-rata for the number of days for which supply is given during the billing cycle. In the cases where the tariff structure contains slabs, the consumer shall be allowed the benefit for the full energy under the relevant lower slab(s) without applying pro-rata principle.”

It is pertinent to mention here that initially the fixed charges were calculated by the Review Applicant -DHBVNL as per the following formula:

$(\text{Rate of Fixed Charge} \times \text{No. of billing days}) / 30$

However, the formula adopted did not seem reasonable as there were 365/ 366 days. Further, the days in each month differed. In such a scenario there may be an under-recovery of fixed charges. Similarly, problem was being faced by DHBVNL in the calculation of fixed charges for the consumers for whom the connection is given in the middle of the month or who had sought disconnection in the middle of the month i.e. in cases where there was over-recovery of fixed charges. The same resulted in a disadvantage for the consumers and was contrary to Regulation 3.5.5 reproduced hereinabove. As an illustration, it is submitted that the consumer may be bound to pay

the fixed charges for a complete month even in cases where electricity was supplied for a single day in the month.

It is further submitted that the Ld. Electricity Ombudsman, Haryana in the case titled M/s NFL Vs. UHBVN, Appeal No. 36/2016 ordered that the Fixed Charges shall be calculated on Monthly Basis. In the said case, it was observed that fixed charges earlier being charged on day basis instead of month basis led to extra charges computation. Accordingly, UHBVNL, being the Respondent therein was directed to levy fixed charges on monthly basis as per Sales Circular No. U-38/2014 and U-09/2015.

As such, for the effective implementation of the order passed by the Ld. Electricity Ombudsman, Haryana, as well as for avoidance of the under/over-charging, a meeting dated 23.06.2017 was convened wherein the issue with respect to the implementation of the fixed charges in the system was duly discussed. After due deliberations, it was decided that the following formula be adopted for uniform application to all the consumers:

(Rate of Fixed Charges x Nos. of billing days x 12)/ 365

In furtherance of the decision take, M/s HCL (the firm responsible for the billing) was directed to make an amendment in the software so that the aforesaid consistent formula can be used for future billing purposes. Therefore, it is submitted that the DHBVNL had fixed the formula in compliance with the Order dated 10.01.2017 passed in the matter of *M/s NFL v. UHBVN*. A copy of the relevant noting sheets showing the approval of the formula being applied are annexed.

It is humbly submitted that the formula has been implemented in the system and is uniform for all consumers. With this, there is no scenario of over/under charging of fixed charges. It is rather advantageous for the consumers whose connection is discontinued in the middle of the month for any reason and is line with Regulation 3.5.5 of the Supply Code, 2014.

- 1.7 It is submitted that the formula is being applied by the DHBVNL, since its approval, for all the consumer alike. However, at this stage, when the same is being challenged by a sole consumer, steps are required to be taken to over-haul the billing software. It is pertinent to mention here that the charges being levied and the formula being implemented in the letter and spirit of the Regulations notified and the order passed by this Hon'ble Commission. It is submitted that in order to capture the variation in number days of each billing cycle, annual fixed charges are computed on per day basis and charged accordingly to the consumers for the respective billing period. Thus, the net impact of the fixed charges gets nullified in 6/12 billing cycles on computation of fixed charges on annual basis. But since fixed charges are computed on per day basis and as such number of days in a month does not have any impact on billing. It is further submitted that when it is done on 'day' basis, it averages out and there is no difference of charges for one complete year.

In the present case as well, no loss had been caused to the Respondent No.1 on account of the adoption of the formula. On the contrary, the

relevant amendment is required to be done in the billing logic at the central level as no change can be made for an individual consumer in the centralized billing system.

- 1.8 It is further submitted that the monthly billing in the system is based on the difference between the last read date and the current read date instead of a calendar month. With this, there is no scenario of over/undercharging of fixed charges. However, a practical difficulty is being faced by the DHBVNL in the implementation of the fresh formula which is required to be done at central level. The system cannot be changed on the mere asking of a single consumer, especially when no loss is being caused to the consumer. In this regard, it is submitted that Respondent No. 1 is a habitual litigant. Attention in this regard is brought towards the order dated 20.01.2022 passed in HERC/ Petition No. 29 of 2021, whereby the following observations were made by the Ld. Hon'ble Commission:

“6.3. Per contra, Ms Sonia Madan, counsel for respondent submitted that as per the directions of Hon'ble Commission vide order dated 17.11.2021, the respondent filed the requisite report on 11.01.2022 based upon meeting held with petitioner to reconcile the issues. She submitted that all the points of differences has been deliberated with the petitioner duly recorded in the MoM but the petitioner refused to sign the MOM for the reason best known to him.

The petitioner has approached the Commission for execution of order of CGRF in complaint no. 2966 of 2020. The petitioner has raised similar issues before CGRF in complaint no. 3681 of 2021 which was filed in July,2021 and is pending adjudication. The petitioner concealed the information regarding the pendency of two other complaints i.e. complaint no. 3546 of 2021 and complaint no. 3681 of 2021. Instead, in the affidavit accompanying the petition, it is stated that the issues pending in any other court/ forum nor have been referred to any authority.

6.4. It is well settled law that if the applicant does not disclose all the material facts fairly and truly and misleads the court, the court has inherent power to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. In fact, such an applicant requires to be dealt with for abusing the process of the court. The act and conduct of the petitioner in re-agitating similar issues is against the law and propriety. The petitioner was duty bound to have disclosed the issues being currently dealt with by the CGRF to the Hon'ble Commission. The petitioner has not come to the Hon'ble Commission with clean hands.

6.5. It has been noted that the differences between the parties are with respect to the computation of the ACD, rate of interest payable on the ACD and the computation of the fixed charges based on the formula. In the complaint no. of 3681 of 2021 the same issues have been re-agitated with regard to applicability of the formula with regard to computation of fixed charges.

6.6. *In view of forgoing facts, the Commission agrees with the version of the respondents that alleged points of differences arising out of execution of Order of CGRF dated 10.02.2021 are sub-judice before the CGRF in another complaint, and that the present petition cannot be entertained on the similar issues simultaneously as it is barred by the applicability of the doctrine of res-subjudice. Accordingly, the present petition is not maintainable under Section 142 r/w Section 146 of the Act for alleged non-compliance of the Order dated 10.02.2021. The Commission decides to remand back the case to the CGRF to hear and decide the matter fresh with the complaint of the petitioner already being heard by it.*

A copy of the aforesaid order dated 20.01.2022 passed by this Hon'ble Commission in HERC/ Petition No. 29 of 2021 is annexed. It is reiterated that the formula may kindly not be changed on the asking of a habitual litigant, especially when neither any other consumer has challenged the same nor any loss is being caused to the Respondent No. 1 in the present case on account of the applicability of the formula.

- 1.9 Further, it is submitted that, The Haryana Electricity Regulatory Commission (Prepaid Smart Metering), Regulations, 2022, Clause no. 7.8,

“Smart meter temporary disconnection process:

a) The energy, rental charge and fixed charge/Monthly Minimum Charge calculation of consumers shall take place on a daily basis on the applicable tariff of that particular consumer. “necessitates the calculation of fixed charges on a daily basis.

- 1.10 It is further submitted that the submissions with respect to the difficulty being faced by the Review Applicant in the amendment of the formula was also brought to the notice of the Hon'ble Commission at the time of passing of previous tariff orders. Vide the order dated 15.02.2023 in *‘the matter of True-up for the FY 2021-22, Annual (Mid-Year) performance review for the FY 2022-23, Aggregate Revenue Requirement of UHBVNL and DHBVNL and distribution and retail supply tariff for the FY 2023-24’*, UHBVNL while submitting its comments had stated that – *“Tariff is implemented in the same letter and spirit as notified by the Hon'ble Commission. However, to capture the variation in number days of each billing cycle, annual fixed charges are computed on per day basis and charged accordingly to the consumers for the respective billing period. Thus, the net impact of the fixed charges gets nullified in 6/ 12 billing cycles on computation of fixed charges on annual basis. But since fixed charges are computed on per day basis and as such number of days in a month does not have any impact on billing”*. The submission made UHBVNL was duly recorded in the order dated 15.02.2023.

- 1.11 That it is humbly submitted that the orders passed by this Hon'ble Commission, to the extent feasible have been duly complied with and the non-compliance, if any, is on account of the practical difficulties which have arisen in the implementation, which may kindly be resolved by this Hon'ble Commission. It is further emphasized that the

calculation of fixed charges is not in any manner in violation of the Regulations.

- 1.12 That even otherwise, no loss would be caused to the Respondent No. 1 in case the present review is allowed. On the contrary, irreparable loss may be caused to the Review Applicant herein if the formula for the calculation is changed.
- 1.13 That an application seeking condonation of delay has been filed with the present petition, which is likely to succeed on the grounds mentioned therein. It is reiterated that the delay in filing the present review is not intentional and has been caused on account of *bonafide* reasons, liable to be condoned.
- 1.14 That no other proceedings have been filed by DHBVNL relating to the subject matter of the present application either before the Hon'ble Commission or any other Court of law.

PRAYER

In light of the above made submissions and keeping in view the peculiar facts and circumstances of the present case, it is most respectfully prayed that the Hon'ble Commission may kindly be pleased to allow the present application, review/ clarify/ modify/ remove the difficulty that has arisen in the implementation of the order dated 24.05.2024, in the interest of justice.

2. The case was heard on 05/03/2025, Ms. Samridhi Sareen, Proxy Counsel for the petitioner requested for short adjournment as the main counsel is out of town due to some personal difficulty. Acceding to request of the petitioner, the Commission adjourned the matter.
3. The case was heard on 25/03/2025, none appeared on behalf of respondent. Ms. Sonia Madan, Counsel for the petitioner submitted that although Sh. B. K. Aggarwal has been made respondent to the case but the issue is not pertaining to only one consumer but has larger implication. Ms. Madan re-iterated the contents of the petition and requested to allow the licensee to use the formula for calculation of fixed charges on per day basis. The Commission decides to afford last opportunity to the respondent to submit his averments, if any, and adjourns the case. In case the respondent fails to submit or appear on next date of hearing, the case shall be decided ex-parte.
4. The case was heard on 14/05/2025, Sh. Akshay Gupta, Advocate submitted that he has been engaged in this case recently by the respondent and requested for time to file the reply. Acceding to request of the respondent, the Commission adjourned the matter and directed the respondent to submit reply within two (2) weeks with advance copy to petitioner and the petitioner may file response on the reply, if any, thereafter.

5. The case was heard on 10/06/2025, Sh. Akshay Gupta, Advocate submitted the reply on behalf of the petitioner and requested to take the same on record with apology for not filing the same in stipulated time. He requested to take a lenient view as the respondent is a senior citizen aged about 80 years. Acceding to request of the respondent, the Commission decides to take the reply on record. Ms. Sonia Madan Counsel for the petitioner requested for some time to file rejoinder to the reply. Acceding to the request, the Commission directs the petitioner to submit its rejoinder with in two (2) weeks with advance copy to respondent.

6. Reply Submitted on 10/06/2025:

6.1 That the present rejoinder is filed on behalf of the Mr. BK Aggarwal (Respondent -1).

6.2 That the Hon'ble Commission vide Petition No 23 of 2023 order dated 24.05.2025 directed the Petitioner i.e DHBVN to comply with the order passed by the CGRF within a period of 3 months.

Order of the Hon'ble Commission is held as under:

In view of the above facts and discussions, the commission observes that the respondent DHBVN has broadly complied with the directions of the CGRF and has tried to address the other issues which were raised by the petitioner during course of hearings. Further, keeping in view of the difficulty expressed by respondent-DHBVN in implementation of the calculation of fixed charges as per regulations, there is no willful disobedience observed on the parts of the respondents. Therefore, no case of willful non-compliance by the respondent under section 142 of Electricity Act, 2003 is made out. However, the respondent DHBVN is directed to levy fixed charges on monthly basis as per prevailing instructions issued under the relevant regulations/ tariff order and make change in the system software, if required, within three months of this order. The present petition is disposed of, accordingly."

6.3 That the respondent should comply with the direction(s) given by the Hon'ble Commission vide order dated 24.05.2025, instead of comply with the order of commission the respondent is filing the review and seeking the clarification of the order (under the guise of seeking review).

6.4 That the petitioner by way of the review petition is seeking invocation of the powers of the Hon'ble Commission under Section 94(1)(f) of the Electricity Act, 2003 read with Regulations 57, 65 to 70 of the HERC (Conduct of Business) Regulations, 2019 seeking review/ reconsideration/ appropriate modification and clarification and/or removal of difficulties arises which has arisen in the compliance of the order dated 24.05.2024 passed by Hon'ble Commission on HERC Petition No 23 of 2023.

The petitioner DHBVN by this present petition seeking the clarification (under the guise of seeking review).

6.5 That the captioned petition is completely baseless, fallacious, flawed, misconceived and untenable. The respondent-1 denies each and every contention and averment raised by the petitioner, save and except what has been specifically admitted by the respondent-1 hereinafter. It is submitted that any omission on the part of respondent-1 to deal with any contention or allegation raised by the petitioner should not be construed as admission/acceptance of the same by the respondent. It is further submitted that respondent -1 is not providing a paragraph-wise reply to the petition filed by the petitioner (for the sake of brevity) and is setting out its submissions hereinbelow

Preliminary :

6.6 The petitioner has filed the review of the matter which has been adjudicated by the Ld. CGRF DHBVN Gurgaon, Ld. EO HERC Panchkula and Hon'ble Commission vide order dated 24.05.2024 (Petition No 23-2023). Hon'ble Commission in ibid order express their view and observed *"That the calculation of fixed charges on the basis of empirical formula with recorded MDI is not in line with the regulations."*

and the respondent (Review Appellant) was directed by the Hon'ble commission to levy the fixed charges on monthly basis as per fixed charges on monthly basis as per prevailing instructions issued under the relevant regulations/ tariff order and make change in the system software, if required, within three months of this order. The present petition is disposed of, accordingly."

6.7 That the petitioner is filing the present review with a delay of 209 days (including 45 days of filing review) and seeking the clarification of the tariff orders passed by the commission under the guise of the review. This is nothing but an to cause an un-necessary harassment to the respondent who is a 79-year-old senior citizen.

6.8 That the Appellant petitioner is expressing their difficulty in implementing the order of the commission and claiming the reason of the same is "software updation".

6.9 That UNDER REGULATION HERC REGULATION NO HERC/29/2014 OF 8TH Jan, 2014 with its Amendments: 2. DEFINITIONS AND INTERPRETATIONS

2.32 fixed charges" shall be as per the provisions of the prevailing tariff order "dated 28th Mar, 2025" issued for the licensee by the commission.

6.10 That changing of HERC Regulation No HERC/29/2014 Notification of 8th Jan, 2014 with its amendments clause no 3.5.5 in isolation is against the other clauses/conditions of the same vary regulation and infringing the conditions of Tariffs and being reproduced one of the conditions of D HBVN Sales Instruction No 1/2017 dated 10/03/2017 "This regulation does not infringe (directly or indirectly) any part of the Tariff Order issued by the Commission". Means Petitioner DHBVN/L is bent upon not to comply the various conditions of Regulations nor any the Tariff order regarding wrong Fixed Charges and Wrong Charges of Energy such as higher slab etc. *In Fact, not*

applicable to consumers using AMR Trivector Meters for supply of electricity by Petitioner DHBVN/ 'L like our (Single Point Supply BSDS at 11 kV).

Moreover, as per Para's 5 & 6 in no way charges on the basis of Fixed Charges on the basis of number of days under can be applied.

6.11 That as Tariff for 2015-16 (as per Order dated 7th May,2015 as amended vide Order dated 15th October, 2015 applicable up to 31.07.2016) the fixed charges (Rs. per kW per month of the connected load / per kVA of sanctioned contract demand (in case supply is on HT) or as indicated and in case of BSDS the fixed charges shall be leviable as Rs. 100 Kw/ of the recorded MDI.

from the above it is clear that the fixed charges shall be leviable/ per month.

6.12 It is pertinent to mention here that not only fixed charges but other charges i.e MMC, charges for street lights and for AP category consumers are levying per month not on number of days.

6.13 That Hon'ble Commission on further orders of tariff issued for the period 2016 onwards also kept the scenario same. It can be very well confirmed from the tariff order(s) issued by Hon'ble commission (same are not reiterated here for the sake of brevity.

6.14 That Hon'ble commission vide tariff order dated 30.04.2021 (TRUE-UP FOR THE FY 2019-20, ANNUAL (MID-YEAR) PERFORMANCE REVIEW FOR THE FY 2020-21, AGGREGATE REVENUE REQUIREMENT OF UHBVNL AND DHBVNL AND DISTRIBUTION & RETAIL SUPPLY TARIFF FOR THE FY 2021-22) observed that the usage of electricity in this category is primarily residential besides other load for common area and other facilities as per the single point supply regulations. Additionally, no subsidy, as extended to the DS consumers is available to this category of consumers. Hence, to give some relief to the Bulk (DS) Consumers, the fixed charges has been reduced from Rs. 100 / kW per month of the recorded demand to Rs. 90/kW/Month.

6.15 That similarly the fixed charges for BSDS category consumer reduced from Rs. 90 / kW per month of the recorded demand to Rs. 80/kW/Month vide tarrif order dated 30.03.2022.

On Merits:

6.16 The issues involved in the instant case for adjudication by the Hon'ble commission are:

- i. Whether Nigam can file a petition seeking clarity of the tarrif orders under the guise of review of the order and Hon'ble Commission has the jurisdiction to adjudicate the matter under section 94(1)(F) read with business code of conduct?
- ii. Whether the Nigam can charge the different number of fixed charges for two same category of the consumer that too for same period (month)?
- iii. Whether the revenue of fixed charges submitting by the discoms during the ARR is calculated on monthly basis or on the basis of number of days?

iv. Whether the commission can revise the fixed charges formula and amend it as per the request of the Appellant and apply it retrospectively for the period 2015 onwards through this review petition.

6.17 That the issue of Levy of Fixed Charges for Bulk Supply (Domestic) Categories Consumers was raised by Mr. Pankaj Bhalotia before the Hon'ble Commission during TRUE-UP FOR THE FY 2022-23, ANNUAL (MID-YEAR) PERFORMANCE REVIEW FOR THE FY 2023-24, AGGREGATE REVENUE REQUIREMENT OF UHBVNL AND DHBVNL AND DISTRIBUTION & RETAIL SUPPLY TARIFF FOR THE FY 2024-25.

Wherein the DHBVN submits the reply as under:

DHBVNL humbly submits that, Tariff for Bulk Supply Domestic is being charged as per Hon'ble HERC Tariff Order for the relevant year. Any order(s) may be passed by the Hon'ble Commission in the interest of justice, as deemed fit.

Commission's observations:

The Commission has perused the objections and observes that the Tariff for Bulk Supply (DS) is governed by the terms and conditions of the Single Point Supply Regulations in vogue. Hence, levy of tariff including Fixed charge ought to be accordingly levied. DHBVNL, as also pointed out in the State Advisory Committee meeting held on 9th February, 2024; must implement the order of CGRF/Ombudsman with immediate effect. As in the case of UHBVNL, the Whole Time Director (WTD) must also review the compliance monthly and take appropriate action for any complacency in this regard.

6.18 It is pertinent to mention here that the Appellant petitioner is charging the fixed charges to all the consumers whose bills are raised through Hartron (Non- RAPDRP) copy of the bills are attached.

We have pulled out the data of some different category consumers from different subdivision(s) and circle of DHBVN to check and see the difference in fixed charges levied monthly wherein the bills are issued by the Hartron and on perusal of the same we have found that the fixed charges levied are on monthly basis not on number of days.

S. No	SUB DIVISION	Account number	MONTH	No of DAYS	Bill issued on	Billing Period	CD/MDI RECORDED	Fixed Charges Amount
1	Badshapur	BPHT00193 (HT)	July-22	30	14-07-22	1-06-22 to 1-07-22	2766	456390
	Badshapur	BPHT00193 (HT)	Aug-22	31	16-08-22	1-07-22 to 1-08-22	2766	456390
	Badshapur	BPHT0090 (BSDS)	Jan-22	31	11-02-22	1-01-22 to 1-02-22	853.6	76860 (854*60)
	Badshapur	BPHT0090 (BSDS)	Feb-22	28	09-03-22	1-02-22 to 1-03-22	761.4	68580 (762*90)

(copy of bills attached)

6.19 That this is the duty of the Review Appellant to update the billing software as per the regulation(s) and tariff order(s) passed by the

Hon'ble Commission in similar way the discom(s) did for other categories.

6.20 That as per the tariff order and regulation the fixed charges shall be leviable on monthly basis. The discoms ought to follow the order(s) passed by the commission and if they were facing any difficulty in implementing the tariff order then that could have been raised through comments during the finalization of tariff order(s).

6.21 As the petitions have been filed before the Commission for review of the Commission's order dated 24.05.2024 under section 94(1)(f) of the Act, the conditions prescribed under order XLVII of Civil Procedure Code are to be satisfied for review.

Review under the CPC is permissible under order XLVII, Rule 1 on the following grounds:

a. Discovery of new and important matter or evidence which after exercise of due diligence was not in the knowledge of the applicant and could not be produced by him at the time when the decree or order was passed.

b. Some mistake or error apparent on the face of the record and

c. For any other sufficient reason

6.22 It is further submitted that the petitioner, instead of filing an appeal against this Hon'ble Commission's order dated 24.05.2024 or filing the review of the tariff order(s) passed by the commission for respective years, has erred in challenging the said order by invoking the inherent jurisdiction of this Hon'ble Commission under the Conduct of Business Regulations. In this regard, it becomes imperative to highlight a settled proposition of law that the inherent powers cannot be exercised to grant any substantive relief, rather it is only a procedural provision to pass orders to secure the ends of justice and to prevent abuse of process of the Court. Exercise of power under such a provision cannot be used to create, recognize or deny substantive rights of the parties. In this context, it becomes pertinent to note that the Hon'ble Supreme Court in *Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Company (India) Private Limited and Ors* (Civil Appeal No. 6399 of 2016) had opportunity to interpret a *pari materia* provision i.e., Regulation 82 of the Gujarat Electricity Regulation Commission (Conduct of Business) Regulations, 2004 which is reproduced hereinbelow: "*Nothing in these Regulations shall, expressly or impliedly, bar the Commission to deal with any matter or exercise any power under the Acts for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit*"

It was in context of the aforesaid provision that the Hon'ble Supreme Court held as under:

"15. By a reading of Regulation 80, it is clear that inherent powers of the State Commission are saved to make such orders as may be necessary:-

(i) to secure the ends of justice; and (ii) to prevent abuse of process of the Commission. The inherent powers being very wide and incapable of definition, its limits should be carefully guarded. Inherent powers

preserved under Regulation 80 (which is a kin to Section 151 of the Code) are with respect to the procedure to be followed by the Commission in deciding the cause before it. The inherent powers under Section 151 CPC are procedural in nature and cannot affect the substantive right of the parties. The inherent powers are not substantive provision that confers the right upon the party to get any substantive relief. These inherent powers are not over substantive rights which a litigant possesses.

16. The inherent power is not a provision of law to grant any substantive relief. But it is only a procedural provision to make orders to secure the ends of justice and to prevent abuse of process of the Court. It cannot be used to create or recognize substantive rights of the parties.

17. The Commission being a creature of statute cannot assume to itself any powers which are not otherwise conferred on it. In other words, under the guise of exercising its inherent power, as we have already noticed above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Act.”

6.23 It is pertinent to mention here that the present issue has been deliberately discussed by the review appellant during the tariff petition and no such difficulty has been raised by them during the hearing and determination of tariff.

Prayer:

In the view of the foregoing, it is most humbly prayed that :

- i. Hon’ble commission may please to dismiss the present petition being untenable and bereft of any merit in the interest of justice and;
- ii. Suo-motto cognizance may be taken by the Hon’ble Commission for non-compliance of the direction(s) given vide order dated 24.05.2024 and;
- iii. Directed the review appellant to pay the litigation expense to the respondent.

7. Rejoinder Submitted on 01/08/2025:

7.1 The present rejoinder is being filed on behalf of Dakshin Haryana Bijli Vitran Nigam Limited/Petitioner (DHBVN) in response to the Written Statement / Reply filed by the Respondent No. 1 in the above captioned petition. However, it is submitted that the Respondent No. 1 has wrongly titled their ‘Reply’ as ‘Rejoinder’.

7.2 It is submitted that all allegations made by the Respondent No. 1 are denied in totality and the same may be treated as a denial as if it was made in seriatim. Nothing submitted herein shall be deemed to be admitted unless the same has been admitted thereto specifically.

7.3 At the outset, the Petitioner denies all and singular allegations, contentions and submissions of the Respondent No. 1 which are contrary to or inconsistent with what is stated in the petition, except those which are matters of record and/or specifically admitted herein. The Petitioner should not be deemed to have admitted any of the

allegations, contentions or submissions of the Respondent unless specifically admitted herein.

7.4 The Respondent No. 1 has raised the following issues in the instant matter for the adjudication by this Hon'ble Commission: -

- i. *Whether the present petition amounts to seeking clarity of the tariff orders under the guise of review of the order and Hon'ble Commission has the jurisdiction to adjudicate the matter under section 94(1)(f) read with conduct of business regulations?*
- ii. *Whether Nigam is charging different number of fixed charges for two same categories of the consumer that too for same period (month)?*
- iii. *Whether the revenue of fixed charges submitted by the discoms during the ARR is calculated on monthly basis or on the basis of number of days?*
- iv. *Whether the commission can revise the fixed charges formula and amend it as per the request of the Applicant and apply it retrospectively for the period 2015 onwards through this review petition?*

7.5 The Petitioner shall set out a composite issue wise response hereunder, which shall address all the contentions raised by the Petitioner in the Reply (wrongly titled as 'Rejoinder'). The issue wise response to the grounds raised by the Respondent No. 1 is being submitted as under-

RE: 'Whether the present petition amounts to seeking clarity of the tariff orders under the guise of review of the order and Hon'ble Commission has the jurisdiction to adjudicate the matter under section 94(1)(f) read with conduct of business regulations?' -

7.6 It is submitted that the objections raised by the Respondent No. 1 regarding the maintainability of the present review petition are legally untenable, misconceived, and devoid of merit. The present petition is not a re-adjudication of issues already decided in the order dated 24.05.2024, nor does it seek to reopen the Hon'ble Commission's findings. The review petition has been filed in conformity with the statutory framework and governing regulations, and for the limited and legitimate purpose of seeking removal of operational difficulty which has arisen in the implementation of the direction contained in the Impugned Order dated 24.05.2024, passed by this Hon'ble Commission in HERC Petition No. 23 of 2023.

7.7 It is reiterated that the present petition has been filed under Section 94(1)(f) of the Electricity Act, 2003, which explicitly empowers the Hon'ble Commission to review its own decisions, directions, or orders. Relevant extract of Section 94(1)(f) reads as under: -

"94. Powers of Appropriate Commission — (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely—

...

(f) reviewing its decisions, directions and orders; ..."

- 7.8 This provision therefore, expressly incorporates, the powers of a civil court to review its decision, including the well-established grounds of review as laid down in Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (CPC), which includes: (i) Discovery of new and important matter or evidence; (ii) Mistake or error apparent on the face of the record; and (iii) Any other sufficient reason. The phrase “*any other sufficient reason*” has been consistently interpreted by Courts to include practical or procedural difficulties which frustrate the implementation or object of the order. The scope of review under this clause is not confined to manifest errors, but includes situations where clarification or limited modification is necessary to give full and effective effect to the order.
- 7.9 Additionally, Regulation 57 of the HERC (Conduct of Business) Regulations, 2019 specifically recognizes the Commission’s power to review its orders. The said regulation states: “*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.*” Thus, both the statute and the Regulations confer the Hon’ble Commission with wide powers to entertain review petitions particularly when filed for removal of hardship or practical difficulties in implementing its directions.
- 7.10 In the instant case, the Review Petitioner has not challenged the legality, correctness, or substance of the findings rendered in the Impugned Order dated 24.05.2024. The limited prayer in the review petition pertains to the direction requiring DHBVNL to amend the system software within a period of three months for implementing a different methodology for calculation of fixed charges. The difficulty that has arisen is technical and systemic owing to the fact that the billing software is centrally managed, jointly used by both DHBVNL and UHBVNL, and cannot be altered for an individual consumer without cascading changes across the entire consumer base. Such alteration at this stage may bring adversarial impact on the consumers and will give rise to potential litigation owing to changes in the billing already made.
- 7.11 It is submitted that no wilful disobedience or non-compliance has occurred. In fact, this Hon’ble Commission in its order dated 24.05.2024 has itself recorded that: “*...there is no wilful disobedience observed on the parts of the respondents... keeping in view of the difficulty expressed by respondent-DHBVN in implementation of the calculation of fixed charges as per regulations...*” This clear acknowledgment by the Hon’ble Commission establishes that the Review Petitioner had been transparent in placing the implementation difficulty before the Hon’ble Commission at the outset.
- 7.12 The Impugned Order, passed by this Hon’ble Commission, to the extent feasible have been duly complied with and the non-compliance, if any, is on account of the practical difficulties which have arisen in the implementation, which may kindly be resolved by this Hon’ble

Commission. It is further emphasized that the calculation of fixed charges is not in any manner in violation of the Regulations.

- 7.13 The Respondent, in para 7 of the Reply, has vaguely contended that the present Petition is an unnecessary harassment of the Respondent who is a 70-year-old senior citizen. It has not been elucidated as to what harassment has been caused to the senior citizen with levy of fixed charges on day basis. The contentions of the Respondent are unsubstantiated and has no real basis. The methodology currently followed by DHBVNL for computing fixed charges i.e., $(\text{Rate} \times \text{Billing Days} \times 12)/365$ is neither arbitrary nor contrary to the regulatory framework. On the contrary, the said formula was adopted after extensive internal deliberations and is in consonance with Regulation 3.5.5 of the HERC Supply Code, 2014, which mandates: “...fixed charges / demand charges... shall be levied pro-rata for the number of days for which supply is given during the billing cycle...” The formula ensures pro-rata recovery, avoids overcharging or undercharging, and is consumer-friendly, particularly for those whose supply begins or ends in the middle of a billing cycle.
- 7.14 The Respondent No. 1’s contention that the present review petition is an “appeal in disguise” is legally untenable. The Review Applicant has not challenged the findings of the Hon’ble Commission; it seeks removal of difficulty in implementing the direction concerning software changes which, if mechanically enforced, would cause undue financial burden, resource diversion, and operational disruption to the Review Applicant. It is a settled principle that orders of regulatory authorities must be legally sustainable, practically enforceable, and administratively viable. Where the implementation of an order is rendered impracticable due to systemic limitations, the authority concerned must retain jurisdiction to revisit its own direction for ensuring compliance in letter and spirit, rather than mechanically.
- 7.15 The review petition has thus been filed under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 57, 65 to 70 of the HERC Conduct of Business Regulations, 2019, specifically to seek limited clarification/modification to resolve these operational challenges and enable effective implementation of the Hon’ble Commission’s intent. Regulation 65 of the HERC Conduct of Business Regulations, 2019 preserves the inherent powers of the Commission to issue appropriate directions to meet the ends of justice and to prevent abuse of process. Furthermore, Regulation 69 of the HERC (Conduct of Business) Regulations, 2019 also provides that “*If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by general or special order, do anything not being inconsistent with the provisions of the Act, which appears to it to be necessary or expedient for the purpose of removing the difficulty.*” This provision clearly recognizes the Commission’s power to issue clarificatory orders or directions, including in the nature of review or modification, for removal of difficulty in implementation.
- 7.16 The Hon’ble Supreme Court in *Union of India v. Subedar Devassy PV, (2006) 1 SCC 613*, held that if any party is aggrieved by an order, or

its implementation is not practicable or feasible according to the party, it can approach the Court for variation of the order or invoke the jurisdiction of an Appellate Court. The relevant extract of the judgment is as under:-

“6. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.”

- 7.17 It is submitted that the Respondent No. 1 has wrongly relied upon the judgment of *Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Company (India) Private Limited*; (2017) 6 SCC 498 to contend that the Commission cannot exercise inherent powers to grant substantive relief, and that such powers are limited only to passing procedural orders to prevent abuse of process or to secure the ends of justice. It is submitted that the Respondent has misapplied both the ratio and the context of the said decision to the present case. In the cited judgment, the Hon'ble Supreme Court was dealing with the exercise of inherent powers by the State Commission to extend the “control period” under a Power Purchase Agreement (PPA), which directly impacted the applicable tariff. The Court held that such an extension would amount to altering the substantive contractual rights of the parties, and therefore, the Commission could not invoke its inherent jurisdiction in a manner inconsistent with the Act or the PPA. The Court observed that the Commission, being a creature of statute, could not assume powers beyond the scope conferred upon it under the Electricity Act, 2003, or exercise inherent powers in an area that is already addressed by the statute or subordinate legislation. However, the present review petition is not based on any claimed exercise of inherent powers. Rather, the petition has been filed under Section 94(1)(f) of the Electricity Act, 2003, which confers upon the State Commission the statutory power to review its own decisions, directions, and orders. This power is not incidental or implied but is expressly conferred by the legislature. The same is further reinforced under Regulation 57 of the HERC (Conduct of Business) Regulations, 2019, which enables the Commission to entertain review petitions where error or sufficient reason is shown. Moreover, unlike the context in cited judgment, the present petition does not seek to modify or override a PPA, nor does it seek to create new substantive rights. The

review is sought for removal of operational difficulty in implementation of the Hon'ble Commission's own order. It is a clarificatory exercise well within the contours of Section 94(1)(f) and Regulation, which recognizes the Commission's inherent powers to pass orders to secure the ends of justice and prevent abuse of its process.

7.18 It is submitted that the core findings in cited judgment supports, rather than negates, the Review Applicant's position in the present case. The Hon'ble Supreme Court clarified that inherent powers cannot be exercised to override statutory provisions, but where express statutory power exists as in the case of review under Section 94(1)(f) its exercise is not only lawful but appropriate. The attempt by Respondent No. 1 to equate a statutory review proceeding with an implied and *ultra vires* exercise of inherent power is both misplaced and legally unsound. In light of the above, it is submitted that the cited judgment has no application to the facts of the present case, where the Hon'ble Commission is not acting outside the Act, but within the express review jurisdiction granted by the Act and regulations framed thereunder.

7.19 In light of the above, it is submitted that this Hon'ble Commission has both the jurisdiction and statutory authority to entertain and adjudicate the present review petition.

RE: 'Whether Nigam is charging different number of fixed charges for two same categories of the consumer that too for same period (month)?'

7.20 It is submitted that the Review Applicant has not charged different fixed charges to similarly situated consumers. The allegation that two consumers of the same category were charged different fixed charges for the same billing period is factually incorrect and legally unsustainable. The Review Applicant has uniformly applied the tariff structure as notified by this Hon'ble Commission under the relevant tariff order, and all fixed charges are being levied in accordance with the Tariff Schedule approved by the Commission. The calculation of fixed charges is based on the principle of pro-rata application, as provided in Regulation 3.5.5 of the HERC Supply Code, 2014, which mandates that: "*Fixed charges/demand charges shall be levied pro-rata for the number of days for which supply is given during the billing cycle.*" Accordingly, variations in the amount of fixed charges, if any, are solely attributable to differing numbers of days of actual supply within the billing cycle (e.g., where the connection commenced or ceased during the month). These variations are mathematically inevitable, but do not constitute differential treatment. The formula being applied uniformly by DHBVNL is: $(\text{Fixed Charge Rate} \times \text{Number of Billing Days} \times 12) \div 365$

7.21 This formula has been adopted across the board, pursuant to internal deliberations and with reference to this Commission's earlier orders. It is therefore submitted that no discrimination or variation in the tariff application exists within the same consumer category.

RE: 'Whether the revenue of fixed charges submitted by the discoms during the ARR is calculated on monthly basis or on the basis of number of days?' -

7.22 To arrive at the ARR figure Compound Annual Growth Rate (CAGR) is applied on the previous FY fixed charges collected on the basis of following empirical formula:

$$\text{Fixed Charges} = (\text{Rate of Fixed Charges} \times \text{Nos. of Billing days} \times 12) / 365$$

7.23 The Petitioner has wrongly projected that there is difference in levy of fixed charges to different category of consumers. Certain bills have been highlighted by the Petitioner in Para 18 of the Reply which relates to BadShahpur Sub-Division for the period February, 2022 till July, 2022. The said bills were raised through a billing software developed by HARTRON, prior to the migration of the concerned sub-division to the RAPDRP platform, which uses a more reliable standard Oracle CCB application i.e. Std. COTS product. However, all bills are now being generated through standardized RAPDRP Billing application (Oracle CCB product), ensuring a uniform and consistent methodology across the DHBVN jurisdiction. R-APDRP migration of Sub-divisions was carried out in a phased manner and around April 2023 all sub-divisions were migrated to R-APDRP platform.

7.24 A comparison of bills of consumers highlighted by the Petitioner in Para 18 of Reply, after R-APDRP migration of concerned subdivision, is as under:

Sr. No	SUB DIVISION	Name & Account number	Month	No of Days	Bill Issued on	Billing Period	CD/MDI RECORDED	Fixed Charges Amount as in bill (as per empirical formula)	Fixed Charges Amount (calculate as per month)
1	Badshahpur	MS Gupta Promoters Old Account no. G22BPHT0090 (BSDS)	APR-23	29	12-04-23	03-03 to 01-04	484.8	36993.17	38784
		New Account No. 9082833000	May-23	30	15-05-23	01-04 to 01-05	779.2	61544.8	62336
2	Badshahpur	MS Nova Realtors Old Account no. G22BPHT0193 (HT)	Jul-23	30	11-07-23	01-06 to 01-07	1940	405221.77	410850
		New Account No. 1353433000	Aug-23	31	10-08-23	01-07 to 01-08	2114	418729.16	410850

7.25 Similarly, a comparative view of the total fixed charges levied by DHBVN as per empirical formula vis-à-vis Fixed Charges calculated on monthly basis, from the consumer account (M/S NOVA REALTORS) is as under:

CONSUMER NAME: 'M/S NOVA REALTORS' SANCTIONED LOAD 2490 ACCOUNT NO.- '1353433000' K NO.- G22BPHT0193 SDO Code: SDO12661									
Sr. No.	BILL MONTH	BILL YEAR	BILL DATE	OLD READING DATE	NEW READING DATE	BILL PERIOD	MDI	Fixed Charges As per Empirical Formula	FC calculated on monthly basis
1	JAN	2024	08/01/2024	01/12/2023	01/01/2024	31	1286	418729.16	410850
2	DEC	2023	13/12/2023	02/11/2023	01/12/2023	29	1530	391714.37	410850
3	NOV	2023	21/11/2023	01/10/2023	02/11/2023	32	1950	432236.55	410850
4	OCT	2023	09/10/2023	01/09/2023	01/10/2023	30	1984	405221.77	410850
5	SEP	2023	09/09/2023	01/08/2023	01/09/2023	31	2022	418729.16	410850
6	AUG	2023	10/08/2023	01/07/2023	01/08/2023	31	2114	418729.16	410850
7	JUL	2023	11/07/2023	01/06/2023	01/07/2023	30	1940	405221.77	410850
8	JUN	2023	10/06/2023	01/05/2023	01/06/2023	31	1908	418729.16	410850
9	MAY	2023	15/05/2023	01/04/2023	01/05/2023	30	1718	405221.77	410850
10	APR	2023	12/04/2023	01/03/2023	01/04/2023	31	1372	418729.16	410850
11	MAR	2023	14/03/2023	01/02/2023	01/03/2023	28	1370	378206.98	410850
12	FEB	2023	15/02/2023	01/01/2023	01/02/2023	31	1178	418729.16	410850
							Total FC	4930198	4930200

7.26 The foregoing amply evinces that the net impact of the fixed charges gets nullified in 6/12 billing cycles on computation of fixed charges on annual basis. The transition from a HARTRON billing system to Oracle CCB—a standard COTS product—has replaced the earlier monthly fixed charge with a per-day calculation. This method is an inherent feature of Oracle CCB, ensuring precise, day-level proration while maintaining the same annual fixed charge (calculated for 365 days and applied proportionately). Unlike the HARTRON system’s simplified flat monthly levy, Oracle CCB’s granular approach enhances accuracy and transparency, aligning with industry norms such as banking systems where annual interest is applied daily. The total annual revenue recovery remains unchanged; only the computation method has shifted to a more compliant and equitable standard.

7.27 The Respondent has also wrongly raised a contention as regards the MMC, charges for street lights and for AP consumers are being levied per month and not on number of days. Monthly Minimum Charges (MMC) is calculated by the DHBVN Billing System on a pro-rata (per-day) basis to ensure accurate billing and to avoid overcharging or undercharging of consumers, including those in the AP category. Although the Hon’ble Commission defines MMC for AP Category on per BHP per year basis, the billing cycle of AP consumers is of four months; hence, per-day normalization is applied to ensure accurate and transparent mechanism.

7.28 Further, the Respondent has made a reference regarding reduction of fixed charges as per the Tariff Order of the Hon’ble Commission for the FY 2021-22. This Hon’ble Commission, vide tariff orders dated 03.04.2021 and 03.04.2022, reduced the fixed charges applicable on recorded demand from Rs.100/kW/month to Rs.90/kW/month and

subsequently to Rs.80/kW/month. The rationale behind such consecutive reductions is detailed below:

- a. In the post-COVID period, HERC reduced fixed and demand-based charges to provide economic relief to affected consumers and promote efficient utilization of contracted demand. This approach aligns with the cost causation principle and supports tariff rationalization under the National Tariff Policy, ensuring retail tariffs remain within $\pm 20\%$ of the cost of supply.
- b. HERC rationalized tariffs by rebalancing fixed and variable components, noting that network-related fixed costs were already adequately recovered. While reducing fixed charges, the Commission maintained revenue neutrality by adjusting other tariff elements, ensuring Discoms' financial viability and aligning tariffs with consumption patterns.

Similar relief measures and rationalization of fixed charges have been adopted by other State Electricity Regulatory Commission post COVID.

State Commissions	Rationalization of Fixed Charges
DERC	Provided fixed charge waivers and reductions for commercial consumers post-COVID
MERC	Offered moratoriums and partial waivers on fixed charges to ease the burden on industrial and commercial consumers
PSERC	Introduced concessions in fixed charges, particularly for MSMEs and during economic downturns
UPERC	Restructured fixed charges based on usage profiles, especially in rural and small commercial categories

These reduction in fixed charges is only to rebalance imposition of charges considering periods of economic stress to support consumer affordability and encourage recovery. This therefore, does not further the case of the Respondent in any manner.

- 7.29 In view of the foregoing, the contention raised by the Respondent is highly misconceived and misrepresented. The present petition has been predicated on the genuine difficulty of the Discoms that has been put forth multiple times before the Hon'ble Commission. The empirical formula being used in DHBVN R-APDRP system for computation of actual fixed charges as given below is more accurate, justified and uniform across all consumers. In view thereof, the present Petition is evidently in the best interest of all concerned and justified the invoking of inherent powers of the Hon'ble Commission for passing suitable directions for continuation of the computation of fixed charges on day basis.

RE: 'Whether the commission can revise the fixed charges formula and amend it as per the request of the Applicant and apply it retrospectively for the period 2015 onwards through this review petition?' –

- 7.30 It is submitted that this Hon'ble Commission, as established under the Electricity Act, 2003, is empowered to revisit, clarify, or modify the tariff methodology, including the fixed charge computation formula,

to correct anomalies, remove ambiguities, in the interest of regulatory certainty and tariff rationality.

- 7.31 As regards retrospective application, it is submitted that regulatory clarifications which explain, interpret, or correct an earlier methodology can validly operate with retrospective effect, particularly where they do not impose new obligations but merely rectify, validate or clarify existing ones. In the instant case, there is no existing challenge to computation of fixed charges as is being done by the Discoms except the present Respondent. In light of the same, the present review petition is necessitated. The clarification on fixed charges computation methodology shall have no adversarial impact on any consumer. It will not create any alteration in the billing done so far. In view thereof, the issuance of appropriate review directions in the instant case will instead help achieve consistency and clarity in tariff structure which is being currently followed and will protect consumers from new charges being levied on account of change in fixed charges formula and ensure they are paying a fair price for the electricity they consume.
- 7.32 This Hon'ble Commission has inherent powers, including under Electricity Act 2003, HERC (Multi Year Tariff) Regulations and Conduct of Business Regulations to *suo-motu* amend the Tariff and rectify any mistakes or omissions in Tariff Order, or clarify any aspects thereof to implement the Tariff Order. Such powers of regulatory commissions have been duly recognised by the Hon'ble Supreme Court of India in *UPPCL vs. NTPC Ltd. And Ors., 2009 (6) SCC 235*, where the Hon'ble Supreme Court had held in the context of the Central Electricity Regulatory Commission (CERC) that it had appropriate regulatory powers and jurisdiction under the Act to revise, alter or amend the tariff if any occasion arises therefor. In view of the submissions made above, it is respectfully prayed that this Hon'ble Commission may be pleased to allow the Review Petition and pass appropriate directions as deemed fit and proper in the present facts and circumstances.
8. The case was heard on 05/08/2025, Sh. Akshay Gupta counsel for the respondent, submitted that the rejoinder has been received 2 days back only and requested for some time to file respondents averments on the rejoinder. Acceding to request of the respondent, the Commission adjourns the matter and directs the respondent to submit its averments within two (2) weeks with advance copy to petitioner.
9. The case was heard on 19/10/2025. Sh. B. K. Aggarwal, submitted that the petitioner wants to change the tariff retrospectively which is against regulations and tariff orders. Ms. Sonia Madan requested for some more time to address some specific issues in the submissions made by respondent. Acceding to request of the petitioner, the Commission

adjourns the matter and directs the parties to appear for final arguments on next date of hearing.

10. The case was heard on 03/12/2025. None appeared on behalf of respondent. The Commission adjourns the matter and directs the parties to appear for final arguments on next date of hearing.
11. The case was heard on 09/04/2026. None appeared on behalf of respondent. The Commission decides to give last opportunity to the respondent and adjourns the matter directing the parties to appear for final arguments on next date of hearing.
12. The case was heard on 19/05/2026, none appeared on behalf of respondent. The Commission adjourns the matter and directs the parties to submit their written submissions with in two (2) weeks and reserves the order.

13. Written Submissions of Petitioner submitted on 01/06/2026:

A. RELIEF SOUGHT

To review, clarify, modify and/or remove the difficulty concerning the direction issued to the Petitioner DHBVN to levy fixed charges on a monthly basis as per the prevailing instructions under the relevant Regulations/Tariff Order, and to make necessary changes in the system software within three months. It is submitted that the said direction, in its present form, has led to operational hurdles, thereby warranting appropriate clarification and modification by this Hon'ble Commission.

LIST OF DATES AND EVENTS

Date	Particulars	Ann./ Page No.
03.12.2021	A complaint was filed by the Respondent No. 1- Complainant before the Ld. Consumer Grievances Redressal Forum ('Ld. CGRF'), DHBVNL, Gurugram alleging wrong billing and surcharge, non-refund of excess ACD, rate of interest thereon and computation of fixed charges. (Case No. D/CGRF/3681/2021)	--
20.01.2022	Order passed by HERC IN Petition No. 29/2021 stating that the present petition cannot be entertained as per the doctrine of Res Sub- Judice as the similar issues are sub- judice in a complaint before the Ld. CGRF. Further, the Commission held that the Petitioner is re-agitating similar issues as has been raised by him in another complaint and therefore remanded back the case to the Ld. CGRF.	RA-5 (83-107)
06.11.2022	The complaint filed by Respondent No. 1 was disposed of by Ld. CGRF vide order dated 06.11.2022. One of the directions given by the Ld. CGRF vide its order is as under: "ii. Calculation of fixed charges on the basis of recorded MDI by using an unnecessary formula should immediately stop and that the fixed charges should be calculated simply by multiplying MDI with the rate. Any excess fixed charges, if	RA-2 (54-55 relevant portion)

	<i>levied previously on this account, should be refunded with interest in the next billing cycle.”</i>	
09.03.2023	Order of Electricity Ombudsman recording DHBVNL's submissions	RA-3 (56-60)
28.03.2023	HERC Petition No.23 of 2023 filed by the Respondent under Section 142 read with Section 146 of Electricity Act, 2003 and Regulation 2.41 of the HERC (Forum and Ombudsman) Regulations, 2020 alleging non-compliance of the order passed by the Ld. CGRF.	
24.05.2024	The petition was disposed of by this Hon'ble Commission vide order dated 24.05.2024 whereby the Hon'ble Commission had directed DHBVNL to levy fixed charges on <u>monthly basis</u> and make change in the system software within a period of three months.	RA-1 (Impugned Order)
13.12.2024	Review Application filed under Section 94(1) (f) of the Electricity Act, 2003 read with Regulations 57,65 to 70 of the HERC (Conduct of Business) Regulations, 2019 seeking review, clarification, modification as well as removal of difficulty in compliance of order dated 24.05.2023 passed in HERC/Petition No. 23 of 2023.	----
18.12.2024	Application was filed for condonation of delay of 164 days in filing the Review Petition.	----
09.06.2025	Reply was filed by the Respondent No.1 to the Review Application No. 06 /2024 filed by the Petitioner.	----
01.08.2025	Rejoinder was filed by the Petitioner in response to the Reply filed by the Respondent No.1 dated 09.06.2025.	----

B. BACKGROUND OF THE PRESENT PETITION

The present proceedings arise out of the Hon'ble Commission's Order dated 24.05.2024 passed in Petition No. 23 of 2023, whereby DHBVNL was directed to levy fixed charges strictly on monthly basis, and modify the centralized billing software accordingly within three months. Aggrieved by the operational difficulty in implementing the said direction, particularly on account of the centralized Oracle-based CCB billing platform used jointly by DHBVN and UHBVN, the Petitioner seeks a limited review under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 57 of the HERC (Conduct of Business) Regulations, 2019 for clarification and removal of difficulty, in view of practical and system-level constraints inherent in the Oracle-based CCB billing platform used jointly by both DISCOMs. The Petitioner does not seek reconsideration of findings, tariff methodology, or reopening of tariff orders. The request is confined solely to resolving the operational difficulty in implementing the direction in a centrally integrated billing system that computes fixed charges based on billing-days and not on calendar-months.

C. APPLICATION FOR CONDONATION OF DELAY-

- 13.1 An application seeking condonation of 164 days delay in filing the Review Petition was submitted on 18.12.2024. The delay is bona fide and deserves to be condoned to advance substantial justice, consistent with the settled principle that procedural technicalities must not defeat justice when sufficient cause exists.

13.2 The delay arose pursuant to the Order passed by the HERC directing DHBVNL to levy fixed charges strictly on a monthly basis and to modify its system software within three months. The said direction necessitated immediate escalation to higher authorities for technical evaluation and administrative approval. A detailed table reflecting the movement of the file in the present petition is set out hereunder.

Sr. No.	Date / Period	File Movement / Administrative Step	Detailed Explanation
1.	24.05.2024	Final order passed by Hon'ble HERC in Petition No. 23 of 2023 (Time for review was uptill 08.07.2024)	The Hon'ble Commission passed the final order observing that the <u>computation of fixed charges on the basis of empirical formula did not align with the extant regulations.</u> The Hon'ble Commission consequently directed DHBVNL to levy fixed charges on monthly basis as per prevailing regulations/tariff orders and to make necessary changes in the system software within three months. The directions directly impacted the centralized R-APDRP billing architecture uniformly operating in both DHBVNL and UHBVNL.
2.	10.06.2024	Detailed examination initiated regarding implementation of the HERC order or either challenging the same before the higher court (Page 65-66 of the petition)	Immediately after passing of the order, the Commercial wing initiated detailed examination regarding implementation of the directions issued. The issue was also required comments from the UHBVN sought on 13.06.2024, because both nigram has common billing arrangement. As the filed was moved by the Commercial wing.
3.	18.07.2024	Comments received from CE/Commercial, UHBVN, Panchkula (Page 67-68 of the petition)	Fixed charges are calculated on a per-day basis as per billing cycle (not calendar month), in line with Haryana Electricity Regulatory Commission Electricity Supply Code 2014 provisions. Due to practical constraints in meter reading (± 4 days), billing periods vary (approx. 24-35 days), hence per-day billing is adopted. Formula applied: $FC \times \text{billing days} \times 12/365$, with minor 360 vs 365-day variation treated as negligible ($\sim 0.01\%$).
4.	July, 2024	Technical examination of R-APDRP billing engine	The technical branches examined the existing functioning of the R-APDRP billing system and observed that fixed charges were being levied on pro-rata basis according to actual billing cycle

			days. It was further noted that the methodology had already been approved by the competent authority and uniformly implemented for all consumers. Thus, implementation of the HERC directions required substantial modification in the billing engine and software architecture.
5.	August 2024	Comparative examination of HERC observations vis-à-vis existing billing system	Detailed comparative analysis was undertaken between the observations made by the Hon'ble HERC and the functioning of the existing billing system. The authorities noted that although HERC had interpreted fixed charges in terms of 30 days, the existing software captured variation in the number of days in each billing cycle and accordingly computed charges on prorata basis.
6.	08.08.2024	Proposed to challenge the HERC order	HERC Supply Code (Clause 3.5.5) permits pro-rata levy of fixed charges based on actual days of supply in the billing cycle. UHBVN clarified that fixed charges are computed on per-day basis annually, so variation in billing days/months has no net financial impact. Accordingly, it is proposed to challenge HERC order dated 24.05.2024 before the higher court on this ground.
7.	22.08.2024	File was prepared and placed before the Worthy MD, DHBVNL for consideration and approval.	Detailed proposal was prepared after due deliberations for filing a review petition before the Haryana Electricity Regulatory Commission, along with approval of petition fees and engagement of counsel for drafting and filing the same.
8.	12.09.2024	File was at Director Finance/Op.	In view of technical issues in implementation of HERC guidelines in the existing R-APDRP system, a proposal was put up for consideration and approval of the competent authority, i.e., the Worthy MD, DHBVNL.
9.	September 2024	Administrative approvals regarding fees and engagement of counsel	Separate approvals were processed concerning filing of review petition, court fees, condonation charges and engagement of counsel. The file moved through Commercial Branch, SE/Commercial, CE/Commercial and higher authorities before final sanction could be accorded.
10.	September-October 2024	Continuous inter-departmental correspondence and legal processing	Communications continued between SE/Commercial, DHBVNL, CE/Commercial, UHBVNL, O/o LR/HPUs Panchkula and the engaged counsel regarding legal strategy, drafting of

			pleadings and procedural formalities for filing of the review petition.
11.	October–November 2024	Finalization of review petition and condonation application	After obtaining technical comments, legal advice and administrative approvals, the draft review petition and condonation application were prepared and finalized. The matter was thereafter processed through O/o LR/HPUs Panchkula for engagement of counsel and final approval before filing.
12.	Final stage prior to filing	Final approval accorded for filing before HERC	Ultimately, after completion of technical scrutiny, inter-DISCOM consultation, legal examination and institutional approvals, the review petition along with condonation application was approved for filing before the Hon'ble Commission.
13.	13.12.2024 to 18.12.2024	Petition was filed	Defects/objections raised were duly examined and cured/rectified in a timely manner
14.	20.12.2024	Petition Registered	HERC Review Petition 06 of 2024

13.3 In view of the foregoing facts and settled legal position, it is respectfully submitted that the delay stands duly explained by a continuous chain of bona fide administrative and procedural steps, supported by record and free from any deliberate inaction. The explanation constitutes “sufficient cause” within the meaning of law, as recognised by the Hon'ble Supreme Court in *Sheo Raj Singh v. Union of India* (2023) 10 SCC 531 and *Special Tehsildar v. K.V. Ayisumma* (1996) 10 SCC 634, and therefore, the delay deserves to be condoned in the interest of substantial justice.

13.4 In the above circumstances, the delay of 164 days is neither intentional nor attributable to any negligence, but is a consequence of bona fide administrative, technical and legal processes. It is pertinent that the Hon'ble Commission itself granted three months' time for implementation, whereas the limitation period for filing review is 45 days. The delay thus deserves to be condoned in the interest of substantial justice.

D. ISSUES FOR ADJUDICATION

I. Whether Nigam can file a petition seeking clarity of the tariff orders under the guise of review of the order and Hon'ble Commission has the jurisdiction to adjudicate the matter under section 94(1)(f) read with business code of conduct?

13.5 The Respondent's objection that the present Petition seeks to reopen tariff issues is misconceived. The Petition does not assail the tariff determination or merits of the Order but is confined to a limited review for removal of implementation difficulty. Section 94(1)(f) of the Electricity Act, 2003, read with Order XLVII Rule 1 CPC as applicable through the Conduct of Business Regulations, expressly permits review where sufficient reason exists, including where directions are incapable of practical implementation.

- 13.6 The Hon'ble Supreme Court in *Union of India v. Subedar Devassy P.V.*, (2006) 1 SCC 613, affirmed that where a party finds an order to be incorrect, contrary to rules, or incapable of practical implementation, the proper course is to approach the court that issued the order or to invoke the appellate jurisdiction. The Court emphasized that the validity or correctness of an order cannot be questioned in contempt proceedings, as the order whether right or wrong must be complied with. In contempt jurisdiction, the court cannot go beyond the scope of the original order, reassess its merits, or amend, add to, or delete any part of it, as doing so would amount to exercising review powers, which is impermissible in contempt proceedings.
- 13.7 The jurisdiction of this Commission is further fortified by Regulation 57 of the HERC (Conduct of Business) Regulations, 2019, which applies CPC review standards *mutatis mutandis*, by Regulation 65 which preserves the Commission's inherent powers to secure justice and prevent procedural injustice, and by Regulation 69 which expressly authorises the Commission to issue appropriate directions for "removal of difficulty." The maintainability of the present review petition is fully supported by the statutory framework and by authoritative Supreme Court precedent.
- 13.8 The present petition does not attempt to reargue the tariff determination nor is it an exercise in disguised appeal. Its scope is confined to addressing an implementation difficulty arising from the centralised billing architecture, which computes fixed charges strictly on the basis of the difference between the last read date and the current read date, rather than on a calendar-month basis. The currently implemented formula (Rate of Fixed Charges × No. of Billing Days × 12) ÷ 365 has been uniformly applied across all consumers since its approval following the Ombudsman's decision in *M/s NFL v. UHBVN*, Appeal No. 36/2016, which directed computation of fixed charges on a monthly basis to prevent over-charging. Any deviation at the instance of a single consumer would require complete overhaul of the centrally integrated billing logic.
- 13.9 Seen in this legal framework, the present petition does not seek to reopen tariff methodology or disturb settled findings. It raises a narrowly confined, implementation-based difficulty arising from the centralised billing software architecture which a constraint is acknowledged in the Impugned Order itself. The petitioner seeks only such limited modification as is necessary to ensure feasibility and uniform implementation across both Discoms. Such a request falls squarely within the permissible contours of review under Section 94(1) (f) read with Regulations 57 and 65 and does not constitute an "appeal in disguise," but rather a legitimate invocation of the Commission's statutory power to secure effective and practicable enforcement of its directions. The relevant regulations are reproduced herein below:-
- i. Regulation "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 Petitioner 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.”

ii. Regulation 65. “Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.”

13.10 The reliance on ‘Gujarat UrjaVikas Nigam Ltd. v. Solar Semiconductor Power Co. (India) Pvt. Ltd.2017 (6) SCC 498’ by the Respondent is wholly misplaced, as that judgment dealt with an impermissible attempt to reopen concluded tariff findings whereas the present Review Petition does not seek reconsideration of tariff, re-appreciation of merits, or modification of any determination. The limited relief sought is a clarification necessitated by the centralized Oracle CCB billing architecture used across both Haryana DISCOMs, which cannot support consumer-specific computational logic. The clarification is operational, revenue-neutral, and intended solely to ensure uniform and accurate implementation of the Commission’s own Order in consonance with the HERC Supply Code. Review jurisdiction under Section 94(1)(f) of the Electricity Act, 2003 extends to “any other sufficient reason,” including situations requiring clarification for effective implementation. Unlike the above cited case, no reopening of merits or tariff structure is sought. Hence the precedent has no application to the present case.

II. Whether the implementation of a strict “Calendar-Month” formula for fixed-charge computation, as directed by the Hon’ble Commission, alters the approved tariff structure and its practical application?

13.11 A strict calendar-month approach assumes a uniform billing cycle irrespective of actual supply days, meter reading dates, or mid-cycle events such as connection, disconnection or load change. This artificial standardisation leads to over- or under-recovery depending solely on billing dates and is inconsistent with Regulation 3.5.5, which mandates levy of fixed charges on a pro-rata basis corresponding to actual days of supply.

13.12 Implementation of a calendar-month methodology would necessitate a complete overhaul of the centralized Oracle CCB architecture affecting lakhs of consumers across both DISCOMs. Such a change would not only entail significant technical and administrative effort but also risk misalignment with ARR projections, which are based on

annualised, day-based aggregation. It may further result in billing inconsistencies, retrospective adjustments and avoidable consumer disputes.

13.13 Even otherwise, at presently in order to capture the variation in number of days of the billing cycle the annual fixed charges are computed on per day basis and consumers are then charged accordingly for their respective billing period. Thus, the net impact of the fixed charges gets nullified in 6/12 billing cycles by adopting this computation method. Insomuch as in the present case as well no loss had been caused to Respondent No.1 on account of the adoption of the formula as when fixed charges are computed on 'day' basis it averages out and there is no difference of charges for one complete year since the number of days in a month does not have any impact on billing.

III. *Whether the Nigam can charge the different number of fixed charges for two same category of the consumer that too for the same period?*

13.14 The Respondent contends that the Petitioner's adoption of a per-day or pro-rata methodology for levying fixed charges results in a differential computation among consumers falling within the same BSDS category, which, according to the Respondent, violates the tariff orders and the regulatory framework mandating monthly levy of fixed charges from FY 2015 onwards.

13.15 It is asserted by the Respondent that the ARR exercise, tariff orders, and other categories of charges such as MMC, AP tariff, and streetlight charges are all structured strictly on a monthly basis and therefore a day-based approach, as adopted by the Petitioner, is impermissible and inconsistent with the tariff design. The Petitioner has applied the tariff strictly in accordance with the methodology approved by this Hon'ble Commission and has not deviated from any regulatory direction in any manner whatsoever.

13.16 Regulation 3.5.5 of the HERC Electricity Supply Code, 2014 unequivocally mandates that fixed charges "*shall be levied pro-rata for the number of days for which supply is given during the billing cycle.*" Thus, the number of supply days is a statutory determinant of the quantum of fixed charges payable, and a pro-rata computation is not a deviation but a regulatory requirement.

13.17 The Petitioner submits that any variation in the amount of fixed charges billed to consumers of the same tariff category is a natural mathematical consequence of differing supply-day counts arising, for instance, from release of new connections mid-cycle, reconnection or disconnection of supply, or other factual contingencies and not due to any alleged inconsistency, selectivity, or arbitrary practice.

13.18 The pro-rata formula adopted by DHBVNL ($\text{Fixed Charge Rate} \times \text{Billing Days} \times 12$) $\div 365$ is a standardised computation uniformly applied across all consumers, formulated after internal technical deliberations, and remains fully aligned with the Commission's directions on proportional billing. It is a settled legal principle that where a statute or regulation prescribes an objective mathematical mechanism, resultant differences attributable solely to factual

variables cannot be construed as discriminatory or violative of tariff uniformity. Applying this principle, consumers having different billing-day durations cannot be equated for purposes of fixed-charge computation.

13.19 Accordingly, the Petitioner submits that the allegation of differential levy or non-uniform application of tariff is baseless and unsupported by the regulatory framework, as the tariff schedule has been implemented in an identical, consistent, and uniform manner for all BSDS consumers.

“3.5.5 of the HERC Electricity Supply Code, 2014

For the billing cycle in which the supply to a new consumer is commenced, the fixed charges / demand charges, minimum monthly charges, rentals and / or any other similar charges shall be levied pro-rata for the number of days for which supply is given during the billing cycle. In the cases where the tariff structure contains slabs, the consumer shall be allowed the benefit for the full energy under the relevant lower slab(s) without applying pro-rata principle.”

IV. Whether for the purpose of ARR submissions, the Discoms calculate fixed charges revenue on a monthly computation method or on the basis of number of actual days?

13.20 At the outset, it is submitted that the Respondent’s assertion that Annual Revenue Requirement (ARR), tariff orders, Minimum Monthly Charges (MMC), Agriculture Pumping (AP) category charges and streetlight tariff components are uniformly designed to operate strictly on a monthly basis and not on per day basis is factually and regulatory incorrect. Fixed-charge revenue in the ARR framework is computed on an annualised basis, not on a monthly basis. ARR projections rely on the previous year’s actual fixed-charge collections and are escalated applying the Compound Annual Growth Rate (CAGR). Thus, ARR formulation does not assume a calendar-month fixed-charge regime.

13.21 The sector-standard empirical formula consistently applied for determining fixed charges across electricity distribution utilities is:

Fixed Charges = (Rate of Fixed Charges × Number of Billing Days × 12) / 365.

This formula ensures that fixed charges correspond proportionately to actual supply days and is entirely consistent with the structure of the ARR.

13.22 Following migration to the Oracle-based CCB system under R-APDRP, fixed-charge computation has been standardised across all subdivisions and consumer categories on a day-based pro-rata methodology, eliminating inconsistencies associated with the earlier legacy system.

13.23 In the case of consumer M/s Nova Realtors, consolidated annual computation confirms that total fixed-charge recovery remains identical whether fixed charges are computed on a day-basis or on a strict month-basis. Any minor variation during individual months automatically neutralises over the 12-month period, resulting in identical annual revenue.

- 13.24 The transition from HARTRON to Oracle CCB has not altered the quantum of fixed charges payable. It has merely refined the computational methodology to align with transparent, accurate, and sector-aligned billing practices. Day-based proration is a standard feature of modern Commercial Off-the-Shelf (COTS) billing applications used internationally in electricity distribution. The assertion that MMC (Minimum Monthly Charges) or AP (Agriculture Pumping) category charges are strictly monthly and not subject to day-based computation is incorrect. Day-based normalization avoids over-recovery and aligns with principles of fairness and proportionality.
- 13.25 The Respondent's reliance on reduction of fixed charges from Rs.100/kW/month to Rs.80/kW/month in FY 2021-22 is irrelevant. That reduction was a tariff rationalisation measure post COVID-19 to afford consumer relief. It has no nexus to the present issue, which concerns methodology of computing fixed charges, not the quantum of the fixed-charge rate.
- 13.26 In light of the above, the Respondent's objections lack merit. The empirical, day-based pro-rata methodology implemented through the R-APDRP Oracle CCB platform ensures accuracy, transparency, uniformity, consumer protection and regulatory consistency.
- V. Whether the commission can revise the fixed charges formula and amend it as per the request of the Appellant and apply it retrospectively for the period 2015 onwards through this review petition?*
- 13.27 The Hon'ble Commission, as the statutory regulator under the Electricity Act, 2003, exercises continuing supervisory jurisdiction over tariff formulation and its practical implementation. It is vested with the authority to clarify or modify tariff methodologies to remove anomalies, ensure uniformity, and maintain coherence between the tariff framework and the operational billing system. Within this regulatory context, the Respondent's objection to retrospective clarification is unsustainable. The reliance on Section 94(1)(f) and the Conduct of Business Regulations to argue that past methodology cannot be revisited overlooks the Commission's broader statutory power to issue clarifications necessary for the effective and correct implementation of its tariff orders.
- 13.28 Sections 61, 62, and 86 of the Electricity Act, 2003 impose a continuing duty on the Commission to uphold tariff transparency, rationality, and fairness. Clarifying the computational approach to fixed charges falls squarely within this mandate, particularly where clarification is required to ensure consistency between regulatory intent and field-level application. It is a well-established principle of regulatory law that clarificatory directions operate retrospectively, as they do not impose new charges or alter vested rights but simply elucidate or correct the methodology that was always intended to apply.
- 13.29 The present clarification does not introduce any new liability on consumers or the licensee. It merely aligns the fixed-charge computation with the billing logic that has already been uniformly

applied across the State and ensures that the tariff framework is implemented in the manner contemplated. The relief sought is revenue-neutral and does not disturb past billing. On the contrary, it enhances uniformity, removes interpretational inconsistencies, and prevents the recurrence of disputes regarding computation methodology.

- 13.30 The Commission's inherent powers under the HERC Multi-Year Tariff Regulations and the HERC Conduct of Business Regulations expressly empower it to amend, rectify, or clarify any aspect of a tariff order, whether suo motu or on the basis of a petition, to give full and effective meaning to its directions.
- 13.31 The Hon'ble Supreme Court in *UPPCL v. NTPC Ltd.*, (2009) 6 SCC 235, has affirmed the authority of electricity regulatory commissions to revise, alter, or amend tariff components where circumstances warrant such intervention. This directly supports the Commission's jurisdiction to issue the clarification sought herein.
- 13.32 Accordingly, the present Review Petition is fully maintainable, and the Commission is well-within its statutory and regulatory jurisdiction to clarify the methodology for computation of fixed charges to ensure accuracy, fairness, and consistency in tariff implementation.
- 13.33 In light of the foregoing submissions, the clarification sought in the present Review Petition is limited, operational, and revenue-neutral. The Hon'ble Commission, in exercise of its regulatory and review jurisdiction under the Electricity Act, 2003 and the HERC Conduct of Business Regulations, is fully empowered to clarify or modify the computational methodology for fixed charges to remove the difficulty arising from the implementation of the direction given by this Hon'ble Commission dated 24.05.2024. It is therefore prayed that this Hon'ble Commission may be pleased to issue appropriate clarifications or directions that fixed charges may continue to be computed on a pro-rata basis in conformity with Regulation 3.5.5 and the existing Oracle CCB architecture, and to pass such further orders as may be deemed fit in the interest of justice

Commission's Order:

1. The Commission examined the petition in detail along with the reply, rejoinder and written submissions on record in the above matter. The primary issue is the maintainability of the review and whether the empirical formula used for calculating fixed charges— $(\text{Rate of Fixed Charges} \times \text{Nos. of billing days} \times 12) / 365$ is legally valid. The petitioner argued that the review is necessary to remove operational difficulties in implementing the previous direction to levy charges on a strictly monthly basis. They relied on Regulations 57, 65, 69, and 70 of the HERC (Conduct of Business) Regulations, 2019, asserting that the Commission has inherent powers to clarify or modify orders to meet the ends of justice. Supporting this, they cited *Union of India v. Subedar Devassy PV* (2006) 1

SCC 613, which suggests that if an order's implementation is not practicable or feasible, the party should approach the court that passed it for variation.

2. The respondent, challenged the maintainability, labeling the petition an "appeal in disguise" filed with a delay of 209 days. He contended that the petitioner has failed to satisfy the requirements of Order XLVII Rule 1 of the Code of Civil Procedure (CPC), as there is no error apparent on the face of the record. The respondent further relied on Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Company (India) Private Limited (2017) 6 SCC 498, arguing that inherent powers cannot be used to grant substantive relief or create new rights. On the merits, the respondent highlighted that HERC Regulation 2.32 and various tariff orders (such as those dated 30.04.2021 and 30.03.2022) clearly define fixed charges on a "per month" basis, such as the reduction for BSDS consumers from Rs. 100/kW/month to Rs. 90/kW/month and then to Rs. 80/kW/month.
3. DHBVNL defended the legality of the formula, stating it is in the spirit of Regulation 3.5.5 of the HERC (Electricity Supply Code) Regulations, 2014, which mandates pro-rata charges for the number of days supply is given. They submitted that since migrating all sub-divisions to the R-APDRP platform (Oracle CCB) by April 2023, the system inherently uses day-level proration for precision. To prove the lack of financial prejudice, the petitioner provided a comparative analysis of M/S Nova Realtors (Account No. 1353433000) for the period between February 2023 and January 2024, demonstrating that the annual fixed charges under the empirical formula were Rs. 4,930,198, compared to Rs. 4,930,208 if calculated on a flat monthly basis, a negligible difference of Rs. 10. They further cited UPPCL vs. NTPC Ltd. (2009) 6 SCC 235 to affirm the Commission's power to revise or amend tariffs as the occasion arises.
4. The Commission observes that while the literal text of the Tariff Orders specifies a monthly rate, the petitioner's empirical formula ensures mathematical accuracy and avoids over-recovery or under-recovery in cases of mid-month disconnections, thus aligning with the pro-rata principle of the Supply Code. Given the systemic complexity of altering centralized billing software and the absence of significant financial loss to consumers, the review petition is allowed, with following directions:
 - 4.1 The Review Petitioner is permitted to continue using the empirical formula $(\text{Rate} \times \text{Days} \times 12) / 365$ for billing purposes, as it is found to be in substantial compliance with the pro-rata requirements of Regulation 3.5.5 of the HERC Supply Code, 2014.

- 4.2 DHBVNL shall ensure that the total fixed charges recovered from a consumer in a full financial year do not exceed the amount calculated by summing the applicable monthly rates, ensuring revenue neutrality.
- 4.3 To enhance transparency, the petitioner is directed to include a brief explanatory note or a web-link on the consumers' bills explaining the day-based proration methodology, preventing further confusion or litigation.
- 4.4 No litigation expenses are awarded to the respondent as the petitioner's request for modification was based on genuine technical difficulties rather than willful disobedience.

5. The petition is disposed of, in above terms.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 09/06/2026.

Date: 09/06/2026
Place: Panchkula

-Sd/-
(Shiv Kumar)
Member

-Sd/-
(Mukesh Garg)
Member

-Sd/-
(Nand Lal Sharma)
Chairman