

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 312 OF 2025 & IA No. 1461 OF 2025

Dated: 4th December, 2025

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Mr. Ajay Talegaonkar, Technical Member (Electricity)

In the matter of:

Haryana Power Purchase Centre Appellant(s)

Versus

L. R. Energy Private Limited & Ors. Respondent(s)

Counsel on record for the Appellant(s) : Poorva Saigal
Shubham Arya
Pallavi Saigal
Reeha Singh
Rishabh Saxena
Shirin Gupta
Shree Dwivedi
Kaavya Madaan
for App. 1

Counsel on record for the Respondent(s) : Deepak Khurana
Tejasv Anand
Shreyans Khare
for Res. 1

Shlok Chandra
for Res. 2

ORDER

IA No. 1461 OF 2025
(for interim relief)

Appeal No. 312 of 2025 is filed against the order passed by the
Haryana Electricity Regulatory Commission (HERC) in Case No.

HERC/Petition No. 22 of 2025 (remand back petition No. 70 of 2020) dated 12.08.2025. The 1st Respondent herein had earlier approached the HERC by filing Petition No. 70 of 2020. On the HERC passing an order on 17.09.2021, determining the project specific levelized tariff of the 1st Respondent at Rs. 2.5843 per unit, the Appellant herein had filed Appeal No. 91 of 2022 before this Tribunal. During the pendency of Appeal No. 91 of 2022 before this Tribunal, Appeal No. 326 of 2021 and batch, filed by M/s Amplus Sun Solutions Private Limited and others, were disposed of by this Tribunal, by order dated 25.10.2024, holding, among others, that the ratio of AC : DC module, associated capital cost and resultant CUF were inter-linked and the State Commission had erred in disallowing the capital cost on higher DC module but, at the same time, considering the higher CUF which could possibly be achieved with the higher DC : AC ratio; the Commission had also not carried out prudence check of the capital cost and associated CUF while determining tariff under Section 62; and, therefore, it needed re-consideration.

This Tribunal set aside the orders impugned in Appeal No. 326 of 2021 and batch, and remanded the matter to the Commission for re-determination of tariff after prudence check of the capital cost including the related issues raised, and considering the feasible CUF corresponding to the capital cost of AC : DC module allowed. This Tribunal made it clear that issues with regards interest on term-loan and working capital, interest during construction and O & M expenses shall not be open for re-consideration.

Following the judgment in Appeal No. 326 of 2021 and batch dated 25.10.2024, this Tribunal, by its order in Appeal No. 91 of 2022 dated 21.02.2025, remanded the matter to the State Commission considering

that a decision had already been taken by this Tribunal earlier in the Amplus Sun Solutions Private Limited judgement (ie in Appeal No. 326 of 2021 and batch), with directions to the Commission to pass consequential orders expeditiously within three months. It is pursuant thereto that the impugned order came to be passed by the Commission whereby the tariff of the 1st Respondent has been fixed at Rs. 2.94 per unit. Aggrieved thereby, the Appellant herein has filed the present appeal.

Mr. Shubham Arya, Learned Counsel for the Appellant, would question the impugned order, for the purpose of grant of interim relief, mainly on two grounds. Firstly that, while the 1st Respondent had itself sought project management expenses of around 85 lakhs, the HERC had granted them a higher sum of Rs. 1.55 crores towards project management expenses; and secondly, the Commission, having considered the data of the actual CUF submitted by the 1st Respondent on the basis of AC : DC ratio of 1.2 : 1, having observed that their power plant was able to achieve CUF of 18.05% to 18.86% and therefore the approved CUF of 22.14% may be liable to penalty to the Appellant on account of shortfall in generation as per the cited clauses of the PPA, had then, erroneously, held that the declared CUF by the generator should be considered as 18.86% .

The submission of Mr. Shubham Arya, Learned Counsel for the Appellant, in this regard is that the approved CUF should either have been taken as 22.14%, both for the purposes of determining the capital cost and for penalty, or at a CUF of 18.86% for both; the Commission could not have observed, selectively with respect to the 1st Respondent alone, that, while the approved CUF for the purpose of determining capital cost should be 22.14%, the declared CUF for the purpose of imposition of

penalty should be considered at a lower 18.86%; if the Appellant were to be permitted to impose penalty at the same CUF as applied for the purpose of determining capital cost, ie. either at 22.14% or 18.86%, the 1st Respondent would only be entitled for a tariff of approx. Rs. 2.58 per unit, and not Rs.2.94 per unit as directed to be paid to them in terms of the impugned order.

Mr. Deepak Khurana, Learned Counsel for the 1st Respondent, would take us through various documents in support his submission that what the 1st Respondent had claimed towards project management expenses was Rs. 1.55 crores; when the original order was passed by the Commission on 17.09.2021, the 1st Respondent had incurred only a part of the said amount; after the matter was remanded, the 1st Respondent's capital cost of Rs. 71.48 crores for 20 MW stood increased to 82.15 crores in view of the enhanced 24 MW capacity considering the CUF as 22.14%; the project management expenses of Rs. 1.55 crores, which formed part of the capital cost, was incurred in its entirety; and the expenditure, incurred with respect to the entire project management expenses, was supported by a Chartered Accountant certificate.

On application of a different CUF, one for the purposes of capital cost and the other for the purpose of imposition of penalty, Mr. Deepak Khurana, Learned Counsel for the 1st Respondent, would contend that the tariff now determined by the Commission of Rs. 2.94 per unit is still lower than the tariff, determined through the bid adoption process under Section 63, when the impugned order came to be passed; and considering the fact that the 1st Respondent is a small generator, with a plant capacity of only 24 MW, the Commission was justified in showing them a little indulgence in stipulating a lower CUF in so far as imposition of penalty is concerned.

On the issue of project management expenses, prima facie, we find merit in the submission of Mr. Deepak Khurana, Learned Counsel for the first respondent, that the variance in the project management expenditure was because the 1st Respondent had partly incurred such expenditure by July, 2021, ie by the time the original order was passed by the Commission, and had thereafter incurred the entire project management expenditure of Rs. 1.55 crores by the time the subsequent order (impugned order) was passed by the Commission consequent on remand. We are, prima facie, of the view that the submissions, urged on behalf of the Appellant on this issue, would not justify the impugned order, passed by the Commission, being interdicted on this score.

In so far as other contention regarding application of different CUF is concerned, the Commission appears, prima facie, to have erred in applying two different yardsticks one for the purpose of determining the Capital Cost, and the other for imposition of penalty. While the Commission has approved a CUF of 22.14% for the purposes of the capital cost of the project, it has taken a lower CUF of 18.86% for the purposes of levy of penalty. The Commission could not have taken two different CUF, one for the purpose of capital cost and the other for the purpose of imposing penalty. We are, prima facie, of the view that the impugned order suffers from an error on this score which would necessitate an interim order being passed in this Appeal.

With the test of a prima facie case being made out, the Appellant would still have to satisfy one of the other two tests of 'Balance of Convenience' and 'Irreparable Injury'. In so far as the test of irreparable injury is concerned, it is not in dispute that the 1st Respondent has a 25 year PPA with the Appellant which is due to come to an end only in the

year 2046, and the entire power generated by them is being supplied exclusively to the Appellant. It is not as if the Appellant would not be able to recover the amounts, due from the 1st Respondent, in case of their success in the main appeal, when it is finally heard, later. The test of irreparable injury cannot, therefore, be said to have been satisfied in the present case.

On the test of balance of convenience, while Mr. Deepak Khurana, Learned Counsel for the 1st Respondent, would contend that the tariff discovered under Section 63, around the time the impugned order was passed, was more than Rs. 2.94 per unit, the submission of Mr. Shubham Arya, Learned Counsel for the Appellant, is that when the original order was passed by the Commission, the discovered tariff was much lower than even Rs. 2.58 per unit. We cannot base our order on the tariff discovered under Section 63, since the tariff, payable by the Appellant to the 1st Respondent, was determined under Section 62 of the Electricity Act, and is a cost-plus tariff. Applying two different yardsticks, a higher CUF for the purpose of determination of capital cost and a lower CUF for the purpose of imposition of penalty, would result in a lower penalty being imposed and, consequently, a higher tariff being paid by the Appellant to the 1st Respondent, which would adversely affect the consumers whose interest the Appellant represents. Payment of a higher tariff, without any justifiable reason, would require the Appellant to pass the same on to its consumers causing them a needless financial burden for no fault on their part. We are satisfied, therefore, that the balance of convenience lies in favour of the Appellant and against the 1st Respondent.

Since the Commission ought to have, prima-facie, stipulated the same CUF both for the purpose of capital cost of the project and for

imposition of penalty, we direct that, as an interim measure, the Appellant compute the amount liable to be paid by the 1st Respondent as penalty taking the CUF as 22.14%. Mr. Shubham Arya, Learned Counsel for the Appellant, would fairly state that the Appellant has already paid the arrears, due in terms of the impugned order, to the 1st respondent till the date on which the impugned order came to be passed. Suffice it to protect the interest of the 1st Respondent to direct that, pending disposal of the main appeal, the Appellant shall not take any coercive steps for recovery of the penalty amount for the period upto when the impugned order came to be passed.

In so far as application of penalty post the impugned order is concerned, the Appellant shall, taking the CUF as 22.14%, compute the penalty as per the applicable clauses of the PPA, from the date of the impugned order till the main appeal is finally heard and decided, and recover the said amount in terms of the PPA.

Needless to state that the arrears already paid by the Appellant and the amount which they have now been directed to pay in terms of the order passed by us, as also the 1st Respondent's entitlement for the amount which has now been stayed by us, shall be subject to the result of the main appeal. Needless to state that both parties shall be entitled, when the main appeal is finally heard and decided, to seek restitution in case the appeal is decided in their favour. The IA is disposed of accordingly.

Learned counsel on both sides agree that the issue involved in this appeal is short, and that the appeal be included in the 'List of Short Matters'.

After pleadings are complete, and after verification by the Registry, let this Appeal be included in the '**List of Short Matters**' to be taken up from there for hearing, in its turn.

Ajay Talegaonkar
Technical Member (Electricity)

Justice Ramesh Ranganathan
Chairperson

Sk/kns