

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,
KEONTHAL COMMERCIAL COMPLEX, KHALINI, SHIMLA-171002

In re: -

Petition for review of order dated 4th Oct., 2008 passed in petition No.138/07, moved under Section 142 of the Electricity Act, 2003 read with regulations 5 and 16 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and regulations 7 and 8 of the HPERC (Terms and Conditions for Determination of Tariff) Regulations, 2004.

1. The H.P. State Electricity Board
Vidyut Bhawan, Shimla-4
2. The Chief Engineer (Commercial),
HPSEB, Vidyut Bhawan, Shimla.
3. The Chief Engineer (Transmission),
HPSEB, Hamirpur.

... Petitioner/applicant

V/s

The Irrigation and Public Health Department,
Govt. of Himachal Pradesh, Shimla
through its Engineer-in-Chief

... Respondents

(Petition No. 56/09
in petition No. 138/07)

(Decided on 23.5.09)

CORAM:-
YOGESH KHANNA
CHAIRMAN

Counsel:-
for the petitioner Sh. Narinder Singh Thakur, Advocate
for respondents Sh. P.P.Chauhan, Advocate

Order

(Last heard on 16.05.2009 and orders reserved)

The Chief Engineer (Transmission), HPSEB, Hamirpur, on behalf of the Himachal Pradesh State Electricity Board (hereinafter referred as “the Board”) through this petition has sought the review of the Commission’s order

dated 4.10.2008, passed in case No. 138/2007 – Irrigation and Public Health Department V/s H.P. State Electricity Board and others.

2. The facts in brief, leading to this review petition, are that the Irrigation and Public Health Department of the State Government of H.P moved a petition u/s 142 of the Electricity Act, 2003 (hereinafter referred in short as “the Act”) read with regulations 5 and 16 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 (hereinafter referred as “the Recovery of Expenditure Regulations”) and regulations 7 and 8 of the HPERC (Terms and Conditions for Determination of Tariff) Regulations, 2004 stating that with a view to cater for and meet the increasing demand for drinking water, the said Department planned to start two proposals for augmentation of Lift Water Supply Schemes from the Giri River for Shimla and Solan towns with an estimated cost of Rs. 1456 lakhs and Rs. 1266 lakhs, respectively. There was difference on the cost sharing. In a meeting held on 16th March, 2006 between the officials of the Board and the officials of IPH Department, the IPH Department agreed to bear the balance cost (i.e. Rs. 13.62 crores) and it was to be refunded as per provisions of Recovery of Expenditure Regulations, as and when new connections are installed or given from the electrical plant and/or electrical line on pro-rata basis with interest @ 8% compounded annually. The new connections, likely to come up in Shimla and Solan towns and nearby areas were, in all probability, to be under the category of Domestic, NDMC, Commercial consumers etc. and at the most and SMS category which would fall under regulations 3 and 4 of the Recovery of Expenditure Regulations. There has been no possibility of any EHT consumers coming up in Shimla/Solan towns and surrounding areas, unlike the industrial areas, where almost all the consumers fall under HT and EHT category and therefore, no recovery of the IPH Department’s share could be made from prospective consumers as per regulations 3 and 4 of the Recovery of Expenditure Regulations. The IPH Department, therefore, invoking the removal of difficulty clause i.e. regulation 16(1) of the Recovery of Expenditure Regulations, approached this Commission for issuance of directions that the balance cost amounting to Rs. 13.62 crore may be included in the investment plan of the Board so as to give effect to the provisions made in regulation 5 of the Recovery of Expenditure Regulations.

3. While considering the said petition of the IPH Department the following issues, were framed:-

(A) Whether in case of HT and EHT consumers the total cost of capacity augmentation is required to be recovered or only the cost of the additional augmentation is to be apportioned?

(B) xxx xxxx xxxx xxxx xxxxx

(C) Whether the applicant is entitled to any relief?

4. This Commission, after considering the facts involved, the averments made in the pleadings, concluded on both issues vide paras 20 and 22 of its order dated 31.5.2008, which read as under –

“20. In the instant case, there are reasons to believe that the new connections, likely to come up in Shimla and Solan towns and surrounding areas, are in all probability to be of the category of domestic, NDNC, commercial consumers etc. and at the most under SMS category, which shall fall under regulations 3 and 4 and not under regulation 5 of the Recovery of Expenditure Regulation. As such the possibility of installation of new connections and recovery of cost from subsequent applicants of EHT category is very remote and negligible. Whereas the total requirement of power for the augmentation of LWSS for Shimla town was worked out to 6.11 MVA, and additional 25MVA 132/66KV transformer has been installed at Jutogh Sub-station. The capacity of transformer becomes spare with the respondent Board to the tune of 18.89 MVA, which can be released to other prospective LT and HT consumers, in respect of Domestic Commercial and NDNC, Small and Medium Industrial Supply. The question which looms large for consideration is that when the requirement of the applicant was only 6.11 MVA, why the respondent Board resorted to the augmentation of additional capacity of 25 MVA, especially when the 2nd proviso to clause (b) of sub-regulation (1) of regulation 3 of the Recovery of Expenditure Regulations stipulates the standard minimum size of DTR single phase 6.3 KVA, 10 KVA, 16 KVA to meet the contract demand of the applicant. Thus in this case the charging of the total cost of

augmentation of the distribution transformer, electrical plant and works from the petitioner Deptt. would not only be unjustifiable but also be in utter disregard of the Recovery of Expenditure Regulations. Thus the petitioner Deptt. should not be charged with the total cost of the augmentation and the recovery charges should be apportioned to the additional augmentation only. The Issue 'A' is answered accordingly.

22. It would be illogical and against the spirit of the Act and the regulations, framed thereunder, to recover the total cost of augmentation from the petitioner Deptt. The recovery of cost should be for the up-gradation of the feeding sub-station and line only and should be apportioned to the additional augmentation and not to total augmented capacity. The cost to be shared by the petitioner Deptt. should be worked out strictly in accordance with the provisions of the regulation 5, read with regulation 3(1)(b), of the Recovery of Expenditure Regulations, as clarified by the Commission its clarificatory order dated 31.10.2005 passed in petition No. 315/05. As the beneficiaries will be drawn from different categories of the consumers, the respondent Board, while working out the applicant's share, should transfer the excess amount incurred for augmenting the capacity above the contract demand of the applicant, to the transmission charge. The issue 'C' is answered accordingly".

5. In the result the Commission vide its said order dated 31.5.2008 ordered that the cost of augmentation of the electrical plant and/or electric line recoverable from the petitioner Department (I&PH) be worked out strictly in accordance with provisions of sub-regulation (5) and (3) (1) (b) of the Recovery of Expenditure Regulations and the Commission's clarificatory order dated 3.10.2005 and the excess amount deposited by the petitioner Department with the Board be refunded with an interest @ 8% compounded annually.

6. Subsequently, this Commission vide its order dated 4.10.2008, closed the matter and that order reads as under:-

“The rectified calculations on the refund amount has been worked out by the IPH Department at a total of Rs. 1360.72 lacs. This calculation is acceptable to the petitioner. The amount be refunded by HPSEB to Govt. of HP within this financial year and the normative interest as per prescription will be applicable on this amount.

As far as penalties etc. are concerned, taking a lenient view the Commission orders that the charges be dropped.”

7. The decision dated 31.5.2008, has not been challenged either by way of appeal or review, and present petition seeks the review of the latter order dated 4.10.2008. The Board submits that in due course of time, after issuance of the impugned order dated 4.10.2008, a joint meeting was conducted on 24.12.2008, in between the I&PH Department and the Board and it has been mutually agreed that the Board will not return the amount to I&PH Department and will complete the left out works at Sainj Sub-station and construction of 132/11 kV Sub-Station at Gaura, alongwith construction of 132 kV D/C line. In light of the said out of Court settlement by the parties, modification in the order dated 4.10.2008 has been sought.

8. In reply to this petition the IPH Department has objected firstly that the maintainability of the review application is barred on the ground by limitation and secondly that in the meeting held on 24.12.2008 the Board agreed to rectify the system by providing new transformers or by upgrading the existing transformers to make the power system sustainable within one month so that all the four pumps can be put into operation simultaneously. The period of one month has long since clasped and the Board has not even taken any initiative in this direction, leave apart completion of work. The IPH Department has prayed this petition, being not maintainable, be dismissed and the penalty as envisaged u/s 142 of the Electricity Act, 2003 be imposed on the Board for non-compliance of the Commission’s Order earlier passed on 4.10.2008.

9. This Commission, after careful consideration of the facts and circumstances of the case and averments made by the parties, concludes that the petition moved by the Board (without any application for condonation of

delay) is hopelessly time barred and is designed to render both the orders dated 31.5.2008 and 4.10.2008 passed in petition No. 138/07 otiose. In the instant case the rectified calculations on the refund amount were worked out by the IPH Department at a total of Rs. 1360.72 lacs and were acceptable to the petitioner. The Commission, finds no sufficient and justifiable reason to accept the review petition and declines to interfere with the impugned orders, already made in the original case No. 138/07, and in the result the review petition is dismissed.

(Yogesh Khanna)
Chairman.