

Case No.334/05

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Present: For HPSEB :Shri Rahul Mahajan, Adv.  
:Shri R.K.Punshi, Dir.SERC  
:Shri R.G.Sood, Dir.(Com.)

Consumer Representative :Shri P N Bhardwaj

Interim Order

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Heard.

Through notice dated 16-11-2005 which is registered as case No.334/05, it was stipulated that the Commission shall hear the Board and any other interested party (ies) on 9-12-2005 along with case No.268/05. The reply to the notice was to be filed within 3 weeks i.e. by 7-12-2005. The reply has been received today when the case was called and no prayer for condonation of delay has been made. The learned Counsel regretted the delay and prayed orally for the condonation of delay which is allowed with reprimand that such omissions may be avoided in future.

Shri Rahul Mahajan, the learned counsel in both the cases contends that through Annexure RX attached with the reply in case No.334/05 (MA No.354/05), the Chief Engineer (Com.) has conveyed to the Chief Engineers (O.) South, North and Central Zone that in pursuance to HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, the Board has decided to recover the expenditure for providing connections from the sub stations in industrial areas being augmented/capacity being added under the 'short term plan scheme' amounting to Rs.95.97 crores and the amount per KVA to be recovered shall be as under:

| Sr.No. | Name of S/stn                              | Cost per KVA to be recovered (Rs.) |
|--------|--|------------------------------------|
| 1.     | Nalagarh<br>At 33 kv<br>At 11 kv           | 4054<br>4445                       |
| 2.     | Malpur (Akkanwali)<br>At 33 kv<br>At 11 kv | 4352<br>4564                       |
| 3.     | Baddi                                      |                                    |

|    |                                  |              |
|----|----------------------------------|--------------|
|    | At 11 kv                         | 1804         |
| 4. | Barotiwala<br>At 11 kv           | 1655         |
| 5. | Jassure<br>At 33 kv              | 1784         |
| 6. | Kala Amb<br>At 33 kv<br>At 11 kv | 1962<br>1660 |
| 7. | Gagret<br>At 33 kv<br>At 11 kv   | 4170<br>4511 |

And that the above amount is recoverable from all the consumers after the enforcement of above Regulations w e f 1-4-2005. Shri Mahajan further contends that the action qua recovery of Rs.96 crores has been taken in accordance with the aforesaid Regulations and no contravention, as mentioned in the news paper cutting, has been committed.

In case No.268/05 the licensee has filed the information in respect of 72 prospective consumers but failed to indicate the contract demand signed by such consumers then or later as per the interim order of 5-11-2005. The additional reply has also been filed in case No.268/05. According to this additional submission, except M/s. Himachal Engineering Pvt. Ltd appearing at serial No.40 of the information submitted on 17-11-2005, all the other 71 are connected to supply. Copy of the scheme sanctioned during 1997-98 for augmentation of Parwanoo sub station has also been attached with the additional reply. The licensee has denied that augmentation carried out in 1999 was premature or ill-planned, and the reply submitted on 6-10-2005 together with Annexures R-1 to R-7 would well justify the Board's stand that the augmentation was well-planned. The additional reply further submits that one consumers M/s. YPL with connected load of 1600 KW was disconnected in 1999 and the other M/s. AB Tools reduced the connected load from 2200 KW to 496 KW during the same year.

The learned consumer representative, Shri P.N.Bhardwaj contends that the different rates as the cost per kva to be recovered in Annexure RX to the reply in case No.334/05, was without any rationale, is inconsistent and in contravention of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and the cost per KVA to be recovered as per this Annexure was almost 10 times the cost recovered earlier. In respect of augmentation of Parwanoo sub station in 1999, there was absolutely no justification for the

augmentation or recovery of expenditure so incurred and collecting the money from the various prospective consumers upto the present demand of some 20 MVA on the sub station.

Upon hearing, the Commission observes that as far as the issues involved in case No.268/05 were concerned, the security deposit as well as the recovery of expenditure for supply of electricity were in violation of the respective Regulations viz. HPERC (Security Deposit) Regulations, 2005 and HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. The Commission had issued the [Removal of Difficulties] First order clarifying the application of the rates in respect of different consumers. The augmented capacity of Parwanoo sub station has still not been used up even after connecting 71 prospective consumers with applied load of 3796 KW. The perusal of the project report for the augmentation of 66/11 kv, 2x10 MVA transformers to 2x20 MVA at Parwanoo along with 66 kv S/C line from Barotiwala to Parwanoo at the estimated cost of Rs.313 lacs reveals that the report was prepared on unrealistic projections and not the factual conditions and circumstances. This has been more than vindicated by the fact that even upto August, 2005, the demand had not exceeded the rated capacity of the unaugmented transformers. The transformers have short term over rating capacity also and the old transformers could have been capable of taking additional demand and releasing many more connections from the same transformers. In that manner of speaking, the project report was fictitious and the augmentation carried out in the year 1999 was premature, infructuous and ill-planned as per the observations made in the interim order dated 5-11-2005.

In respect of the HPERC (Recovery Of Expenditure For Supply Of Electricity) Regulations, 2005, the Commission observes that the Regulations were unambiguous, unmistakable and too clear to be misunderstood or misinterpreted. There is no question of recovery of expenditure on blanket and ad hoc rates per kva. It is inconceivable that the expenditure for providing supply to all the consumers in future shall be the same regardless of the location and the loading and the staging. The cost data had yet to be submitted by the Board and yet to be approved by the Commission. Recovery of expenditure of Rs.95.97 crores, only through the industrial consumers regardless of the staging of the connections is without any basis, rationale and justification and is tantamount to recovering far less amount on NPV basis.

Taking into consideration, the facts and circumstances, the documents placed on record, the arguments led and the legal position, the Commission is in no doubt whatsoever that the Board has contravened the provisions of the HPERC

(Recovery of Expenditure for Supply of Electricity) Regulations, 2005, holds it squarely guilty of contravention of the aforesaid Regulations and is, therefore, liable for penalty under Section 142 of the Act. However, before imposing the penalty the Commission would like to afford yet another opportunity to the Board to answer the interrogatories as per Regulation 62(3) of the HPERC (Conduct of Business) Regulations, 2005 as follows:

- (a) the nature and extent of non-compliance or violation;
- (b) the amount of wrongful gain or unfair advantage derived or contra loss or disadvantage caused to any person(s), including Commission, as a result of the non-compliance or violation;
- (c) the amount of loss or degree of harassment caused to any person(s), including the Commission, or harmful effect on the efficient, economical and competitive performance of the electricity industry as a result of the non-compliance or violation;
- (d) the nature and extent of harm or impairment caused to the objects and purposes of the Act as a result of non-compliance or violation;
- (e) motive for non-compliance or violation; and
- (f) the repetitive nature of the non-compliance or violation.

In the light of the foregoing, Annexure RX, being a letter No.HPSEB/CE(Comm.)/LS-Cost Sharing/2005-13945-14235 dated October 3, 2005 from the Chief Engineer (Comm.), is held void ab-initio and is struck down. Further, the amount of Rs.31,21,400, deposited by 72 consumers as per Annexure B to MA No.319/05 shall be refunded to the consumers by credit to their electricity bills in respect of those already connected and in cash to the one not as yet connected within 6 weeks after deducting the actual expenditure incurred in connecting them to supply but without taking into consideration the cost of augmentation of the line and the sub station. The information in regard to the contract demand signed by the 72 consumers has also not been furnished and the same be furnished within 2 weeks.

The Chairman and the concerned Members must be present on the next date of hearing to answer the interrogatories as above. The copy of this common interim order be placed in case file No.268/05.

List on 07-01-2006 at 11.30 (or soonafter).

Dated: 09-12-2005.

(S S Gupta)  
Chairman