

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,  
SHIMLA-171002.

No.

Dated: 02/05/11

In the matter of clarification sought by HPSEB Ltd. regarding adjustment of advance cost share.

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**ORDER**

1. HPSEBI, vide their letter dated 8.04.2011, has sought clarification regarding mechanism for adjustment of advance cost share towards infrastructural developmental charges @ Rs. 1000 per kW/kVA of load applied as per para 3.2.2 read with para 3.2.5 of H.P. Electricity Supply Code 2009, because there is no provision under HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 regarding infrastructural developmental charges and adjustment/recovery thereof.

2. Para 3.2 of the H.P. Electricity Supply Code 2009 has the following provisions:-

(i) 3.2.2. The consumer shall apply, for grant of Power Availability Certificate, on payment of \_

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advance cost share towards infrastructural developmental charges, calculated @ Rs. 1000 per kW/kVA of the load applied for .

(ii) 3.2.5 The applicant may, after grant of power availability certificate in para 3.2.3, submit the application to give supply of electricity to the premises and the licensee shall adjust ..... and the advance cost share towards initial estimated amount payable under Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

3. Regulation 3(1) of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 as well as 4(1) and 5(1) thereof provide for estimate to be prepared by the licensee for recovery of cost under various situations with respect to low tension supply, high tension supply and extra high tension supply respectively, the salient features which are as under:-

(a) In all the three cases of supply, the entire cost of the extensions of line from the existing network and terminal and metering arrangement at the consumer premises is required to be met by the applicant consumer.

(b) The second provisos with respect to all the three types of supply pertain to the situations where there is a need for erection of a new transformer or for augmentation of the existing transformer and imply that the applicant consumer has to share the cost in ratio of capacity to be

utilised for supply to be made against the total capacity created or to be created.

However, with respect to HT supply there is also a specific provision that if new 33/11 KV Sub-station is required to be constructed to extend supply to an individual applicant, he will bear cost of construction of such Sub-Station.

- (c) With respect to erection, strengthening, augmentation or extension of line for setting up of new sub-station/transformer, there are separate and different provisos for different supplies as under:-
- (i) For LT supply, if there is a need to erect, strengthen, augment or extend 11 kV, 22 kV or LT line for establishing a distribution transformer in order to extend supply to the applicant, the cost thereof is to be paid by him for such section of line, on per kilometre basis.
  - (ii) For HT supply, if there is a need to erect, strengthen, augment or extend HT line for the purpose of establishing a power transformer and/or setting up of 33/11 kV Sub-station so as to extend the supply to the applicant, the cost thereof is to be paid by him for such section of line, on per kilometre basis.
  - (iii) With respect to EHT, if there is a need to erect, strengthen, augment or extend EHT line for establishing a power transformer so as to extend supply to the applicant, the cost thereof is to be paid by him for such section of line, on per kilometre basis.

4. Sub-Regulation 3(1) of the HPERC (Recovery of Expenditure for supply of Electricity) Regulations, 2005 for LT supply, 4 (1) thereof for the HT supply and 5(1) thereof for EHT supply, also contain similar/common provisos for recovery of the cost from subsequent applicants if the system created for the supply to first applicant has spare capacity to meet the requirement of subsequent load for supply/additional supply. The relevant portion reads as under:-

“Provided further that in case there are subsequent applications for supply or additional supply and the existing electrical plant has --

- (i) adequate spare capacity to meet with the additional demand, or
- (ii) spare capacity but not sufficient to meet with the additional demand, and there is need to strengthen/augment the existing electrical plant for meeting the additional supply,

the licensee shall estimate and/or recover the cost in the like manner, including the actual cost already incurred, with compound interest at the rate of 8% per annum on pro rata basis and the credit of the depreciated cost of

old/existing electric plant rendered surplus on account of augmentation shall be afforded in the estimate.”

5. The various other provisions contained in the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, with regard to recovery of cost, manner of payments and option for payment through monthly rentals, are as under :-

- (i) **6. Recovery of Cost :** (1) Subject to the provisions of sub-regulation (2), the balance cost of electrical plant and/or electric line after deducting the amount payable by the applicant under sub-regulation (1) of regulation 3, regulation 4 and regulation 5 shall be either invested by the licensee or paid for by the applicant and where licensee's investment approval does not permit this cost, the licensee shall recover the total balance cost from the applicant:

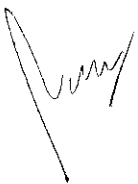
Provided that the balance cost shall be refunded to the applicant as and when new connections are installed or given from the electrical plant and/or electrical line on pro rata basis with the interest rate of 8% compounded annually.

Provided further that notwithstanding anything contained in any other law for the time being in force, balance cost due shall be recoverable from subsequent applicant(s) and the bills of the consumer who had paid the balance cost shall be invariably flagged continuously until paid fully.

- (ii) **8. Manner of Payments.-** The applicant shall, before the commencement of work, deposit 100% payment on notice of demand for amount payable under sub-regulation (1) of regulation 3, regulation 4, regulation 5 and regulation 7.

- (iii) **9. Option of paying through monthly rentals.-** (1) Where the works for supply are covered under the approved investment plan of the licensee, the applicant shall have the option either to pay the cost of works and/or service line (including terminal and metering arrangement), electrical plant and/or 11kV, 22 kV or LT/HT/EHT Line in lump sum as specified under sub-regulations (1) of regulation 3, regulations 4,5 and 7 or pay the same along with interest @ 8% , compounded annually, in equal monthly instalments within a period of 10 years reckoned from the actual date of supply of electricity.

(2) Where a consumer who in the first instance elects to pay the monthly instalments, afterwards desires to pay in lump sum shall be allowed to pay the balance amount of the total cost after adjusting the instalments already paid by him on Net Present Value @ 8% Discounted Cash Flow. The monthly instalments shall cease from the date, the entire cost is so paid by the consumer in all cases.



6. Regulation 9 provides that in cases where the cost of works of supply is invested, either fully or partially, by the licensee under approved investment plan, the same, along with interest, will be recovered from the concerned applicants in instalments. Similarly, the second proviso to Regulation 6 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, as reproduced in para-5 above substantiates that, except for the dedicated system required to be provided for supply of power to the consumer premises, the applicant consumer is one of the beneficiaries bearing a part of the cost and the balance cost paid by him shall be refunded to him when such cost is recovered from subsequent applicant(s).

7. The HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 thus enshrine the basic spirit that each applicant would pay for (i) the cost of dedicated system to be erected for supply of power to him; and (ii) the cost of certain common system, actually created or to be created, for supply of power to the applicant(s), on pro rata sharing basis. Such works covered in (ii) above for which the cost is to be borne by the applicant(s) on pro rata basis, by virtue of their nature form a part of the infrastructural works as there are more than one beneficiary under such arrangement. These could normally include creation of a new substation or augmentation of the transformation capacity at a substation, as the case may be, and the electrical lines connected to such substation (one each on the incoming and outgoing side) and could involve various combinations of voltages and capacities of the substations and the electrical lines as well as the length(s) of the electrical line(s) required for various applicants. Based on the spirit enshrined in the aforesaid Regulations, as described above, each applicant must pay for the cost of such infrastructural works in proportion to the estimated usage of such works by him irrespective of the voltage and capacity of the transformer/sub-station and lines. This not only meets the natural ends of justice but is also in conformity with provisions of section 46 of the Electricity Act, 2003. Accordingly, the cost of new substations or the augmentation of transformation capacities, as the case may be, actually provided or to be provided, for supply of power to the applicant should be shared by the applicant on per MVA basis and the same for each section of the line(s) should be shared by the applicants on the basis of per MVA per Kilometre. However, in cases where, in the beginning, there are not many applicants to fully utilize the capacity of such infrastructural works, the balance cost of such works ( i.e. after deducting the pro rata share of the applicant on the above lines) shall be invested either by the licensee or by the applicant in accordance with Regulation 6(1) of the aforesaid Regulation and should, after recovery from the subsequent applicant(s) along with interest, be passed on to the party (i.e. licensee or the original applicant) which actually invested such balance cost.

8. Even though as per regulation 8 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, the applicant is required to deposit, before the commencement of the work, 100% payment on notice of demand, the Supply Code also contains some special additional provisions relating to power availability certificates (PACs) for loads exceeding 100 KW. In accordance with para 3.2.4 of the Supply Code, PAC to be issued as per the provisions of the said Code shall be valid for a period as may be mutually agreed by the licensee and the applicant but not exceeding three years. It thus become binding for the licensee to provide

connection within a reasonable period if the application is received from the applicant within the validity period of PAC. On the other hand, the Supply Code provides for certain payments in shape of adjustable advance by the applicant as a pre condition to the issuance of the PAC. The PAC thus form an understanding between both the parties i.e. licensee and the applicant and both the parties are expected to carry out parallel activities for supply and drawal of power. The common works as referred to in para 7 above, which by virtue of their nature form a part of infrastructure to be provided at the cost of the applicant(s), may normally involve longer timelines for their execution and as such may require advance action by the licensee for creating such systems in anticipation of the receipt of applications, preparation of estimate for each applicant and compliance of the codal formalities by the applicants.

9. In view of the foregoing and to adhere to the provisions relating to the time limits for release of connection by the licensee to the applicant, as specified under the HPERC (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004, it thus normally becomes necessary for the licensee that the infrastructural works, as described above, are taken up in hand even before the receipt of applications from all the applicants to be fed from such systems particularly when the timelines for execution of such works may also require coordination with the programme for release of connections to the other applicants in the area. The requirements with regard to time limits as well as availability of funds for the purpose are obviously more predominant in case of higher loads. The provisions contained in para 3.2 of the HP Electricity Supply Code, 2009 with regard to payment of advance amount @ Rs. 1000 per kW/kVA takes care of this requirement to a considerable extent as this provides for payment of certain amount as adjustable advance to the licensee to enable it to take up such works, in advance of the actual receipt of the application for the various applicants requiring connection in the area, preparation of estimates for each applicant and compliance of requirement by them. Even though the term "Infrastructural Developmental Charges" has not been defined in the said Supply Code or in the aforesaid Regulations, the adjustable advance amount to be paid by the applicants on the aforesaid account at the time of obtaining PAC can be aptly termed as Infrastructural Developmental Charges. The amount so collected by the licensee is however, required to be adjusted by the licensee at the time of issuance of the demand notice in accordance with para 3.1.4 of the Supply Code, against the estimated amount payable as per the various provisions and the spirit enshrined in the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 as described above. In this connection it is worth mentioning that in addition to such common works forming one part of the infrastructural works to be provided at the cost of applicants, the licensee has also to make arrangements for the upstream systems for which funds are normally required to be arranged by the licensee by including the same in the investment plan.

10. From the harmonious reading of various provisions of the aforesaid Regulations read with the provisions of Supply Code as well as Section 46 of Electricity Act, 2003, it is amply clear that the amount of Rs.1000 per kW/kVA payable by the applicant at the time of obtaining power availability certificate is an adjustable advance amount to be given by the applicant to the licensee at a fixed rate so as to enable the licensee to meet the cost of infrastructural works i.e. transformer, sub-station, line etc. (excluding extension of line from existing net-work to the

consumer premises, being a dedicated work) as are normally required to be taken up in anticipation of receipt of applications from the applicant and preparation of estimates for individual applicants keeping in view the overall requirement. Since the applicant is one of the beneficiaries, he is liable to share proportionate cost of such infrastructure. As described above, the Regulations further provide for sharing the balance cost of such infrastructure, whether invested by the original applicant or by licensee through the approved investment plan, by the subsequent applicants on the same principles.

11. For adjustment of such amount, it is essential that when the applicant applies for supply of electricity to the premises, the estimate has to be prepared and communicated to him after adjustment of Rs. 1000 per kW/kVA, indicating recoverable part/ recoveries thereupon from the applicant. Within 3 months after release of connection, the licensee has to render to the applicant consumer, the account of expenditure showing the excess or deficit in relation to initial estimated amount and any refund to the consumer in the event of deficit expenditure or recoveries in the event of excess expenditure shall be regulated as per the regulation 6 (2) of the HPERC (Recovery of Expenditure for Supply of Power ) Regulations, 2005 and final adjustment shall be done accordingly. However, if the applicant fails to submit the application for supply of power within the validity period of the PAC or declines to take the supply, the said amount of Rs. 1000 per kW/kVA shall be regulated as per para 3.2.6 of the Supply Code.

Commission clarifies accordingly.

  
(Subhash C Negi)  
Chairman.