



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

In the matter of:

M/S Vardhman Polytex Limited, Village Nangal Nichla, Swarghat Road, Nalagarh, 174101

– Complainant

Vs

- 1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
 - 2. Assistant Engineer (E), ESD No. 2, HPSEBL, Nalagarh, District Solan HP-174101**
 - 3. Sr Executive Engineer (E), Electrical Division, HPSEB Ltd, Nalagarh, District Solan HP 174101**
 - 4. Sr Executive Engineer (E), Electrical System Division, HPSEB Ltd, Nalagarh, District Solan HP 174101**
- Respondents**

Complaint No.: 23/2020, Registered on 13/07/2020
(Decided on 19/10/2020)

CORAM

K L Gupta
HP Electricity Ombudsman

Counsel for:

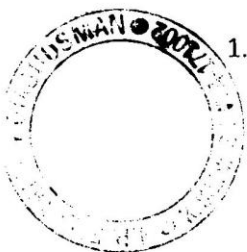
Complainant: Sh. Rakesh Bansal
Respondent: Mr Anil Kumar God, Advocate

Order

The case was registered on 13/07/2020 and sent for reconciliation on 15/07/2020. Since no communication was received for reconciliation approach, the case was listed for hearing on 05/09/2020. The Respondents didn't file their reply by 05/09/2020 and time was given till 19/09/2020 with rejoinder by 26/09/2020. The case was listed for final arguments on 26/09/2020. The Sr Xen Nalagarh informed that they have initiated refund under Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 for 69,31,000/- which was put on hold due to arguments on 26/09/2020. Written arguments were sought by 06/10/2020 and the orders were reserved. Hence the delay.

A – Brief facts about the case.

- 1. M/S Vardhman Polytex Limited, Village Nangal Nichla, Swarghat Road, Nalagarh, 174101 has filed an application through Sh. Amit Pandey (hereinafter called as 'The Complainant')**



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under regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the orders passed by Consumer Grievances Redressal Forum on 22/10/2019 in Complaint No. 1432/2/19/022, dated 19/06/2019.

2. The Complainant has prayed for modification of the orders of the Forum, order refund of Infrastructural Development Charges wrongfully recovered from him contravening the provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and order interest on amount claimed in excess and kept by the Respondents.

B - The Complainant's submissions:

1. The Complainant submits that this representation is being filed in accordance with the HPERC (CGRF & Ombudsman) Regulations, 2013 as the applicant/ Complainant is aggrieved by the orders dated 22/10/2019 passed by the Ld. Forum in the Complaint No. 1432/2/19/022 titled as Vardhman Polytex Limited v. HPSEBL and others, whereby the Consumer Grievance Redressal Forum of HPSEBL had observed that the procedure laid down in the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations has been vitiated. The Complainant is **aggrieved due to the non-compliance of the orders of the Forum**, in spite of sufficient time period of six months having given by the Forum and partially on account of unclear/ non-specific orders of the Forum in respect of the actual liability of the Complainant. The Forum passed general orders, without discussing the specific amounts about which the questions were raised by the Complainant. The Forum held that the Respondents have erred and ordered them to provide details as per Regulations within a period of six months and determine the exact liability of the Complainant within the said period. Besides, having other specific grievances with respect to orders of the Forum, the Complainant was left with no choice than to wait for the period of six months which expired on 21/04/2020 in order to see the result of such overhauling before approaching the Hon'ble Ombudsman. The Complainant is thus approaching the Hon'ble Electricity Ombudsman as no such computation of exact liability was communicated to the Complainant in spite of the directions of the Forum. Besides this, the **Complainant also has specific grievances against the orders of the Forum** besides non-implementation of the orders of the Forum.
2. The Complainant submits that he was committed a load of 7200.00 kW at 220 kV supply voltage from Uperla Nangal 220/66 kV substation which was commissioned on 02/07/2010. The substation was created to supply output power at 66 kV to Nalagarh Sub-station, Mandhala and many other 66/33/11 kV substations in the area. This substation receives



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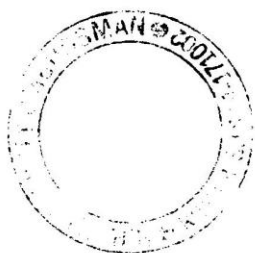


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supply from PGCIL network at 220 kV bus connecting Uperla Nangal, Mandhala, Baddi, Kunihar, Panchkula etc.

3. He further submits that Power Availability Certificate (PAC) was issued on 18/04/2011 on various terms and conditions. The condition number 2 of the PAC, expressly stated that Infrastructure Development Charges shall be governed by HPERC Regulation 419/2005 and an advance cost share towards IDC @ Rs. 1000/- per kVA amounting to 72 lakhs was recovered by the Respondents at the time of issuance of PAC vide R. No. 0100499 dated 13/04/2011 as per provisions of the Supply Code, 2009 and the terms of PAC.
4. The Complainant submits that the PAC envisaged the supply at 220 kV from the incoming of 220/66 kV sub-station at Uperla Nangal. A dedicated bay was constructed on the incoming side of the sub-station at the cost of the Complainant after the grant of PAC and also a dedicated service line was erected by Complainant, the cost of which was also separately incurred by the Complainant including inspection charges. The Complainant in no way has been utilizing the 220/ 66 kV step down transformers installed at the sub-station as the supply of the Complainant branches out from incoming side of the sub- station. The output at 66 kV from the two transformers installed at this substation transmits power to 66 kV bus and as a result reaches different 66/ 33 kV and 66/ 11 kV substations in the area including Nalagarh.
5. The Complainant further states that he submitted application for load on 15/02/2012. Sanction letter was issued by the Respondents on 05/05/2012 for 7200 kW/ 5000 kVA of load. The Respondents demanded a sum of Rs. 78.00 lakhs paid by the Complainant vide receipt number 2075348 dated 30/06/2012 and a further sum of Rs. 18.00 lakhs paid by the Complainant vide R. No. 2076318 dated 04/08/2012 in addition to the advance cost share of Rs. 72.00 lakhs paid at the time of granting PAC. The detail of payments in respect of IDC towards sub-station cost have been tabulated below:
6. The Respondents as a whole recovered the following amounts towards the Infrastructure Development Charges from the Complainant:

Sr. No.	Date	R. No.	Amount (Rs.)
1	13/04/2011	0100499	72,00,000.00
2	30/06/2012	2075348	78,00,000.00
3	04/08/2012	2076318	18,00,000.00
		Total	Rs. 1,68,00,000/-

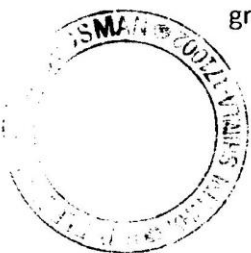


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7. The Complainant submits that the Respondents at that time were not clear regarding the actual liability of the Complainant towards IDC and thus wrongly charged the lumpsum estimated cost of the whole scheme of the Uperla Nangal Sub-station. The amount recovered appears to be based on the estimated cost of the scheme that was conveyed to them vide circular dated 29/03/2012 by the Chief Engineer Commercial. The Respondents on tentative basis got deposited the above sum of Rs. 1.68 Crores, which was required to be settled later as per the Regulations.
8. The Complainant submits that his load was sanctioned vide sanction letter dated 05/05/2012. On 18/05/2012 HPERC (Recovery of Expenditure for Supply of Electricity, 2012) was notified, which superseded the earlier regulations of 2005. The regulations of 2012, notified that the infrastructure development charges will be recovered from the Consumers at normative rates, whereas the earlier regulation of 2005 provided for recovery on the basis of actual cost, the mechanism of which was also detailed in the said regulations.
9. The Complainant submits that his load was released on 13/08/2012 (*On 14/08/2012, the SCO was dated 13/08/2012*). The account of expenditure was to be provided by the Respondents within three months of the date of release of connection. After the issuance of notices to many Consumers in 2012, many Consumers went into litigation on the recovery of infrastructure development charges even up to the level of Appellate Tribunal of Electricity. The matter being sub-judice in respect of some Consumers, the Respondents stopped issuing notices and waited for the decision of the court in the matter.
10. The Complainant further submits that the HPERC finally issued clarificatory orders dated 05/10/2016, in suo-moto petition 25/2016 on the directions issued by APTEL, clarifying the mechanism to be followed in overhauling the advance cost share received from the Consumers before which the overhauling of accounts of the Consumers were put to a halt by the Respondents pending litigation before APTEL and the Commission. The Respondents thereafter again issued notices to the Consumers from which the amount was recoverable. But, the Respondents did not care to refund the amount to such Consumers, to whom the amount was already recovered in excess. The Complainant after waiting for considerable duration of time for overhauling of IDC account as per HPERC's order, had written a letter to the concerned field offices, but no response was received in any form from the Respondents, who chose to remain silent on the issue of overhauling. The Complainant approached the Consumer Grievances Redressal Forum for proper lawful redressal of his grievance vide Complaint number 1432/2/19/022.

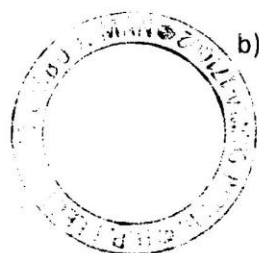


Accepted
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11. The Complainant submits that the CGRF then passed orders dated 22/10/2019, vide which the Respondents were directed to determine the exact liability of the Complainant towards infrastructure development charges and adjust the excess / deficit in the energy bills issued to the Complainant as per Regulation of 2005. A period of six months was provided by the Forum for carrying out such an exercise.
12. He further submits that no communication with regard to the exact liability of the Complainant was received from the Respondents up to the expiry of period of six months, which expired on 21/04/2020. Since the working of the office of Ld. Electricity Ombudsman was adversely affected by the lockdown since March, 2020 and also since fresh appointment of the Electricity Ombudsman was in process the Complainant could not file this representation before the Ld. Ombudsman earlier.
13. **Non-implementation of Forum's Orders:** The Complainant submits that the applicant is aggrieved with the fact that the orders passed by the applicant has still not been implemented by the Respondents even after a long time, over and above the time period of 21 days provided vide Regulation 27 of the HPERC (Consumer Grievances Redressal and Ombudsman) Regulations 2013. The implementation of the order was to be carried out by 21/04/2020 as per Regulations. The Respondents did not even exhaust the remedy available with them to file a review with the Forum within a period of 30 days allowed to them under the Regulations. The Respondents neither challenged nor communicated to the applicant any intention of agitating the matter in any further court of law or any other remedy available to them. Regulation 28 (c) of the HPERC (CGRF and Ombudsman) Regulations, 2013 provides for filing of representations before the Ombudsman if the Complainant is aggrieved by non-implementation of the Forum's order.
14. **Calculation of IDC recoverable from Complainant for creation of common infrastructure**
- a) **Preliminary Contention:** The Complainant submits that the orders of the Forum are bad in the eyes of law and liable to be modified, as the same has not been issued as per the Regulations framed under the Electricity Act, 2003 by Himachal Pradesh Electricity Regulatory Commission. Regulation 26 (4) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 reads as ***"The order of the Forum shall be reasoned and the reasons given by the Forum in support of the order, including those by the dissenting member, if any, shall form a part of the order, and the Members who heard the matter shall sign the order."***
- b) The Complainant submits that the orders issued by the Forum in this Complaint lacks reasoning and orders are silent on most of the issues raised by the Complainant. The CGRF has passed a general order that the process defined in the Regulations of 2005 has been



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vitiated, while deciding on the issue that in the case of the Complainant, the provisions of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 shall apply, which is not being specifically contested by the applicant/ Complainant in this representation.

- c) **Specific Contentions on Merit:** The Complainant submits that the Respondents have contravened the provisions of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 in various ways, some of which are highlighted below and forms the part of the contentions/ grounds of this representation.
- d) The Complainant submits that he had taken connection from the input line at 220 kV of the Uperla Nangal 220/66 kV substation, while incurring the entire dedicated cost for creation and alteration of the bay and other equipment that was required for providing the connection. It is also specifically denied that the sub-station was created on the specific request of the Complainant. The Respondents having created this substation for other needs of the area and was transforming 220 kV to 66 kV with a capacity of 200 MVA. When the Complainant approached the Respondents for a connection of 5 MVA demand, the sub-station already existed and was commissioned since 02/07/2010. Supply at 220 kV from the incoming bay of 220 kV was tapped to provide supply to the Complainant and the 220/66 kV transformers were totally bypassed and does not form a part of the channel providing supply to the Complainant. Therefore, there is no justification or rationale for claiming the cost of the 220/66 kV transformers on pro-rata basis from the Complainant as was being charged from 66 kV applicants. The Complainant has reasonable doubts that the cost of these transformers has also been included while determining the infrastructure development charges claimable from the Complainant and this is a major part of the amount of Rs. 1.68 Cr recovered from the Complainant.
- e) The Complainant submits that it is also specifically provided in the Regulation 5 (a) of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 that the licensee can recover only such cost of the line, which has to be created for providing supply to the Consumer, if only such provision is required. The relevant portion of the said Regulation is reproduced below:

“5. Specific provision for extra high tension supply: (1) The following provisions shall apply for extra high tension supply.-

(a) In case of application for new connection, where such supply requires only extension of extra high tension line from the existing transmission substation to the Consumer's premises, the distribution licensee shall estimate and recover the cost of such line and the cost of terminal and metering arrangements at the premises of the Consumer, but not

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including the cost of meter and current transformer and/or potential transformer used for metering. The distribution licensee shall estimate and recover the cost of line on per kilometer basis and the cost of metering arrangements based on the latest cost data as published by the transmission licensee;

....."

- f) As per this regulation, the Respondent was entitled to recover the cost of extension/ dedicated line required for providing supply to the Complainant. The total cost of such extension as was required, was incurred by the Complainant. The said line was constructed on self-execution basis. Rs. 1.68 Cr was recovered towards common infrastructure over and above the cost of this line.
- g) The Complainant submits that the Respondent has also failed to comply the Regulation 6 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. The Respondent has remained silent on these provisions and have failed to provide account of expenditure and refund the excess amount refundable as per HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. **The Respondent thus has committed an intentional fraud by not disclosing the facts as were required under the regulations. Regulation 6 (2) clearly provides for a transparent procedure to be adopted by the Licensee in final settlement of accounts. The settlement of accounts has been kept pending and the accounts have been concealed by the Respondents. Even the orders of the Forum, vide which the time period of six months was again ordered by the Forum, to provide the detail as per regulations, have not been complied with.**

"6.

(2) The licensee shall render to the applicant/ Consumer the account of expenditure showing the excess or deficit in relation to initial estimated amount within three months after release of connection giving details of item wise estimation and actual expenditure along with the item wise figures of variance to the extent possible and, if applicant requires any additional information, the distribution licensee shall furnish the same within ten days of receipt of such requisition;

Provided that where the actual expenditure;

(a) is less than the initial estimated cost by more than 3% the licensee shall refund the excess amount, within 30 days from the date of submission of the account, or

(b) exceeds the initial estimated cost by more than 3%, the applicant shall pay the difference between the initial estimated cost and the actual expenditure to the extent of 3% only and any amount in excess of 3% shall be borne by the licensee.

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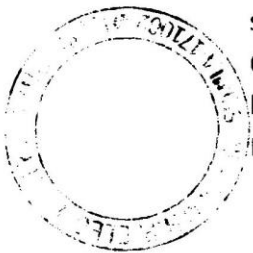
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(3) Notwithstanding anything to the contrary contained in these regulations the expenditure on the electrical plant and/or electric lines incurred from any grant or subvention from the Central or State Government or any other agency shall not be recoverable.

....."

- h) The Respondent is unable to explain under which provision of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, the amount of Rs. 1.68 Cr have been claimed from the Complainant. It is the right of the Consumer to know the nature of such recovery and the governing law under which the said amount has been recovered by the Respondent.
- i) The line feeding the Uperla Nangal Sub-station is not a distribution expense. This line being an asset of the transmission network is a part of CAPEX (Capital Expenditure Plan) and in general such schemes are funded and aided under various schemes announced by Central Government agencies. Such assets form the fixed assets of the Licensee and the cost of such assets, if incurred by the Licensee is recovered through tariff in the Annual Revenue Requirement (ARR) approved by the Himachal Pradesh Electricity Regulatory Commission on year to year basis by way of charging depreciation in Profit and Loss statement as well as ARR spread over many years. The Respondents thus are not entitled to recover any part of the cost of the line constituting non-dedicated infrastructure.
- j) The incoming line of the Uperla Nangal must have been of a capacity to serve more than 200 MVA as it is already serving the Uperla Nangal transformers which are rated at 200 MVA. Also, in addition, this line is serving the Complainant to an extent of 5 MVA. There could be other substations/ Consumers also being served by this line. Even if the cost of the line is not being funded as explained above, which is not claimable as is explained in para above as it was a pre-existing line when the Consumer actually came to apply for a power connection.

15. **Prayer:** The Complainant prayed that the representation may kindly be allowed and the findings of the Consumer Grievances Redressal Forum in the order dated 22/10/2019 passed in the Complaint number 1432/2/19/022 in the Complaint titled as Vardhman Polytex Limited Vs. HPSEBL and others, whereby the Ld. Forum has partially granted the relief sought in the Complaint but in indirect terms, is bad in law and deserve to be modified suitably in the interest of justice or any further orders which this Hon'ble Electricity Ombudsman may deem fit and proper. In the facts and circumstances of the case may kindly be decided in favour of the Complainant Company and against the Respondents/ Distribution Licensee.



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16. He further prays: a) to modify suitably or issue fresh orders in the interest of justice; b) to order refund of Infrastructure Development Charges Rs. 1.68 Crores, which have been recovered wrongfully from the Complainant contravening the provisions of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005; c) to order interest @ 15% or a rate as per applicable regulations, on the period for which the amount claimed in excess was kept by the Respondents; d) to condone the delay, if any, in the filing of this representation, due to uncertain travel conditions prevailing in the country due to onset of the pandemic Covid 19, which has resulted in the curbs on travelling, that resulted in delay in signing of the representation; e) cost of Complaint to an extent of Rs. 2,00,000/-; f) call for the record of the case and g) any other or further orders which this Hon'ble Ombudsman may deem fit and proper, in the facts and circumstances of the case may kindly be passed in favour of the Complainant company and against the Respondents/ Distribution Licensees.

C – The Respondents' submissions:

1. The Respondents submits that as per Forum's order on dated 22/10/2019 to provide the initial estimate and subsequent account of expenditure to the Complainant which was mandatory under the regulation, the details of actual expenditure has already been submitted to the Complainant on dated 25/06/2020 as per the orders of Hon'ble Consumers Grievances Redressal Forum by Electrical System Division, Nalagarh vide his office letter No.HPSEBL/ESDN/E-23 (Court case)/2020-711-14. The delay in submission was due to this pandemic Covid-19 lockdown period. Further it is denied that the Hon'ble CGRF had vitiated the HPERC (Recovery of Expenditure for Supply of Electricity).
2. The Respondents submits that the Consumer had deposited a sum of Rs. 1,68,00,000/- as lumpsum amount. They submitted that as per interim order dated 15/07/2020 of this Hon'ble Forum for reconciliation the matter, they had arranged a personal hearing on dated 30/07/2020. The basic issues raised by the Consumer was clarified from the higher authority. As per the direction of competent authority the Consumer is liable to pay the IDC as per normative rates as the connection of the Consumer was released after 23/05/2012. They have already calculated the amount at normative rates and the Consumer is liable to refund excess amount of Rs. 69,31,000/- which has already been sent for approval from higher authority.
3. The Respondents submits that as per forum's order on dated 22/10/2019 to provide the initial estimate and subsequent account of expenditure to the Complainant which was mandatory under the regulation, the details of actual expenditure has already been submitted to the Complainant on dated 25/06/2020 as per the orders of Hon'ble Consumers Grievances Redressal Forum by Electrical System Division, Nalagarh vide his office letter No.HPSEBL/ESDN/E-23(Court case)/2020-711-14. The delay in submission was



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- due to this pandemic Covid-19 lockdown. Further it is denied that the Hon'ble CGRF had vitiated the HPERC (Recovery of Expenditure for Supply of Electricity).
4. The Respondents submits that the Consumer is liable to pay the IDC charges at normative rates which was decided by the HPSEBL as the connection of Consumer was released on 13/08/2020. So the Consumer is liable to pay as per normative rates irrespective of supply voltage.
 5. The Respondents submitted that the IDC matter was under consideration in HPERC which was later decided on 27/11/2012 and notified wide Chief Engineer (Comm.) HPSEBL office letter No. HPSEB/CE (Comm.)/Misc-IDC/2012-16509-574 dated 07/12/2012 for which Demand Notices were issued to Consumers in 2014. But some Consumer approaches various courts against notices issued during 2014. HPERC vide order dated 05/10/2016 in Suo-Moto case no. 25 of 2016 has issued a mechanism for the adjustment of Advance Cost Share towards Infrastructure Development Charges paid under paragraphs 3.2.2 and 3.2.5 of the H.P. Electricity supply Code, 2009 as per directions on Hon'ble Appellate Tribunal for Electricity. In compliance to order dated 05/10/2016 in Suo-Moto petition No. 25 of 2016. Hence the IDC of the Consumer was not calculated with time frame.
 6. Tr submits that the Complainant's apprehensions are on mere speculation without any record. The Complainant is saying that being an asset of the transmission network this line is a part of CAPEX and are funded and aided under various schemes announced by Central Government agencies. The depreciation, interest & other expenses are not included in ARR. The expenditure recovery has been done in accordance with HPERC regulation 419/2012 and in ARR filed all these sub-station expenditures have been included as Consumer contributions. Moreover depreciation also cannot be claimed in ARR for assets funded by capital subsidies /grant.
 7. They further prayed that the Complaint filed by the Complainant may kindly be dismissed with cost.

D – The Complainant's additional submission through rejoinder:

1. The Complainant submits that he repeat, reiterate and confirm all the statements and averments made by them in the Complaint. He further deny all the statements and averments made in the said reply unless and until the same are specifically admitted by the Complainant Company.
2. The Complainant submits that the Respondents has merely provided the extract of the cost incurred in the overall scheme titled as "Providing and strengthening EHV system at Nalagarh and Baddi by providing 220/66 kV sub-station at Nangal Uperla". He further

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submits that the Respondent has not given any detail so as to the calculations of the liability of the Complainant on account of infrastructure development charges as per HPERC (Recovery of Expenditure) Regulations, 2005 or any other relevant regulations. The Respondents have still not complied with the orders passed by CGRF in the Complaint. The detail of the scheme which has been provided is of the 220/ 66 kV substation catering to the needs of 66 kV output, whereas the Complainant's supply is at 220 kV.

3. The Complainant submits that the Respondents have admitted and agreed to the amount deposited by the Complainant i.e. Rs. 1,68,00,000/- as a lump sum amount. The reply accepted to the extent a reconciliation meeting was held at the office of the Sr. Executive Engineer, Electrical Division, Nalagarh to discuss and reconcile the issue. But the proceedings of the said meeting were not recorded though. He denied that the normative rates of IDC are applicable in the present case and the directions issued by the competent authority are not as per the applicable rules and regulations, who is basing the liability of the Complainant on the date of release of connection, rather than rules applicable on the date of PAC, which was binding on both the parties. The Respondent is attempting to take advantage of the transition period between the old and the new regulations relating to infrastructure development charges. The Complainant is eligible for a much larger refund than what has been recommended by the Respondents to the higher authorities. The Respondents in the letter attached with reply have also stated that the power connection was sanctioned on 17/05/2012, which was too before the notification of the new regulation and deserves specific attention in the present case.
4. The Complainant denied as what the Respondent is considering as compliance is not compliance in actual terms, when the order of the CGRF is read carefully. The Respondents have miserably failed in complying with the orders even with delay. The Respondents also failed in addressing the basic issues raised by the Complainant in the Complaint filed before the CGRF. The intentions of the Respondents are not clear as even the recommendation sent to the higher authorities have till date not been allowed and no such refund, even to the extent admitted by the Respondents have actually seen the light of the day. If at all such refund has been sanctioned, the copy of the same has not been provided to the Ld. Electricity Ombudsman. The Respondents have stated that

"Further it is denied that the Hon'ble CGRF had vitiated the HPERC (Recovery of Expenditure for Supply of Electricity)."

The question in this representation is vitiation of the process by the Respondents, but not on the part of the CGRF.

5. The Complainant submits that the Respondents are mainly quoting the relevant regulations applicable in the present case. Nowhere, the regulations say that the applicability is based



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on date of release of power connection, which is time and again being stated in the reply by the Respondents. The Respondent has not quoted any extract of the regulation to support their contention.

6. The Complainant submits that the Respondents have miserably failed in making the IDC recoveries in a transparent manner as was the true spirit and the intention of the Regulations, in which a provision has been kept to provide detailed account to the Consumers. There are thousands of Consumers to whom even to this date the detailed account has not been provided. It is only the Consumers who have approached the authorities by way of litigation, who have been successful to get some justice. It is definitely and intentional fraud, by claiming the cost of the schemes in duplicity. On one hand such costs were accounted in the CAPEX and costs such as depreciation and interest etc. in the ARR, which finally recovers such cost in the tariff chargeable to the Consumers, whereas on the other hand the cost of entire scheme and common works was also recovered from the Consumers or individual Consumers. The Consumers, therefore, have been cheated and hence the term fraud has been used in the Complaint / representation.
7. The Complainant submits that the Respondent has pointed out that the allegations levied are merely on the basis of suspicions. Had the Respondents been transparent, they would have submitted to this Hon'ble Ombudsman the details relevant to such costs being taken in CAPEX in order to remove the suspicion. Had such information and the detailed CAPEX expenditure been in the public domain, the Complainants would have come with specific figures to prove their contention.
8. The Complainant submits that the Respondents are only entitled to recover the infrastructure development charges of the system that was created for the use of the Complainant specifically but not the schemes which were being funded under CAPEX as a normal business investment.
9. The Complainant submits that none of the issues of the present representation have been disposed by the reply filed by the Respondents. They have not implemented the Regulations in the manner they should have been. The Respondents are still not resolving the dispute in a time bound manner, which is further increasing their liability towards interest payment. He once again prayed to grant relief as prayed in the Complaint.

E – Written submissions by the Complainant:

1. The Complainant has not submitted any written arguments.



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F – Written arguments by the Respondents:

1. The Respondents submits that the load of 7200 kW with 5000 kVA demand was released in favour of Complainant from 220/ 66 kV sub-station Uperla Nangal at 220 kV supply voltage on 13/08/2012.
2. They submitted that the PAC was issued to the Complainant on 18/04/2011 where it was envisaged that Complainant had to furnish an undertaking at the time of load sanction to an effect to pay IDC as per the decision of HPERC. The load of the Complainant was sanctioned on 17/05/2012 with certain terms and conditions. Wherein vide condition No. 25, which is being produce as under:-

“The Consumer shall deposit cost towards expenditure for supply of electricity as per HPERC Regulation bearing No. 419 for which an undertaking to pay amount as per HPERC regulation is to be given by the firm duly authenticated by class-1 Executive Magistrate before release of load. Further the undertaking to pay balance infrastructure development charges as per decision of Hon’ble HPERC shall be obtained before release of load”.

3. The Respondents submits that the Complainant had entered in agreement with the HPSEBL on the basis of IDC charges as per the decision of HPERC payable at the time of release of load.
4. The Respondents further submits that in compliance of orders passed by Hon’ble HPERC in Suo-Motto case 25/2016 and in light of the instructions issued by Chief Engineer (Comm.) issued vide letter No. HPSEBL/CE(Comm.)/APTEL/Vol-1/2016-10021-10135 dated 01/11/2016 and No. HPSEBL/CE(Comm.)/Misc-IDC/2012-16509-574 dated 07.12.2012 and also as per the terms and conditions of the load sanction order the date of applicability of IDC charges will be same as the date of release of connection.
5. The Respondents submits that since in this case, load was finally released on 13/08/2012 so as such normative IDC rates as per recovery of expenditure for supply of electricity 419/2012 should be applicable to the Consumers to whom connection has been released after 23/05/2012 i.e which is 13/08/2012 in the Complainant case and same is applicable.
6. The Respondents submits that the total amount of Rs. 1,68,00,000/- was deposited by the Consumer at the time of PAC and load sanction/ release in the year 2011-12.the details of same is as under:-

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Sl. No.	Amount	Receipt No.	Date
1	Rs.72,00,000/- at the time of PAC	10049	13/04/2011
2	Rs.78,00,000/- at the time of load sanction	2075948	30/06/2012
3	Rs.18,00,000/- at the time of release of connection	2076318	04/08/2012
	Total		1,68,00,000/-

7. The Respondents submits that as the connection of the Consumer was released after 23/05/2012, hence the Consumer is liable to pay the IDC charges at the normative rates as intimated by Hon'ble HPERC. The net IDC charges applicable to Complainant comes out to be 98,69,000/- and the details of same is as under:-

Sl. No	Contract Demand	Normative rates	IDC amount
1	For first 30 kVA	300 per kVA	9000/-
2	For next 20 kVA	500 per kVA	10,000/-
3	For next 50 kVA	1000 per kVA	50,000/-
4	For balance contract demand (4900 kVA)	2000 per kVA	98,00,000/-
	Total 5000 kVA		98,69,000/-

8. The Respondents submitted that they had processed the refund to the applicant to the tune of Rs. 69,31,000/- (1,68,00,000-98,69,000) vide SE letter No. HC-II/CS-IDC/2020-21-5527-30 dated 26/09/2020 which was then put on hold on directions of Hon'ble Ombudsman vide its interim order No. HPEO/(Case no. 23/20)/2020-21-593-97 dated 26/09/2020.
9. The Respondents submitted that vide Regulation-25 of the HP Electricity Regulatory Commission (Recovery of Expenditure for supply of Electricity) regulation 2012, the HP

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Electricity Regulatory commission (Recovery of Expenditure for supply of Electricity) Regulations, 2005 have been repealed. However anything done or any action taken or purported to have been done or taken including any appointment made or any document or instrument or any direction given under the repealed regulations, shall be deemed to have been done, taken, made or given or purported to have been done, taken made or given under the corresponding provisions of these Regulations. Since the connection in the instant matter has been granted on 13/08/2012 i.e. after coming into force the new Regulations of 2012 on 23/05/2012, therefore, in view of the aforesaid provisions all the actions taken or done are to be deemed to have been done or taken under the corresponding provisions of the new Regulations of 2012, which means that in the instant matter the provisions of HP Electricity Regulatory Commission (Recovery of Expenditure for supply of Electricity) Regulation 2012 shall be applicable and it is accordingly prayed.

G – Analysis of the Complaint:

1. The case file at Consumer Grievances Redressal Forum have also been requisitioned and gone through.
2. The Complainant was committed a Connected Load of 7200 kW on dated 18/04/2011 at 220 kV through dedicated feeder from 220 kV sub-station Nangal Upperla at Nalagarh with pre-conditions specified at Sr No. 14 that power shall be made available subject to availability of power drawl from the source sub-station i.e. 400/ 220 kV sub-station of PGCIL at Nalagarh (Reru) to be confirmed by CE (SO) Shimla.
3. As per condition No. 15, the firm was to bear the cost of land, 220 kV bay at feeding point Nangal Upperla sub-station and being high energy consuming industry **shall have to bear the upstream Infrastructural Development Charges on cost sharing basis.**
4. Condition No. 2 of the PAC dated 18/04/2011 states that the Advance Infrastructural Development Charges deposited @ Rs 1000/- per kVA shall be adjusted after necessary modification in regulation 419/2005 i.e. Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and in the event of increase in rates of Infrastructural Development Charges by HPERC, the same shall be deposited by the firm & an affidavit to this effect shall be furnished by the firm at the time-of sanction of load. **Further, the cost sharing amount shall be intimated by CE (Op) South Shimla/ CE (ES) HPSEBL Hamirpur.**
5. The firm had deposited advance Infrastructural Development Charges amounting to Rs 72,00,000/- on 13/04/2011 as per demand notice by Respondents dated 16/02/2011 @ Rs

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- 1,000/- per kW which appears to have been done in absence of required Contract Demand in kVA.
6. Condition No. 6 of the PAC dated 18/04/2011 stated that **recovery of expenditure for supply of electricity shall be carried out as per Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005** bearing No. 419/2005 for which an undertaking to the effect to pay amount as per HPERC Regulations is to be given duly authenticated by Class-I Executive Magistrate at the time of application on prescribed format for sanction of load.
 7. The Complainant applied for connection through A&A Form which was entered by Respondent No. 2 on dated 15/02/2012 (LS 268). The load was sanctioned on dated 15/05/2012 by CE (Op) South, Shimla for 7200 kW Connected Load and 5000 kVA Contract Demand meaning thereby that the load was available from upstream 400/220 kV sub-station of PGCIL at Reru (Nalagarh).
 8. Condition No. 16 of the sanction stated that entire cost of the dedicated independent/ joint feeder alongwith bay and associated equipment at both ends shall be borne by the Consumer. **In addition to this the proportionate cost of feeding sub-station (including augmentation) and incoming line shall be recovered before release of connection as per prescribed per kVA cost circulated by Chief Engineer (Commercial) vide letter No. 22835-42, dated 29/03/2012.**
 9. The Complainant paid RS 78,00,000/- additional towards Infrastructural Development Charges on dated 30/06/2012. The load to the Complainant was released on 14/08/2012 after an additional deposit of Rs 18,00,000/- towards Infrastructural Development Charges on 04/08/2012. The total Infrastructural Development Charges paid by the Complainant before release of connection was Rs 1,68,00,000/- (Rs 72,00,000/- before PAC dated 18/04/2011 @ Rs 1,000/- per kW, Rs 78,00,000/- after sanction of load on dated 15/05/2012 and Rs 18,00,000/- before release of connection).
 10. Now the rate of Rs 1,000/- per kW has been taken from the clause 3.2.2 of Himachal Pradesh Electricity Supply Code, 2009. The Himachal Pradesh Electricity Supply Code, 2009 was notified on 26/05/2009 and Clause 3.2.2 states:

"3.2.1 The consumer shall apply, for grant of Power Availability Certificate, on payment of (i) the earnest money equivalent to the 10% of the initial security as specified in the Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2005; and

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- (ii) *advance cost share, towards infrastructural developmental charges, calculated @ Rs.1000 per kW/kVA of the load applied for.*
11. Sub-clause 3.2.1 (ii) specify the rates per kW/ kVA which is Rs 1,000/- per kW/ kVA. In case the load applied is in kVA, then the rates should be Rs per kVA and if the load applied is in kW then the rates should have been Rs per kW, whichever is applicable.
12. The PAC dated 18/04/2011 mention load in kW only and assuming that the load was applied in kW (there are no documents on record to suggest that the load was applied by the Complainant mentioning both Connected Load in kW and Contract Demand in kVA) by the Complainant, the rates per charges as Rs 1,000/- per kW before issue of PAC and accordingly RS 72,00,000/- were deposited on dated 13/04/2011 for 7200 kW Connected Load. However, the consumer applied for Connected Load as 7200 kW 15/02/2012 and with Contract Demand of 5000 kVA which was sanctioned on 15/05/2012.
13. Since the Complainant applied for Connected Load of 7200 kW and Contract Demand as 5000 kVA at the time of application and agreement form acknowledged on dated 15/02/2012, the additional amount of Infrastructural Development Charges amounting to Rs 22,00,000/- should have been either been refunded or adjusted in future demands from the Complainant i.e with additional demand towards IDC for Rs 78,00,000/- deposited by the Complainant on 30/06/2012 or with additional demand for IDC for Rs 18,00,000/- deposited by the Complainant on 04/08/2012 which appears to have not been done by the Respondents (there is no record to suggest otherwise of any adjustments made).
14. The 220 kV at 220 kV sub-station and Nangal Uperla, Nalagarh alongwith dedicated feeder and terminal equipment at both end were constructed by the Complainant. Further, since the load was released on 14/08/2012, after sanction on 15/05/2012, the capacity to supply was available at that time and further the 220/66 kV sub-station was already commissioned on 02/07/2010 and since the confirmation letter from the CE (SO) Shimla is also not available on record it can be safely concluded that the load was available much prior to even sanction/ release.
15. There is nothing on record to suggest that the cost sharing amount has been intimated by CE (Op) South Shimla/ CE (ES) HPSEBL Hamirpur as per condition No. 2 of the PAC dated 18/04/2011.
16. The Complainant deposited Rs 1,68,00,000/- in total towards Infrastructural Development Charges which was to be adjusted in line with the orders dated 05/10/2016 by the Commission in Suo-moto petition bearing No. 25/2016.



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17. Since the Respondents didn't take any action to adjust the Infrastructural Development Charges in line with decision of the Commission dated 05/10/2016 in suo-moto petition 25/2016, he approached the Consumer Grievances Redressal Forum vide Complaint No. 1432/2/19/022, dated 19/06/2019. The Forum passed an order dated 22/10/2019 wherein they ordered to render account of expenditure to the Complainant within next six months.
18. The Respondent No. 4 supplied expenditure of Upperla Nangal sub-station for 220/66 kV sub-station and 220 kV Double Circuit line from PGCIL Reru sub-station including the 66 kV Double Circuit line from Nangal Upperla to 66 kV sub-station Nalagarh as per estimates/ revised estimates on 25/06/2020. The said statement is just the estimated cost of upstream 220 kV and downstream 66 kV line including 220/66 kV sub-station and not the account of expenditure for supply of load to the Complainant as per regulation 6 (2) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.
19. Feeling aggrieved, the present Complaint has been filed with prayer for a) modifications of Forum's orders dated 22/10/2019; b) order refund of 1.68 Cr of Infrastructural Development Charges wrongfully recovered contravening the provisions of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005; c) order interest @15% for amount claimed in excess and kept by the Respondents and d) cost of complaint for Rs 2,00,000/-.
20. The Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 were notified on 18/05/2012 applicable w.e. from 23/05/2012. The load of the Complainant was sanctioned on 15/05/2012 and released on 14/08/2012. However, the load of the Complainant was committed on 18/04/2011. For the purpose of the recovery of expenditure, as per condition No. 6 of PAC dated 18/04/2011 and condition No. 25 of sanction dated 15/05/2012 (Regulation 2012 were not issued by then), the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 were applicable. The normative Infrastructural Development Charges fixed under Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 are not applicable to the Complainant.
21. Similarly, the refund now sanctioned on dated 26/09/2020 by SE Solan (Document produced on last hearing i.e. 26/09/2020) for Rs 69,31,000/- after adjustment of his cost share under provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 on normative basis is also not in line with the regulations applicable to the Complainant and accordingly the same was put on hold vide Interim Orders dated 26/09/2020 till outcome of the case.

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22. Further, as per condition No. 15 & 17 of the PAC dated 18/04/2011, the Complainant was to bear the cost of Infrastructural Development Charges for upstream infrastructure development on cost sharing basis.
23. The Complainant is not using the other infrastructure of 220/66 kV sub-station at Nangal Upperla, Nalagarh since he is using the 220 kV bus on incoming side of the sub-station only for his 220 kV dedicated feeder by constructing 220 kV bay and associate terminal equipment at HPSEBL end as well as at his own end. The Infrastructural Development Charges as applicable for other downstream consumers of 66/ 33/ 11 kV are not applicable to him. The rates notified by the Chief Engineer (Commercial) vide letter dated 07/12/2012 for Nangal Upperla, Nalagarh as Rs 3094/- per kVA are not applicable to him.
24. Moreover, the contention of the Complainant that the per kVA rates cost circulated by Chief Engineer (Commercial) vide letter No. 22835-42, dated 29/03/2012 have been used to work out the rates applicable to him appears to be not true since the same was supersede by rates circulated by the Chief Engineer (Commercial) vide letter dated 07/12/2012.
25. In line with provisions under regulation 5 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, the Respondents have to work out the prorata share of upstream 220 kV line and associated bays/ terminal equipment at both ends keeping in view the capacity sanctioned in kVA in respect of the Complainant vis-à-vis the total kVA capacity available for HPSEBL from 400/220 kV upstream PGCIL sub-station at Reru (Nalagarh) besides the other charges on prorata basis for maintenance of 220 kV bus at Nangal Upperla sub-station at Nalagarh and including the infrastructure such as control room, land development, maintenance staff etc at sub-station.
26. The orders of the Forum dated 22/10/2019 for providing account of expenditure in line with regulation 6 (2) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 have also not been implemented and instead the Respondents have supplied the total estimated cost of the Sub-station including upstream and downstream lines.
27. The Respondents contention that vide Regulation-25 of the HP Electricity Regulatory Commission (Recovery of Expenditure for supply of Electricity) regulation 2012, the HP Electricity Regulatory commission (Recovery of Expenditure for supply of Electricity) Regulations, 2005 have been repealed and anything done or any action taken or purported to have been done or taken including any appointment made or any document or instrument or any direction given under the repealed regulations, shall be deemed to have

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been done, taken, made or given or purported to have been done, taken made or given under the corresponding provisions of these Regulations 2012 does not hold good since the works done during the validity of the Regulation 2005 shall be covered under provisions of Regulations 2005 only.

28. The contention of the Respondents that as per the terms and conditions of the load sanction order the date of applicability of IDC charges will be same as the date of release of connection does not hold good since the load was committed and also sanctioned prior to applicability of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012. Further, the Forum vide orders dated 22/10/2019 had ordered them to provide account of expenditure in line with regulation 6 (2) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 having its applicability and not under regulation 2012 which the Respondents have itself assumed and taken action to refund the excess Infrastructural Development Charges recovered under normative rates of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 vide order dated 26/09/2020.
29. Since the Respondents supplied copy of the expenditure on dated 25/06/2020, much beyond the fixed time of six months after 22/10/2019, the orders of the Forum have not been complied by the Respondents within the time frame specified. Since the Complainant has not prayed for non-implementation of the orders and its reporting to the Commission, the matter is not being taken up.
30. After working out the per kVA rates, as mentioned above, in case excess amount has been claimed and kept by the Respondents, the Complainant is entitled to the simple interest @ 15% in line with Clause 5.7.3 of Himachal Pradesh Electricity Supply Code, 2009. Or in case the amount is due from the Complainant, the same has to be recovered with simple interest @15%.

H – Issues in question:

1. **Issue No. 1:** Whether the provisions under Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 or the provisions under Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 are applicable in this case?
2. **Issue No. 2:** Whether the orders passed on 22/10/2019 by the Consumer Grievances Redressal Forum in Complaint No. 1432/2/19/022 dated 19/06/2019 are in line with provisions of the relevant regulations?



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3. **Issue No. 3:** Whether the orders dated 22/10/2019 passed by the Consumer Grievances Redressal Forum in Complaint No. 1432/2/19/022 dated 19/06/2019 require modifications?
4. **Issue No.4:** Whether, in case the Infrastructural Development Charges has been claimed and recovered extra from the Complainant, the same qualifies for simple interest @15% on excess claimed and retained by the Respondents or vice versa in case the amount is recoverable from the Complainant.

I – Findings on the Issues:

Issue No. 1

1. As is evident from the analysis done above, the provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 are applicable in the present case since the load was committed vide PAC dated 18/04/2011 and sanctioned on dated 15/05/2012 under these regulations only.
2. The recovery of expenditure in respect of the Complainant has to be worked out in line with condition No. 2, 6, 15 & 17 of the PAC dated 18/04/2011, conditions No. 25 of the sanction dated 15/05/2012 and in line with provisions of regulation 5 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

Issue No.2:

1. As is evident from the analysis done above, although the orders passed by the CRGF on dated 22/10/2019 in Complaint No. 1432/2/19/022 dated 19/06/2019 are in line with provisions of regulation 6 (2) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 but the same are not in line with regulation 26 (4) of the said regulations.

Issue No. 3:

1. As is evident from the analysis done above, the orders dated 22/10/2019 passed by the Consumer Grievances Redressal Forum in Complaint No. 1432/2/19/022 dated 19/06/2019 require modification to the extent of the mechanism to work out the expenditure under provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

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Issue No. 4:

1. As is evident from the analysis done above, in case excess amount has been claimed and kept by the Respondents, the Complainant is entitled to the simple interest @ 15% in line with Clause 5.7.3 of Himachal Pradesh Electricity Supply Code, 2009. Or in case the amount is due from the Complainant, the same has to be recovered with simple interest @15%.

J – Order:

1. The orders passed by Consumer Grievances Redressal Forum on dated 22/10/2019 in Complaint No. 1432/2/19/022 dated 19/06/2019 are upheld and modified to the following extent.
 - a) The Respondents are directed to work out the rates of Infrastructural Development Charges to be charged from the Complainant in line with regulation 5 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 worked out on the prorata share of upstream 220 kV line and associated bays/ terminal equipment at both ends keeping in view the capacity sanctioned in kVA in respect of the Complainant vis-à-vis the total kVA capacity available for HPSEBL from 400/220 kV upstream PGCIL sub-station at Reru (Nalagarh) besides the other charges on prorata basis for maintenance of 220 kV bus at Nangal Upperla sub-station at Nalagarh and including the infrastructure such as control room, land development, maintenance staff etc at sub-station.
 - b) The Respondents are directed to provide account of expenditure statement used to work out the per kVA rates applicable to the Complainant in line with regulation 6 (2) of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 to the Complainant.
2. The Respondents are directed to refund the excess amount, if any, to the Complainant in case the excess amount has been claimed after working out the exact liability of Infrastructural Development Charges applicable @15% simple interest through adjustment in energy bills till actually adjusted. In case after working out the per kVA rates, there is amount due towards Infrastructural Development Charges to be recovered from the Complainant, simple interest @15% shall be applicable in that case also.
3. The Office Order dated 26/09/2020 issued by the SE Solan authorising refund of Rs 69,31,000/- to the Complainant through energy bills under provisions of Himachal

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Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 is quashed and set aside.

4. The Respondents are further directed to report compliance within a period of 45 days from the date of issue of this order i.e. latest by 3rd December 2020 positively.
5. The Complaint filed by M/S Vardhman Polytex Limited, Village Nangal Nichla, Swarghat Road, Nalagarh, 174101 is hereby disposed off.
6. No cost to litigation.

Given under my hand and seal of this office.



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