CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9.

No. CGRF/Complaint No. 1432/3/21/07 **Dated:-**

Complaint No.: -	**1432/3/21/07**
Date of Admission: -	**24.07.2021**
Quorum: -	**Er. Tushar Gupta, Chairman.** **Er. Vikas Gupta, Member I,** **Sh. K.S. Dhaulta, Member II.**

M/s Sunnox International
Vill & P.O Panjhera
Nalagarh Distt Solan **Complainant**

V/s.

1. The Executive Director (Pers.),
HPSEBL,Vidyut Bhawan,
Shimla-171004.

2. The Sr. Executive Engineer,
Electrical System Division,
Nalagarh Distt. Solan HP

3. The Sr. Executive Engineer,
Electrical Division, HPSEBL,
Nalagarh, Distt. Solan (HP).

4. The Assistant Executive Engineer,
Electrical Sub-Division No2 HPSEBL,
Nalagarh, Distt. Solan (HP). **Respondents**

Final hearing:- **04.06.2022**

Present for:-

Complainant 1 None.

Respondent 1. Sh. Anil Kumar God, Advocate

Date of Decision: - **04.06.2022**

ORDER

Brief Facts Of The Case –

(1) Complaint has been filed under regulation 16, 17 and 18 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.

(2) The complainant M/s Sunoxx International is a consumer of the HPSEBL and became so on 11.04.2018; The Power Availability Certificate (PAC) was issued on 11.03.2010 with the conditions that entire cost of 'dedicated 66kV feeder from 220/66kV Sub Station Nalagarh to consumer premises' was to be borne by the consumer, cost of joint feeder was to be shared between Industrial consumers and metering was to be done at the Substation for the dedicated feeder and for other consumers at the respective consumer premises; The Load Sanction Letter was issued on 31.08.2010 by the Respondent. A Demand Notice was issued by the Respondent HPSEBL to the Complainant for the payment of Rs 107.13 lacs against a total estimate of Rs 717.75 lacs for providing supply on 66kV voltage from 220/66kV Sub-Station Uperla-Nangal, Nalagarh in respect of which payments were made by the Complainant on 20.08.2011; and the Load (or connection) was released at 66kV supply voltage in favour of the Complainant by the Respondent on 11.04.2018 from Nalagarh Uperla-Nangal Sub Station pursuant to completion of codal formalities in accordance with the HP Electricity Supply Code 2009 and the consumer came into existence from this date.

(3) In the financial year 2011-12, construction of the 66kV dedicated feeder was undertaken on self-execution basis by the complainant and this was completed in the financial year 2018-19 and thereafter on 11.04.2018 Load was released to the complainant consumer by the Respondent HPSEBL.

(4) On 07.06.2018 the Complainant received a communication from Respondent that they shall be augmenting 33/11 kV Baglehar Substation to 66/11 kV and for connecting this the respondent shall be laying a second circuit or feeder on the existing 66 kV dedicated feeder structures supplying to the complainant; On 28.11.2018 Complainant wrote and requested the Respondent that - the Baglehar Sub Station being geographically close to the existing dedicated feeder connecting Nalagarh (Uperla-Nagal) to consumer premises, the existing 66kV dedicated feeder itself may be utilised instead of erecting the second circuit and that this would save money and time of the Respondent while also utilising the idle capacity

available on the existing dedicated feeder. For this cost sharing mechanism had been notified in the regulation 6 of HPERC (Recovery of Expenditure) Regulations, 2005 hereinafter referred to as the ‘RoE 2005 Regulations’ and accordingly the cost adjustments could be done. On 05.12.2018, Respondent HPSEBL sought details on the 66kV line, audited accounts of expenditure incurred for construction of the line and whether the Complainant will give the ownership of the line to Respondent HPSEBL. On 17.12.2018 the Complainant conveyed the details as were required by the Respondent while also conveying their No Objection to give ownership of line to the HPSEBL. Thereafter, a spate of communications followed / exchanged between the complainant and the respondent. The Respondents inter-alia conveyed the fact that the line was a ‘Service Line’ and that in accordance with regulation 4 of HPERC (Recovery of Expenditure) Regulations, 2012 hereinafter referred to as ‘RoE 2012 Regulations’, there was no provision for cost sharing of a service line and that in accordance with regulation 11 of these Regulations, the 66 kV line or dedicated feeder was the property of the licensee who had the right to supply electricity from such line. In the year 2021, the Baglehar Substation was connected by directly tapping the existing 66kV dedicated feeder supplying electricity to the complainant. The Complainant is aggrieved by the fact that all of this has been done without compensating him for the cost incurred on the self-erected dedicated feeder. This has finally resulted in dispute between the parties before the Forum.

COMPLAINANT:

(5) The Complainant has relied upon RoE 2005 Regulations to support their case.

Inter-alia the complainant has raised multitude issues and submitted before the Forum–

(6) That the respondent HPSEBL has on 19.06.2021 connected the Baglehar substation from 66kV Nalagarh (Uperla-Nagal) to consumer premises dedicated line of the complainant;

(7) that the conditions of the PAC and the Load Sanction letter stated that the cost for erection of dedicated feeder was to be borne by the complainant and that the complainant is entitled to be compensated for cost incurred along with interest at 8%;

(8) that the Respondents shall be earning Infrastructure Development Charges (IDC) from other consumers / applicants on Baglehar Substation in accordance with the RoE Regulations,

2012 and if cost of the dedicated line is paid by the Respondents, then they will not have anything to lose;

(9) that dedicated feeder being a 66kV line is a Transmission line and will become a part of the Transmission assets if taken over, which shall be pass-through in Tariff;

(10) that the Respondents are misinterpreting regulation 10 of RoE 2005 Regulations, which specifies the ownership of the works which may have been paid for by the applicant as becoming property of the distribution licensee;

(11) that by directly tapping the dedicated feeder supplying electricity to the complainant the action of the Respondent results in contravention of sub-regulation (6) of regulation 44 of CEA(Measures relating to Safety and Electric Supply) Regulations, 2010;

(12) In its submission, the Complainant has relied upon Hon'ble HP Electricity Regulatory Commission Order dated 22.08.2014 in Petition No 138/2012 in the matter of Gujarat Ambuja Cements Limited Vs HP State Electricity Board Ltd and ors;

(13) The complainant has further sought relief by way of directions to Respondents inter-alia to --compensate the complainant for the entire cost of the 66kV line amounting to Rs 9,39,83,175.76 along with compound interest @8% per annum, to accommodate load growth upto a level of 10 MVA even for sister concerns, to remove solid tap and LILO the 66kV line for feeding the complainant; and

(14) for allowing cost of complaint amounting to Rs 5 lacs.

<u>RESPONDENT:</u>

The Respondents inter-alia have submitted –

(15) that the present complaint falls under the purview of RoE 2012 Regulations and not the RoE 2005 Regulations and accordingly, the Respondents have relied upon RoE 2012 Regulations to support their case for the reason that the connection was released to the complainant in the year 2018;

(16) that the ownership of the 66kV dedicated feeder lies with the Respondents in accordance with regulation 11 of RoE 2012 Regulations which provides for works to be the property of the licensee any portion of which may have been paid for by the applicant for the reason that such is maintained by the licensee and because the works of 66kV dedicated feeder is the property of Respondent HPSEBL, HPSEBL has right to supply to other consumers;

(17) that the PAC condition clearly states that the entire cost of the dedicated 66 kV feeder shall be borne by the Complainant and that the load sanction letter dated 31.08.2010 clearly states that the whole or part of the service line paid for by the consumer and maintained by the licensee shall be the property of the HPSEB;

(18) that the complainant was issued Demand Notice to deposit the estimated cost of Rs 107.13 lacs out of total cost of Rs. 717.75 lacs but the Complainant chose to opt the execution of the line on self-execution basis;

(19) that no provisions for cost sharing was available in respect of a Service Line per regulation 4 of the RoE 2012 Regulations;

(20) that in accordance with the Electricity Act, 2003, the distribution system cannot be distinguished on the basis of voltage;

(21) that the contention relating to Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 are not within the jurisdictional purview of the Forum.

FORUM:

(22) We have heard the parties and examined the record / documents adduced during the course of hearing. We have gone through the provisions of Act, Rules and Regulations on the matter.

(23) In the matter the following issues have emerged for determination by this Forum:-

(a) Which Recovery of Expenditure Regulations are applicable - the HPERC (Recovery of Expenditure) Regulations, 2005 which came into existence on 01.04.2005 OR the HPERC (Recovery of Expenditure) Regulations, 2012 which came into existence on 18.05.2012;

(b) Is the ‘66kV Nalagarh (Uperla-Nagal) to consumer complainant premises’ dedicated feeder line a ‘Service Line’ OR a ‘common feeder’ / ‘Works other than a Service line’.

(c) Was it illegal of the Respondent in connecting the Baglehar substation on 19.06.2021 to 66kV Nalagarh (Uperla-Nagal) to consumer complainant premises being a dedicated feeder line;

(d) Is the complainant entitled to be compensated by way of Infrastructure Development Charges (IDC) recovered as expenditure by the Respondent from other consumers / applicants on Baglehar Substation;

(e) Is the 66kV dedicated feeder a Transmission line and therefore to become a part of the Transmission assets if taken over by the Respondent and thereafter be pass-through in Tariff;

(f) Is the ownership of the works which may have been paid for by the prospective consumer complainant herein, property of the distribution licensee;

(g) Is it within the legal jurisdiction of this Forum to decide on contravention of sub-regulation (6) of regulation 44 of CEA (Measures relating to Safety and Electric Supply) Regulations, 2010, with regard to action of the Respondent to directly tap the 66kV dedicated feeder supplying electricity to the complainant, as alleged by the Complainant;

(h) Is the Hon'ble HP Electricity Regulatory Commission Order dated 22.08.2014 in Petition No 138/2012 in the matter of Gujarat Ambuja Cements Limited Vs HP State Electricity Board Ltd and ors, applicable in the present matter.

The Forum now proceeds to discuss and determine each issue, though not in the same order as mentioned above -

(24) The issue raised by the Complainant and emerging in para (23) (e) of this Order for determining by this Forum with regard to the 66kV feeder becoming a Transmission Line and its consequent pass-through in Tariffs, can be settled by way of the Electricity Act, 2003. The Act ibid expressly defines the "distribution licensee" in sub-sections 2(17), the "distribution system" in sub-section 2(19), the "transmission lines" in sub-section 2(72) and the "transmission licensee" in sub-section 2(73). The ibid provisions do not distinguish between the distribution system and the transmission system based on voltage levels and clearly establish the distribution system being that authorised with the Distribution Licensee. Further, the Transmission lines together with transformers, switch gear etc, are defined as those that are authorised with the Transmission Licensee. The ibid sub-sections of section 2 of the Act are reproduced as follows for the sake of clarity:-

<u>Quote</u>

2. Definitions.-- *In this Act, unless the context otherwise requires,--*

……

(17) "distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;

……

(19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines…… and the point of connection to the installation of the consumers";

……

(72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station……. And other works.

(73) "transmission licensee" means a licensee authorised to establish or operate transmission lines;

<u>Un-Quote</u>

The submissions of the Complainant are far-fetched and based on conjectures on the 66kV feeder supplying to the complainant as becoming part of the Transmission System in future, if taken over by the Distribution Licensee and further its consequent inclusion for Tariff determination in the future. The contentions of the complainant in this regard are far-fetched, un-tenable as being not based on law/Regulations etc. This Forum is not inclined to decide the issue ibid as emerging which is based on conjectures created by the Complainant and accordingly this Forum does not find merit in the submission and arguments of the complainant on this issue. The issue is decided against the complainant accordingly.

(25) The issue raised by the Complainant as emerging in para (23) (g) of this Order for determination by this Forum with regard to solid or direct tapping of the 66kV feeder as contravention of Central Electricity Authority (CEA) Regulations supra. It is observed that the issue if viewed in light of section 142 of the Electricity Act, 2003, wherein provisions for contravention of Regulations are covered and which squarely fall within the jurisdiction of the Hon'ble HP Electricity Regulatory Commission, as also contended by the Respondent Board in its contentions. Thus Complainant is at liberty to approach the Hon'ble Commission on the issue for redressal. This Forum does not find it appropriate to return any findings on the issue raised by Complainant on jurisdictional grounds.

(26) The other issues mentioned at para (23) (a) to (d), (f) and (h) emerging for determination by this Forum are examined as per record, pleadings or regulations etc. adduced by the parties. Firstly determining whether the 66kV dedicated feeder from Nalagarh Uperla-Nangal to

complainant consumer premises, is a service line or a common feeder? Secondly, by determining which of the HPERC (Recovery of Expenditure) Regulations—i.e the 2005 or the 2012 Regulations are applicable in the instant matter. Thirdly, by determining which provisions of the applicable Regulations are relevant in the instant complaint.

(27) The Dedicated 66kV feeder was completed by self-erection by the Complainant in the year 2018 and the 66/11 kV Baglehar Substation was connected to this feeder on 19th June, 2021. The Electricity Act, 2003 in sub-section (61) of section 2, defines service line as –

Quote

"(61) "service line" means any electric supply-line through which electricity is, or is intended to be supplied—

(a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or

(b) from a distributing main to a group of consumers on the same premises or on contiguous premises …….."

UnQuote

The examination of the record, pleadings and extant Regulations on the issue, it clearly becomes apparent that 66 KV feeder is not a 'service' line as claimed by complainant. Before June 19, 2021 the 66 kV dedicated feeder was a 'Service Line' and beyond the date of connection of Baglehar Substation to this dedicated 66kV feeder on 19.06.2021, the dedicated 66kV feeder ceases to be a 'Service Line' and becomes a common feeder' or 'works other than service line'. It is safely concluded that from June 19, 2021 onwards, the 66kV feeder is not a Service Line and the issue ibid mentioned in para 23(b) of this Order is decided accordingly.

(28) The issue of applicability of Regulations is examined vis-à-vis pleadings and facts placed on record by the parties. It is evident that HPERC (Recovery of Expenditure) Regulations, 2005 came into existence on 01.04.2005 and the HPERC (Recovery of Expenditure) Regulations, 2012 came into existence on 18.05.2012. The PAC, Load Sanction letter, the Demand Notice issued and self-erection of 66kV dedicated feeder undertaken in financial year 2011-12 were all done under the 2005 Regulations, while the erection of 66kV dedicated feeder was completed in the financial year 2018-19 and the connection released to consumer on 11.04.2018 were all done during the HPERC (Recovery of Expenditure)

Regulations, 2012. Thus, the 2012 Regulations are found to be applicable in the present case in the facts and circumstances of the complaints.

(29) The primary grievance of the complainant as can be perceived from complainant is with regard to connecting Baglehar Substation to the dedicated feeder on 19.06.2021, for which payment of Rs 107.13 lacs out of total estimate of Rs 717.75 lacs was made by the Complainant to the Respondent. Thereafter, construction of line was undertaken on self-execution basis, while no cost sharing was done with the complainant nor any cost-sharing mechanism by way of Infrastructure Development Charges (IDC) to be recovered from the applicants / consumers on Baglehar Substation, was evolved with the Complainant.

(30) On examination of the issue of cost sharing vis-à-vis Regulations, pleadings and facts on record, it is observed that cost sharing is an event incidental to future consumers i.e. cost to be recovered from those consumers who come up later in time and subsequently to be shared with the person(s) originally having paid the cost and Infrastructure Development Charges (IDC). Thus, it is a feature of the HPERC (Recovery of Expenditure) Regulations, 2012 and not of the HPERC (Recovery of Expenditure) Regulations, 2005. For this simple reason that the Baglehar Substation was connected to the dedicated feeder on 19.06.2021 the future applicants / consumers for the purpose of cost sharing would obviously be those, who come up after 19.06.2021. Accordingly, this Forum is of the firm view that the HPERC (Recovery of Expenditure) Regulations, 2012 are applicable in the present matter of the complaint and provisions within these Regulations relevant to 'common feeders'/ 'works other than service line' and not for 'service line' shall automatically become applicable. Further, Infrastructure Developmental Charges (IDC) being a feature of the HPERC (Recovery of Expenditure) Regulations, 2012, the issue of cost sharing by way of recovery of IDC from applicants/ consumers for sharing with original consumer can only be settled by way of resorting to application of these Regulations. In view of observation recorded above on the issue, this Forum is of the considered opinion that in the present matter, the HPERC (Recovery of Expenditure) Regulations, 2012 shall be applicable. The issue with regard to applicability of Recovery of Expenditure Regulations is decided accordingly.

(31) Since the present matter has been found to be covered under the HPERC (Recovery of Expenditure)Regulations, 2012 and as a sequel to it the claim of complainant to the applicability of Regulations, 2005 as per order of Hon'ble HPERC passed in its order dated

22.08.2014 in petition No. 138/2012 is untenable on this simple reason that the said order of the HPERC is based upon HPERC (Recovery of Expenditure) Regulations,2005 and not applicable in present case which is squarely covered under Regulations, 2012 as concluded above in paras supra.

(32) The Forum examined the issue of ownership, maintenance etc. vis-à-vis record, Regulations and pleadings of parties. It is observed that the '66kV Uperla-Nangal feeder to consumer premises' as stated by the Complainant is a works paid for by the complainant with an amount of Rs 107.13 lacs, requisitioned but later self-executed by the complainant by incurring cost of approx Rs 9.4 crores and this fact has not been disputed by the Respondent. The works were connected with the electricity supply system of the Respondent HPSEBL and are maintained / being maintained by the Respondent HPSEBL and this fact is not disputed by the Complainant. In absence of any Special Agreement between parties to this complaint, determining therein necessary terms and conditions inter-alia that of interface point, conditions of ownership, maintenance etc, per regulation 11 of the RoE, 2012 Regulations, all works become the property of the licensee and the licensee has the right to supply electricity to other prospective applicants / consumers from these works.

Quote

11. Maintenance of works.-(1)Notwithstanding anything contained in any other law for the time being in force, all the works erected for providing supply in pursuance of requisition by the applicant, or any portion thereof, which may have been paid for by the applicant making requisition, shall be maintained by the licensee and the licensee shall also have the right to supply electricity to any other prospective applicants or the consumers, through the said works and the said works shall become the property of the licensee.

(2) The interface point of commencement of supply, as determined under the provisions of the Supply Code and the relevant agreements, shall constitute the liability between the licensee and the consumer/applicant.

Unquote

(33) The issue mentioned in para 23(f) regarding ownership of 66kV dedicated feeder is decided by this Forum strictly in accordance with regulation 11 of the RoE 2012 Regulations in favour of the Respondents.

(34) The issue of cost sharing by way of Infrastructure Development Charges (IDC) recovered from other consumers / applicants on Baglehar Substation or for that matter any other consumers / applicants that may come up on the 66 kV earlier being a service line / dedicated feeder and later attaining the status of 'common feeder' or 'other works not being a service line' is examined on the basis of facts on record, pleadings and extant Regulation on the matter. The Respondents have contended that regulation 4 in respect of Service Line is applicable to the Complainant wherein provision for cost sharing does not exist. The Forum is not in agreement with this contention of the Respondents. As determined in foregoing paras that the 66kv Feeder is not a 'Service Line beyond 19.06.2021 and on attaining the status of a common feeder as 'other works not being a service line', thus, sub regulation (6) of regulation (5) of the RoE, 2012 Regulations becomes applicable in the present case. Therefore in our considered opinion, complainant is entitled to cost sharing by way of Infrastructure Development Charges (IDC), strictly in accordance with sub regulation (6) of regulation 5 of HPERC (Recovery of Expenditure) Regulations, 2012 and the conditions specified there-in, recovered / to be recovered from other consumers / applicants that may come up on the 66kV feeder from 'Uperla Nangal to consumer premises' including those on Baglehar Sub Station after 19.06.2021 i.e., when Baglehar substation was connected to the 66kV feeder being a Service Line at that time. The relevant extract of sub-regulation 5(6) is reproduced below for clarity:-

Quote

………….

…………..

5. Expenses for the distribution system other than service line. –

……………

……………

…..(6)…. If subsequent application(s) are received within 5 years after the date of commissioning of works executed under sub-regulation (3), for permanent supply of power at a voltage level similar to that of the original applicant(s) under sub regulation (3) and supply of power to such applicant(s) essentially involves usage of such works, on regular basis, the infrastructure development charges, if any, actually recovered from such

subsequent applicants for usage of spare capacity as quantified in accordance with sub-regulation (8) shall be refunded, on pro-rata basis………

…………..

…………..

Un-Quote

After examination of the facts on record and provisions of Regulations above, it is safely concluded that the Complainant is entitled to cost sharing upto the limit of spare capacity available on the 66kV feeder ibid. This cost sharing shall be on a total estimated cost by the Respondent HPSEBL placed on record as Annexure C-3 and Annexure R-4 which is to the tune of Rs 717.75 lacs by way of cost sharing of Infrastructure Development Charges (IDC) and strictly in accordance with sub regulation (6) of regulation 5 of HPERC (Recovery of Expenditure) Regulations, 2012 and strictly for the available spare capacity after 19.06.2022. Accordingly the issue as mentioned in para 23(d) is decided in favour of the Complainant.

In view of foregoing terms, the Complaint is disposed of on merits and is partly allowed in favour of the complainant.

The parties are left to bear their own costs.

The Order reserved on 19.05.2022 is released on 04.06.2022 in presence of parties at Shimla. The original complaint file be consigned to record room for safe custody.

Place:-Shimla
Dated:-04.06.2022

Sd/-	Sd/-	Sd/-
(K.S.Dhaulta)	**(Vikas Gupta)**	**(Tushar Gupta)**
(Member)	**(Member)**	**(Chairman)**

Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1432/3/21/07 **Dated:-**

M/s Sunnox International
Vill & P.O Panjhera
Nalagarh Distt Solan **Complainant**

V/s.

HPSEBL & Others. **Respondents**

Complaint No. 1432/3/21/07

1. The Executive Director (Pers.),
HPSEBL,Vidyut Bhawan,
Shimla-171004.

2. The Sr. Executive Engineer,
Electrical System Division,
Nalagarh Distt. Solan HP

3. The Sr. Executive Engineer,
Electrical Division, HPSEBL,
Nalagarh, Distt. Solan (HP).

4. The Assistant Executive Engineer,
Electrical Sub-Division No2 HPSEBL,
Nalagarh, Distt. Solan (HP). **Respondents**

The Certified copy of final order dated 04.06.2022 passed by the Hon'ble Forum in the aforesaid complaint is enclosed find herewith for further necessary action at your end please. The compliance be reported/intimated within one month after the receipt of order in the office.

DA:-As above.

Secretary,
Consumers Grievances Redressal Forum,
HPSEBL, Kasumpti Shimla-171009.