

**HARYANA ELECTRICITY REGULATORY COMMISSION
SCO 180, SECTOR 5, PANCHKULA – 134 109, HARYANA**

CASE NO. HERC/PRO - 7 OF 2004

DATE OF HEARING : 7.2.2005, 28.4.2005 & 31.5.2005

DATE OF ORDER : 15.07.2005

IN THE MATTER OF :

Complaint against respondents for non-release of Bulk Supply (domestic) electricity connection for Belvedere Tower, DLF City, Phase-II, Gurgaon in gross violation of Section 43 of Electricity Act, 2003 and condition 19.1 of Distribution and Retail Supply Licence and undue harassment. The connection was applied on 05.03.2003 for 1598 KW load.

AND

IN THE MATTER OF :

1. Belvedere Tower Condominium Association, Belvedere Tower Apartments, DLF City, Phase –II, Gurgaon –122002 (Haryana), through President, Cdr. K. Raghav.
Petitioner No. 1
2. DLF Universal Limited, Shopping Mall, Arjun Marg, DLF City, Phase –I, Gurgaon –122002 (Haryana), through authorized signatory, Sh. K.K. Bhattacharya.
Petitioner No. 2

Versus

1. Managing Director, Haryana Vidyut Prasaran Nigam Ltd. (“HVPNL”) Shakti Bhawan, Sector-6, Panchkula (Haryana)
Respondent No. 1
2. Managing Director Dakshin Haryana Bijli Vitran Nigam Ltd. (“DHBVNL”) Vidyut Sadan, Vidyut Nagar, Hisar (Haryana)
Respondent No. 2
3. Superintending Engineer (Operation), Dakshin Haryana Bijli Vitran Nigam Ltd. (“DHBVNL”), M.G. Road, Gurgaon (Haryana)
Respondent No. 3
4. Sub-Divisional Officer, Maruti S/D, Dakshin Haryana Bijli Vitran Nigam Ltd. (“DHBVNL”), Sector –18, Gurgaon (Haryana)
Respondent No. 4

Present :

1. Lt. Col. (Retd.) Raghbir Singh, Chairman, HERC
2. Sh. T.R. Dhaka, Member, HERC
3. Sh. T.S. Tawatia, Member, HERC

On behalf of petitioners :

1. Sh. K.K. Bhattacharya, Director, DLF Universal Ltd., Gurgaon
2. Col. J.S. Soharu, DGM, DLF Universal Ltd., Gurgaon
3. Sh. Sanjay Sharma, AM, DLF Universal Ltd., Gurgaon

On behalf of respondents :

1. Sh. A.S. Chugh, Director/ P, HVPNL, Panchkula
2. Sh. M.K. Sharma, Director (Op), DHBVNL, Hisar
3. Sh. P.S. Bhatia, C.E. /P & C, HVPNL, Panchkula

4. Sh. T.K. Dhingra, S.E. Planning, HVPNL, Panchkula
5. Sh.R.K.Aggarwal, SE/RA, DHBVNL, Hisar
6. Sh. D.S. Yadav, S.E./ Commercial, DHBVNL, Hisar
7. Sh. K.S. Behl, S.E./S.O., DHBVNL, Hisar
8. Sh. M.L. Goyal, S.E. 'OP', DHBVNL, Gurgaon

9. Sh. S.L. Goyal, XEN/RAU, HVPNL, Panchkula
10. Sh. P.C. Gupta, XEN/RA, DHBVNL, Hisar
11. Sh. V.K. Seth, XEN/S.O. , DHBVNL, Hisar
12. Sh. D.S. Rathee, XEN, Suburban, DHBVNL, Gurgaon

13. Sh. R.K.Gupta, AEE/RAU, HVPNL, Panchkula
14. Sh. A.S. Jaiswal, AEE/RA, DHBVNL, Hisar
15. Sh. D.L. Hansu, AEE, SDO/OCC, Gurgaon
16. Sh. M.S. Jakhar, AE, SDO/Maruti, Gurgaon

ORDER

1. The petition dated 29.10.2004 has been filed against respondents for non-release of Bulk Supply (domestic) electricity connection for Belvedere Tower, DLF City, Phase-II, Gurgaon in gross violation of Section 43 of Electricity Act, 2003 and condition 19.1 of Distribution and Retail Supply Licence and undue harassment. The connection was applied on 05.03.2003 for 1598 KW load.
 - 1.1 That the Petitioner no. 1 Belvedere Tower Condominium Association is duly registered under the Society Registration Act, 1860 vide Regn. No. 1915 year 2002-03 having its office at Belvedere Tower Apartments. The present petition/ complaint is being filed through its President Cdr. K. Raghav, who has been authorized to sign and file the present Complaint.
 - 1.2 The Petitioner no. 2 is company under the Companies Act, 1956 having its registered office at DLF Centre, Sansad Marg, New Delhi –110001. DLF Universal is promoting and developing a residential colony known as “DLF City” in District Gurgaon, after obtaining requisite licences/sanctions from the State Government. DLF Universal is also constructing various state of the art prestigious commercial and residential projects within the DLF City, one of them being “Belvedere Tower”.
 - 1.3 The Respondent No. 1 i.e. MD, Haryana Vidyt Prasaran Nigam Limited (**HVPNL**) is the licensee authorized to carry out the business of distribution and retail supply in Gurgaon and other areas in Haryana, in terms of the licence issued by this Hon’ble Commission. In terms of the order dated 21st April 1999 passed by this Hon’ble Commission, permission was granted to HVPNL to carry on the distribution and retail supply business pertaining to areas in the South of Haryana, including Gurgaon through and in the name of the Respondent no. 2 i.e. MD, Dakshin Haryana Bijli Vitran Nigam Limited (**DHBVNL**).
 - 1.4 The Petitioners have impleaded Respondents No. 1, 2, 3 and 4 as parties to this petition because in terms of the order dated 21st April 1999, issued by this Hon’ble Commission. **HVPNL** and **DHBVNL** are jointly and severally responsible for discharging the obligations under the distribution and retail supply licence issued by this Hon’ble Commission during the period when the HVPNL holds and operates its distribution undertaking and distribution and retail supply business through DHBVNL. In terms of the licence, the respondents are under an obligation to comply with the provisions of applicable law and orders, directions and regulations issued by this Hon’ble Commission in disposing of the applications received requesting for supply.
 - 1.5 They filed an application for sanction of load under domestic bulk supply category for their Belvedere Tower, Residential Complex located at DLF City Phase-II Gurgaon vide application dated 25.02.2003 for load of 1598 KW. A copy of the said application has been filed with the petition. They have also deposited Demand Draft No. 054515 dated 7.1.2003 for Rs. 2,46,292/- in favour of respondent No. 4 drawn at ICICI Bank, Gurgaon. The said demand draft was deposited as Advance

Consumption Deposit (ACD). The application was accepted by respondent No. 4 on 05.03.2003 vide receipt bearing No. A&A 5076/BS dated 05.03.2003.

- 1.6 They have written number of letters dated 05.09.2003, 09.09.2003, 07.01.2004, 21.01.2004, 23.01.2004, 04.03.2004, 22.07.2004, 17.09.2004 requesting the release of the connection.
- 1.7 That in spite of so many references made to the respondent they have not cared to send a single reply intimating the status of the case, leave aside release of connection. This has caused undue harassment to them apart from wasting time and energy.
- 1.8 That in terms of the provisions in Section 43 (1) of the Electricity Act, 2003 the Respondent is under obligation to give supply of electricity to any person, within one month of receipt of any application.
- 1.9 That on the one hand, the respondents have not taken any action on their application, they have released connection to the applicants who have applied at later date. This is a clear case of discrimination against them.
- 1.10 That DLF is the only coloniser who has erected a 66 KV Substation in Gurgaon at their own cost and handed over to HVPNL free of cost. Even then the application of the petitioner is being withheld by the Respondent.
- 1.11 That non-release of this connection is resulting into revenue loss of Rs. 1.3 Crore (approx.) per annum to the respondent and state exchequer. Apart from this petitioners' business has also been affected, as they had to incur huge expenditure for maintenance and upkeep of essential services in the complex.
- 1.12 That pursuant to Clause 19.1 (a) & (b) of Distribution and Retail Supply Licence, the Licensee shall, on the application of owner or occupier of any premises within the area of supply, provide connection from the Licensee's Distribution System for the purposes of providing supply of electricity to those premises, including the laying of any required distribution mains.
- 1.13 That the petitioners have exhausted all the channels of redressal set out in the respondents' complaint redressal procedure in as much as several representations have been filed by the Petitioners before the office of the Respondents till date but no action has been taken on the same. The Petitioners have not filed any complaint with the Consumer Forum or civil court on the issues raised in this petition and this Commission has jurisdiction to entertain this petition.
- 1.14 PRAYER

Issue appropriate directions to the Respondents:

- a) for release of the aforesaid electricity connection under domestic bulk supply category forthwith for the property Belvedere Tower

- b) issue appropriate directions against the respondents to pay interest on the ACD of Rs. 246292/- deposited by the Petitioner on 25.02.2003 at the rate of 24% per annum calculated from the date of its deposit, up to the date of release of the connection/or pass any other order/directions.
 - c) Issue any other orders/directions as it may deem fit in the facts and circumstances of the case.
 - d) As the Respondents have failed to supply electricity within the premises specified in sub-section (1) of Section 43 of Electricity Act 2003, necessary action as deemed fit may be taken against the Respondents.
 - e) The petitioners also prayed to issue appropriate directions in the matters submitted vide their rejoinder dated 11.4.2005.
2. The petition dated 29.10.2004 of M/s DLF Universal Ltd. and others was received on 4.11.2004. Vide notice dated 16.11.2004, the Commission directed the respondents to file the reply to the petition by 30.11.2004. On 30.11.2004, a request was received from respondents for extension of date to file the reply upto 10.12.2004 which was considered and extension granted by the Commission. The respondent (DHBVNL) submitted its para-wise reply dated 9.12.2004, to the petition. On 13.12.2004 the Commission issued a notice to the petitioners and respondents for hearing on 23.12.2004. Subsequently, a request dated 17.12.2004 was received from the petitioners to postpone the hearing to the second week of January 2005, in view of the ensuing year-end vacations. The Commission acceded to the request and fixed 7th February 2005 as the next date of hearing which was intimated to the petitioners and respondents vide notice dated 21.12.2004. Meanwhile, vide letter dated 23.12.2004, the Commission directed MD/HVPNL to file the reply by 18.1.2005 to the petition, being respondent no. 1 and responsible for construction of 220KV and 66KV S/Stns. On 23.12.2004 two letters were also written to MD/DHBVNL to supply original signed copy of their MoU dated 9.1.2002 with the petitioners, a copy of licence issued by Director Town and Country Planning, Haryana to M/s DLF Universal Ltd. (referred to in their reply) and complete seniority list of H.T. Bulk Supply applicants & connections released w.e.f. the earliest application of M/s DLF Universal Ltd. The HVPNL filed its reply dated 19.1.2005 which was received on 24.1.2005. The hearing of the case was held on 7.2.2005 and the representative of the Respondent No. 2, SE/RA, DHBVNL requested the Commission to grant more time to them for collection of relevant information for filing the reply regarding information sought by the Commission vide letters dated 23.12.2004. The request of respondents was considered and Commission fixed 28.4.2005 as the next date of hearing. The respondent No. 2 was directed to file the reply to the letters of the Commission dated 23.12.2004 by 12.4.2005.
3. DHBVNL vide its filing dated 26.4.2005 submitted another para-wise reply to the petition which was similar to their reply dated 9.12.2004 except that it contained a confirmation of having approved the release of petitioners' connection.
4. In para-wise reply, the Respondent No. 2 vide filing dated 9.12.2004 and 26.4.2005 and Respondent No. 1 vide filing dated 19.1.2005 have stated that:

- 4.1 DHBVNL Reply dated 09.12.04 – Matter of record
DHBVNL Reply dated 26.04.05 - Matter of record
HVPNL Reply dated 19.01.05 – No Comments, Matter of record
- 4.2 DHBVNL Reply dated 09.12.04 -
Matter of record. M/s DLF Universal Ltd. is to comply with all the Terms and
Conditions of licence as private colonizer.
DHBVNL Reply dated 26.04.05 - Matter of record
HVPNL Reply dated 19.01.05 – No Comments, Matter of record.
- 4.3 DHBVNL Reply dated 09.12.04 – Matter of record
DHBVNL Reply dated 26.04.05 - Matter of record
HVPNL Reply dated 19.01.05 – Independent D&RS licence has been granted to
DHBVNL on 04.11.2004.
- 4.4 DHBVNL Reply dated 09.12.04-
Agreed to the extent that the HVPNL holds the licence and operates its
distribution undertaking and distribution and retail supply business through
DHBVNL. Regarding disposing off the application received, requesting for
supply, it is informed that in the above case adequate electrical infrastructure is
required to be laid by M/s. DLF Universal Ltd. as a private colonizer which they
have failed to do so. Therefore, they themselves are responsible for non-release of
above connection.
- DHBVNL Reply dated 26.04.05-
First para same as above.
However, due to Commissioning of 220 KV Substations at Sector 52 and
acceptance of M/s. DLF request by HVPNL to construct 66 KV Substation at DLF
Phase-V by the colonizer, we have released the electric connection, thus disposing
of their request.
- HVPNL Reply dated 19.01.05 - Independent D&RS licence has been granted to
DHBVNL on 04.11.2004.
- 4.5 DHBVNL Reply dated 09.12.04 – Matter of record
DHBVNL Reply dated 26.04.05 - Matter of record
HVPNL Reply dated 19.01.05 – No Comments, Matter of record
- 4.6 DHBVNL Reply dated 09.12.04 -

Electric connection in the name of M/s. Belvedere Tower, DLF Phase-II, Gurgaon for 1598KW load applied vide A&A No. 5076/BS/DS dated 05.03.2003 in the office of SDO OP Sub Divn. Maruti, DHBVNL, Gurgaon could not be released due to non-availability of Power T/f capacity at 66 KV S/Stn. DLF Q Block Gurgaon. The 2 No. Power Transformers of capacity 12.5/16 MVA, 66/11 KV provided by M/s. DLF Universal Ltd. are fully loaded. M/s. DLF Universal Ltd. was to erect three No. 66 KV S/Stn. at DLF Q Block, F&U Block having capacity of 2x12.5/16MVA, 66/11 KV each, total capacity of 96 MVA as is evident from the letter of C.E/Planning, HSEB, Panchkula to C.E./Zone, Delhi vide Memo No. Ch.18/406/K-100 dated 09.01.1996 copy of which was endorsed to M/s. DLF Universal Ltd. vide Ch. 18/406/K-100 dated 09.01.1996. Also to meet with the existing as well as further load demand of the area being developed by M/s. DLF Universal Ltd. as a private colonizer around Gurgaon, M/s. DLF Universal Ltd. has not taken any steps to erect new 66 KV S/Stns. or to augment the capacity of existing 66 KV S/Stns by installation of additional 16 MVA T/f. Further, it is intimated that 4th 12.5/16 MVA 66/11 KV T/fs. with associated works is also to be provided by M/s. DLF Universal Ltd. At 66 KV S/Stns, DLF Q Block Gurgaon. The above was conveyed by the SE/Planning and Commercial, HVPNL, Sector-6, Shakti Bhawan, Panchkula vide Memo No. 23/Ch.96/40 GK 147/Vol. I dated 12.06.2003 alongwith the undertaking of M/s. DLF dated 06.12.2002, which is yet to be done. M/s.DLF Universal Ltd. was required to provide 220 KV S/Stns. as well as chain of 66 KV S/Stn. at load center, as per the memorandum of understanding between HVPNL/DHBVNL and DLF Universal Ltd. held at Panchkula on 09.01.2002 and attended by Sh. Samir Mathur, Managing Director, HVPNL, Sh. V. Umashankar, Managing Director/DHBVNL, Sh. R.K. Jain, Director/Technical, HVPNL, Sh. K.K. Bhattacharya, Director (Operations) and Sh. Satish Bhalla, Advisor of M/s. DLF. The para-3 of the meeting, in this regard is reproduced as under:

“On behalf of HVPN it was informed that the 220 KV substation already being constructed by HVPN would not be able to take up the additional transformers of 220 KV or 66 KV asked for by DLF. Accordingly, it was suggested that DLF should plan for a 220 KV substation of its own and the 66 KV substations for meeting their future power demand on the pattern of HSIDC in IMT Manesar. This would enable feeding the long term power requirement of DLF Complexes in and around Gurgaon Township. This substation would also cater to the additional load of Q-block substation and DLF Phase-V and proposed Cyber City Complex subject to technical feasibility. While planning for the DLF 220 KV substation, provision will be kept by DLF for placement of additional transformers of HVPN for its transmission needs”.

Regular meeting of local field officers, Distt. Administration and also at the level of F.C./Power Govt. of Haryana were held with M/s. DLF Universal Ltd. to create adequate electrical infrastructure including creation of new 220 KV & 66 KV S/Stns. but M/s. DLF Universal Ltd. is not fulfilling its obligation as a private colonizer as such the above connection could not be released.

DHBVNL Reply dated 26.04.05-

First para same as above.

Second Para (up to the end of reproduction of Para on MoU with DLF) – deleted
Third para starting with ‘Regular meetings’ same as above.

Following addition has been made:

Now as M/s. DLF has offered land and proposal for erection of another 66 KV S/Stns. at DLF Phase-V and proposal of 4th transformer at 66 KV S/Stn. Q-Block, the decision for release of connection was approved by the Nigam and accordingly the connection since stands released on 28.02.2005 with the condition that they will deposit the share cost initially which will be refunded only when they construct their S/Stn. and actually shift their load from DHBVNL system to their S/Stn.

HVPNL Reply dated 19.01.05 – Reply to be submitted by DHBVNL, the D&RS Licensee.

4.7 DHBVNL Reply dated 09.12.04-

In this regard, regular meetings were held with the local field officers as well as the department management level as has been mentioned in the Para No. 4.6 above and M/s. DLF Universal were apprised of the factual position.

DHBVNL Reply dated 26.04.05-

Same as above.

HVPNL Reply dated 19.01.05 – Reply to be submitted by DHBVNL, the D&RS Licensee.

4.8 DHBVNL Reply dated 09.12.04 -

In the above case, M/s. DLF Universal Ltd. as a private colonizer is required to provide adequate electrical infrastructure including creation of new 220 KV and chain of 66 KV Grid S/Stn. at the load centre for meeting with their load demand which is yet to be done on their part. As such, M/s. DLF Universal Ltd. are themselves responsible for the stated delay in the release of above connection.

DHBVNL Reply dated 26.04.05-

As per para No. 4.6 above.

HVPNL Reply dated 19.01.05 – Reply to be submitted by DHBVNL, the D&RS Licensee.

4.9 DHBVNL Reply dated 09.12.04 -

In the absence of available power T/f capacity at the existing 66 KV S/Stn. DLF Q-Block and failure on the part of M/S DLF Universal Limited to create new 220 KV and 66 KV S/Stn. at the load centre. The above application of new connection could not be further processed due to the fact that the source of power supply has not been identified, for the other new applicants proper seniority has been maintained.

DHBVNL Reply dated 26.04.05-

As per para No. 4.6 above.

HVPNL Reply dated 19.01.05 – Reply to be submitted by DHBVNL, the D&RS Licensee.

- 4.10 DHBVNL Reply dated 09.12.04-
M/s DLF Universal Ltd. has not created 220 KV and 66 KV S/Stns. at the load centers, capable to meet with the electrical load requirement of the area being developed as a private colonizer. The phase wise projected load up to year 2009 is 253 MW as per their letter dated 16.5.2001.
M/s DLF Universal Ltd. are failing to fulfill the obligation on their part as a private colonizer

DHBVNL Reply dated 26.04.05-
First para -same as above.
Second para – deleted.

HVPNL Reply dated 19.01.05-
As a colonizer, M/s. DLF was required to provide the required infrastructure for various services like road, water supply, sewerage and electricity for the developed area. M/s. DLF had promised to construct such grid substations for meeting the power demand of their area. In this regard, an agreement was entered into between HVPNL and M/s. DLF on 11.3.1999, according to which M/s. DLF was to construct 66 KV substations at ‘Q’ Block, DLF City, Gurgaon and further to construct such substations in ‘F’ and ‘U’ Blocks . The relevant clause (C) and Clause 1.11 of the Agreement is reproduced hereunder for favour of reference.
Clause (C)

The construction of the substation will be carried out by the colonizer as per the approved design/standards of HPVNL and the construction of the transmission line will be carried out by HVPNL at colonizer’s cost.

Clause 1.11

Separate agreement in advance for F-Block and U-Block substation will have to be signed before starting any work on these substations. HVPNL will not be responsible for any loss to the colonizer on this account. HVPNL reserve the right to review and change the proposal in totality at the time of signing these agreements based on the status of grid and Power Supply conditions”.

Thereafter, an MoU was signed between HVPNL/DHBVNL and M/s. DLF on 9.1.2002, wherein it was admitted that the required 220/66 KV Substations would be constructed by M/s. DLF. Para-9 of the Memorandum of Understanding dated 9.1.2002 is reproduced as under :

“On behalf of HVPNL it was informed that the 220 KV substation already being constructed by HVPNL would not be able to take up the additional transformers of 220 KV or 66 KV substation of its own and the 66 KV substations for meeting their future power demand on the pattern of HSIDC in IMT Manesar. This would enable feeding the long-term power requirement of DLF Complexes in and around Gurgaon Township. This substation would also cater to the additional load of Q-Block substation and DLF Phase-V and proposed Cyber City Complex subject to technical feasibility. While planning for the DLF 220 KV sub station, provision

will be kept by DLF for placement of additional transformers of HVPNL for its transmission needs”.

From the above Submissions, it would be clear that M/s. DLF has failed to construct the required network of 220 KV/66KV substations to cater to the power demand of their subsidiary companies, associate companies, group companies in which M/s. DLF are a partner.

4.11 DHBVNL Reply dated 09.12.04-

The M/S DLF Universal Ltd. are themselves responsible for delay in release of above connection as has been mentioned Para No. 4.6 above.

DHBVNL Reply dated 26.04.05-

Same as above.

HVPNL Reply dated 19.01.05-

M/s. DLF Universal Ltd. are solely responsible for the power problem in their developed area since the planned 220 KV/66 KV substations have not been constructed by them to take care of the projected demand in respect of their subsidiary companies, associate companies, group companies in which M/s. DLF are a partner.

4.12 DHBVNL Reply dated 09.12.04-

In the above case, M/s DLF Universal Ltd. is to create 220 KV and 66 KV S/Stn. for meeting the load demand of the area being developed as a private colonizer.

As per terms and conditions of the licence obtained by M/S DLF Universal Ltd from office of the Director Town and Country Planning, all external services including electrical infrastructure is to be provided by Pvt. Colonizer which M/s DLF Universal Ltd. is failing to do so.

DHBVNL Reply dated 26.04.05-

First para - same as above.

Second para – deleted.

HVPNL Reply dated 19.01.05-

As per the terms and conditions of the licence obtained by M/s. DLF Universal Ltd. from the office of Director, Town and Country Planning, all external services including electrical infrastructure is to be provided by the private colonizer which M/s. DLF Universal Ltd. have failed to honour.

4.13 DHBVNL Reply dated 09.12.04-

M/s DLF Universal Ltd. is misrepresenting the facts and not paying any heed to fulfill the commitment made from time to time as mentioned in Para No. 4.6 and 4.8 above.

DHBVNL Reply dated 26.04.05-

M/s DLF Universal Ltd. is misrepresenting the facts and not paying any heed to fulfill the commitment made from time to time as mentioned in Para No. 4.6.

HVPNL Reply dated 19.01.05-
Reply to be given by DHBVNL, the D&RS Licensee.

- 4.14 DHBVNL Reply dated 09.12.04-
To be decided by the Commission. DHBVNL is not responsible for any delay of release of new connection as alleged in the petition. It is prayed that M/s DLF Universal Ltd. be impressed upon to provide the adequate electrical infrastructure including 220 KV and chain of 66 KV S/Stns at the load centers to meet with the existing as well as future load demand of the area being developed as a private colonizer.
However, in case the system loading position permits in future, the application for release of above connection will be reviewed for release.

DHBVNL Reply dated 26.04.05-

- a) DHBVNL is not responsible for any delay of release of new connection as alleged in the petition, because M/s. DLF had earlier undertaken to provide 3 Nos. 66 KV S/Stns. in DLF Area in Q, U and F Blocks but they have constructed only one 66 KV S/Stns. in Q Block and did not construct any other sub stations.

Now they have offered the land for construction of another 66KV S/Stn. in Ph-V for which they have submitted the complete proposal to HVPNL for approval, which has been approved by HVPNL vide their office Memo No. 289/Ch-40/406/K-216 dated 31.03.2005.

Secondly 220 KV S/Stn. at Sec-52A with an installed capacity of 40 MVA & 66 KV S/Stns. at Sec-44 with an installed capacity of 16 MVA T/f were energized on 1.11.2004. M/s. DLF submitted a representation to the Nigam for release of their connection as the load at Nigam's S/Stns. was available.

On the basis of above, the approval to release the connection was accorded by the management as an interim arrangement till the creation of 220KV & 66 KV Grid S/Station by M/s. DLF to cater their own load demands and accordingly the connection was released on 21/02/2005, after the completion of formalities by M/s. DLF.

- b) No interest is payable to ACD (advance consumption deposit) which is taken from the consumer for the consumption made during the month for which he only pays after the expiry of one-month period.

c & d) No further directions are required as the connection since stands released.

HVPNL Reply dated 19.01.05-

It is prayed that M/s DLF may be directed to construct the required 220KV/66 KV substations as agreed by them and handover the same to HVPN to facilitate the release of new electricity connections to their subsidiary companies developed by M/s. DLF in the complex.

It is further submitted that activity of power distribution to various consumers is to be carried out by DHBVNL, which is sole D&RS Licensee in the said area. M/s.

DLF is required to obtain a licence if it wants to take up power distribution function in its developed area.

5. The petitioners vide their rejoinder dated 14.4.2005 have submitted as under:
 - 5.1 The connection has now been released by the Respondents, but as demanded in the Demand Notice we erected the feeder and also deposited Share Cost and FSC. The amount deposited by us is Rs.13,00,000/- as share cost and Rs.7,99,000/- towards FSC and which needs to be refunded.
6. The Commission vide its communication dated 19.4.2005 directed the respondents to submit their reply to the above rejoinder by 25.4.2005.
7. The Respondent No. 1 (HVPNL), in its para-wise reply dated 27.4.2005 to the rejoinder of the petitioners, has stated as under:
 - 7.1 The issue relates to DHBVN, the Distribution & Retail Supply Licensee.
8. The Respondent No. 2 (DHBVNL) neither submitted the documents asked for by the Commission vide its letter dated 23.12.2004 (Deadline being 12.4.2005) nor their reply to the rejoinder (Deadline being 25.4.2005) until 28.4.2005 – the date of hearing. The hearing was held on 28.4.2005 as per the schedule. During the course of this hearing, the respondents pleaded for grant of more time to submit the requisite documents and their reply to the petitioner's rejoinder. The Commission considered the plea of the respondents and vide its communication dated 3.5.2005 directed DHBVNL to submit the requisite documents and their reply to the rejoinder by 16.5.2005 as the next date of hearing of the case was fixed as 31.5.2005.
9. The Respondent No. 2 (DHBVNL), in its para-wise reply dated 27.4.2005/4.5.2005 to the rejoinder of the petitioners, has stated as under:
 - 9.1 As regards share cost amounting to Rs. 13,00,000/- it is submitted that they have deposited the applicable share cost with the condition that the same will be refunded to M/s DLF Universal Ltd. after load sanctioned/released is shifted to the 66KV S/station to be created by M/s DLF Universal Ltd. That M/s DLF Universal Ltd. letter dated 8.01.2005 is enclosed in support of share cost. Now the approval of sanction of 66 KV S/station DLF-V in Sector-43, Gurgaon has been accorded by CE/PD&C, HVPNL, Panchkula vide memo No. 289/Ch-40/406/K-216 dated 31.3.2005 with the terms and conditions explained in the said memo. That the creation of 66 KV S/station at DLF Phase-V in Sector-43, Gurgaon will be done at the cost of M/s DLF Universal Ltd. which they have agreed in their above letter. Therefore the refund of share cost shall be done on the completion of shifting of above load to 66 KV S/station to be created by M/s DLF.

Charging of FSC is a well established system in the distribution utilities. The FSC has been charged in view of sales circular No. 22/1994 issued vide Chief Engineer

Commercial of erstwhile HSEB Panchkula vide memo No. Ch-10/TR-101(90) SR/Loose dated 26.8.1994.

That even as per HERC Draft Regulations on “Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and power to require security” (Part – III pages 7 to 13) conveyed vide Secretary HERC Panchkula Memo No. HERC/T-83E/730 dated 6.7.2004 – is relevant to the matter of FSC. which allows the charging of FSC.

Further, it is submitted that M/s DLF has erected the 11 KV line from 220/66 KV S/station, Sector-52A for availing the load as an interim arrangement, the cost of such temporary arrangement is required to be borne by the applicant.

Therefore, the FSC charges amounting to Rs.7,99,000/- are as per the Nigam instructions and as per HERC draft guidelines on supply of electricity. The FSC charges are rightly payable and not refundable/adjustable against the temporary work of erection of 11 KV feeders carried out by M/s DLF to meet with their load demand for the time being from the 220/66 KV HVPNL Grid S/station please.

10. DHBVNL vide its filing dated 16.5.2005 submitted the requisite documents asked for by the Commission vide its communication dated 23.12.2004.
11. The petitioners, in their para-wise counter reply dated 20.5.2005 to the DHBVNL’s filing dated 27.4.2005/4.5.2005, have stated as under:
 - 11.1 The petitioners have reproduced para 7 of H.T. brochure of licensee for bulk supply connection with regard to FSC refund/charges which states - “The applicant will have the option of supplying and even erecting the material required for release of his connection, which will be got passed from Chief Electrical Inspector to Govt. of Haryana. Such applicant will be entitled to priority over others whose connections are pending for want of material. The cost of material so supplied shall be adjusted against the service connection charges as per schedule of rates fixed by the Nigam.”

The petitioner has quoted part III page 9 (4.9.2) of HERC draft regulation “Duty to supply electricity on request, power to recover expenditure incurred in providing supply & power to require security” states – “The work relating to electrification of Urban Estates and Group Housing Societies will be executed by the concerned department / colonizer / societies after the licensee approves the electrification plan and estimates prepared on the basis of standard cost data book, for such plans and the applicant shall pay supervision charges to the licensee in accordance with Regulation 4.9.1. at the time of energisation of the system, the licensee shall ensure that the system has been laid as per the approved electrification plan. The consumer applying for connection in such area shall not pay service connection charges to the licensee as long as his load is within the parameters of the sanctioned plan”.

The pursuance of this para clearly states that the service connection charges are not payable if the system is laid by colonizer.

The petitioners have stated that the licensee in its Demand Notice and sanction letter has not mentioned anywhere that it was an interim and temporary arrangement. The petitioners have further stated that any additional work required for shifting of the load from sector 52A substation to their proposed 66 KV substation DLF Phase V will be done at their cost.

The Commission may decide issue regarding charging/refund of FSC & Share Cost.

12. The Commission heard the case on 31.5.2005, as per the schedule. During the course of hearing, the Commission directed the respondent No.2 to submit its reply to the following issue which had remained un-responded so far :

Total load of other (non-DLF) consumers fed by DHBVNL from 66 / 11 KV 16 MVA T/FS (T-1 & T-2) at 66 KV 'Q'-Block sub-station which according to the agreement dated 11.3.1999 were basically meant to feed the load of the petitioners.

- 12.1 The respondent No.2 was directed to submit its filing to the Commission by 9.6.2005 with a copy to the petitioners who, in turn, were required to submit their counter-comments by 14.6.2005. The respondent No.2 vide its letter dated 9.6.2005 sought extension of time upto 17.6.2005 to submit its said filing. The Commission considered and conceded to the above request of the respondents vide its memo. dated 15.6.2005. Accordingly, the Respondent No. 2 was asked to submit the said filing by 17.6.2005 with a copy to the petitioner. The Respondent No. 2 submitted the requisite filing vide its memo. dated 16.6.2005 and the petitioner's counter-comments thereon were received by the Commission on 20.6.2005.

- 12.2 The Respondent No. 2 has supplied the details of load of other consumers being fed from the 66/11 KV, 16 MVA T/fs (T-1 & T-2) of 66 KV 'Q' block substation provided by petitioners. The load of village Nathupur, Sikanderpur, Chakarpur on DLF feeders has been given as 2326 KVA. The load of the village being fed from 11 KV DLF Phase -III feeder, G-H block feeder and Corporate Park feeder is given as 467 KVA, 145 KVA and 60 KVA respectively. Thus the total load of 2998 KVA of other consumers is being fed from 66/11 KV, 16 MVA transformers T-1 and T-2 of 66 KV, Q block substation. The respondents have submitted that these three villages are surrounded by the DLF system and there is no right of way to isolate and erect separate feeders for these villages. It is further stated that since M/s DLF Universal Ltd. has purchased land from these villages for developing the colonies and commercial complexes, the above mentioned load of these three villages purely pertains to DLF load.

13. The petitioner's counter-comments vide its filing dated 20.6.2005 are as under :

- 13.1 The petitioners have submitted that the respondents have themselves accepted in their reply that they had released a load of 3 MVA to the adjoining villages from

transformer T-1 and T-2 without obtaining any consent from the petitioners which is in contravention to the clause 1.05 of the agreement.

- 13.2 The respondents have also not released any load of the petitioners from the third transformer though as per clause 1.05 of the agreement this transformer was meant for feeding the load of the petitioners and other consumers. The respondents kept the applications of the petitioners pending and released new connection to other junior applicants from their transformers.
- 13.3 The petitioners have also stated as incorrect, the contention of the respondents that there is no right of way to the villages and have stated that it is technically possible to feed the villages from other feeders existing inside all the three villages. The plea of the respondents that there is no right of way is not correct.
- 13.4 The petitioners have further prayed to the Commission to direct the respondents to release their pending loads from the third transformer or any other source, equivalent to the load of other consumers fed from the petitioners' own transformers, without charging any share cost of the substation.

14 **Commission's View and order**

After going through the records and hearing the petitioners as well as respondents, the Commission, observes as under, on the various issues raised in the petition.

14.1 **Non-release of Connections**

- 14.1.1 As per agreement dated 11.3.1999, the 66/11 KV, 16 MVA transformers (T-1 & T-2) at 66 KV 'Q' Block S/Stn provided by the petitioners were basically meant for feeding the load of the petitioners. Release of connections from the above power transformers to other consumers required the written consent of the petitioners. 66/11 KV, 16 MVA transformer (T-3) provided by the HVPNL was to feed the load of the petitioners and other consumers. The respondents have themselves admitted in their filing dated 16.6.2005 that no load of the petitioners was fed from the 3rd transformer (T-3) at 66 KV Q-Block S/Stn. During the course of hearing on 31.5.2005, the respondents, in reply to the point raised by the petitioners, admitted that some load of other consumers has also been fed from the 66/11 KV, 16 MVA transformers (T-1 & T-2) provided by the petitioners. Subsequently, the DHBVNL vide their filing dated 16.6.2005, have intimated that about 3 MVA load of other consumers is being fed from these two transformers. However, the scrutiny of the detail supplied by the respondents has revealed a calculation error and the total load of other consumers being supplied from these transformers works out to about 3.6 MVA. The petitioners have, therefore, prayed to the Commission to direct the respondents to release their pending loads from the third transformer or any other source, without charging any share cost of the substation, equivalent to the load of other consumers fed from the petitioners' own transformers.

Thus the respondents have made a false statement in their filing in regard to feeding of loads from 66/11 KV, 16 MVA transformers (T-1 & T-2) at 66 KV Q-Block substation and, also, violated clause 1.05 of the agreement dated 11th March, 1999, signed between the petitioners and respondents for release of connections to the petitioners .

- 14.1.2 A perusal of the list of HT connections released by the DHBVNL reveals that the connections to the applicants who applied at a later date were released ignoring the seniority of the petitioners which goes to establish discrimination against the petitioners, by the respondents.
- 14.1.3 The respondents have stated in their filings that as per MoU signed on 9.1.2002 between the petitioners and respondents, the petitioners were to plan and construct a 220 KV sub-station and 66 KV sub-stations to meet their power demand subject to technical feasibility. The respondents supplied an unsigned copy of the MoU with their filing. The Commission directed the respondents to produce a signed copy of the said MoU. However, the respondents were unable to produce a signed copy of the MoU before the Commission and in the subsequent filing admitted that the said MoU was not signed between the parties.

The respondents, in order to justify their stand for not releasing the connections to the petitioners, made a false statement before the Commission by quoting existence of a such a document (MoU) which was eventually found to be invalid.

- 14.1.4 The respondents have stated in their filing that as per the terms and conditions of the licence obtained by M/s. DLF Universal Ltd. from the office of Director, Town and Country Planning, all external services including electrical infrastructure (i.e. creation of new 220 KV and chain of 66 KV Grid S/Stns.) is to be provided by the private colonizer viz. M/s. DLF Universal Ltd., which they have failed to honour. The Commission directed the respondents to produce a copy of the licence issued by the Director, Town and Country Planning, Haryana to the petitioners to corroborate their contention.

The respondents, have subsequently intimated, that they have not been able to arrange a copy of the licence issued by the Director, Town and Country Planning, Haryana to the petitioners. However, they informed that they have been able to obtain a copy of the Licence No. 174 of 2004 i.e. extension given by the Director T & CP to M/s DLF Housing & Construction Ltd. for setting up a colony in village Sikanderpur, Distt. Gurgaon and reproduced para 5 (C) of the licence in support of their reply already submitted :

‘The colonizer will arrange the electric connection from outside source of electrification of their colony from HVPN. If they fail to provide electric connection from HVPN the Director, Town and Country Planning, Haryana will recover the cost from the colonizer and deposit it with HVPN’.

The Commission observes that stipulation of the licence referred to above requires the petitioners to arrange the electric connection from outside source of electrification of their colony from HVPN. The petitioners have met this requirement of licence by erecting 11 KV line(s) for electric connection of their colony/load to the system of HVPN.

Hence, the assumption of the respondents that arranging electric connection from outside source for electrification of the petitioner's colony/load, implies that the petitioners will arrange to construct Sub-stations of 220 KV and 66KV ratings is not correct.

14.1.5 Section 39 of the EA, 2003 on State Transmission Utility and its Functions specifies that STU shall discharge functions of planning and co-ordination relating to intra-State transmission system and ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from generating station to the load centres.

Section 40 of the EA, 2003 on duties of the transmission licensees further states that - 'It shall be the duty of transmission licensee a) to build, maintain and operate an efficient, co-ordinated and economical inter-State transmission system or intra-State transmission system, as the case may be'.

The Electricity Act, 2003 does not make any distinction between a private colonizer and any other consumer.

Section 43 of EA, 2003 on Duty to supply on request, under Part VI - Distribution of Electricity states :

(1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission;

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

Similar provisions regarding duty of licensee have been made in regulations on 'Conditions of Licence for Distribution & Retail Supply business' (Section 7 of regulations HERC/07/2004).

- 14.1.6 It is evident that the explanation and arguments given by the respondents for not releasing the connection until 28.02.2005 are unreasonable and unjustified. It gets corroborated from the fact that they released the connection of the petitioners within four months of the filing of the petition before the Commission, which was otherwise kept pending for about 2 years after the acceptance of their application.**

Since the connection of the petitioners has now been released by the respondents, the grievance of the petitioners in this regard stands redressed. However, the Commission directs the respondents to make arrangement within three months of issue of this order, for the release of the additional load of the petitioners (without charging any share cost of the substation), equivalent to the load of the other consumers (3.6 MVA) fed by the respondents from 66/11 KV, 16 MVA transformers (T-1 & T-2), installed by the petitioners at 66 KV, Q-Block sub-station.

The Commission also directs the respondents to release the electrical connections to the various applicants in future, strictly as per the seniority. The Commission, at any point of time may direct the respondents to supply the detailed list indicating the date of application of the consumers and date of release of connection by the respondents, in order to ascertain transparency in release of connections and compliance of the directive.

The Commission notes with concern the false filings made by the respondents and warns them not to do so in future. The Commission shall be constrained to take action against the erring respondents/petitioners as per regulations 30 (1) of the Conduct of Business Regulations, 2004 in future.

14.2 Payment of Interest on Advance Consumption Deposit (ACD)

- 14.2.1 The petitioners, in their original petition, had prayed for payment of interest on ACD amount deposited by them, from the date of deposit to the date of release of connection. However, during the hearing of the case on 31st May, 2005 the petitioners have conveyed to the Commission that they do not intend to pursue and claim the interest.**

As such, the demand of the petitioners for payment of interest on the ACD amount is treated as withdrawn.

14.3 Refund/Adjustment of Service Connection Charges

14.3.1 The petitioners, as per the instructions of the respondents have erected the feeder and also deposited the Service Connection charges. The respondents, even after about 2 years of the submission of application for connection by the petitioner have termed the release of connection as temporary arrangement and have given this argument to deny refund/ adjustment of the Service Connection charges. The demand notice (issued by the respondents) and in the sanction letter for release of load, the respondents have nowhere mentioned that the load feeding arrangement of the petitioners was temporary. Subsequently, the respondents, with reference to a query by the Commission, during the hearing on 31st May, 2005 have admitted that the connection released was not temporary.

14.3.2 The respondents cannot resort to charging the Service Connection charges and also get the 11 KV feeder erected through the consumer. The HERC Order on Distribution and Retail Supply ARR and Tariff – 2000, specifies under Annexure 3 -Schedule of General and Miscellaneous Charges that “In case due to non-availability of material with the licensee, the applicant supplies the material, due credit of the cost of material supplied shall be given to the applicant from the Service Connection Charges as worked out above. The rates of material would be worked out on the basis of the issue rates as fixed by the Controller of Stores or the actuals on which it is purchased by the applicants, whichever is lesser.” Similar provision has also been mentioned in the brochure of the respondents for applicants of the H.T. Bulk Supply connection.

14.3.3 Since the petitioners have deposited Rs.7,99,000/- as Service Connection charges and also erected the 11 KV feeder, the respondents are directed to refund the Service Connection charges or cost of feeder erected by the petitioners, which ever is less, within one month of issue of the order. In case of shifting of the feeding arrangement of the electricity connection at a later date from 220 KV Sector 52-A substation to the proposed 66 KV substation in DLF Phase –V, Gurgaon to be erected by the petitioners, the cost of such shifting will be borne by the petitioners as already agreed to by them in their filing dated 20th May, 2005.

Date : 15th July, 2005

Place : Panchkula

T.S. Tewatia
Member

T.R. Dhaka
Member

Lt. Col.(Retd.) Raghbir Singh
Chairman