

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

CASE NO. HERC/PRO - 8 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 (non-domestic) electricity connection for 2.4344 acre, Queensdale (Centre Court), DLF City, Phase-V, 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 10.09.2002 for 2268 KW load.

AND

IN THE MATTER OF :

1. DLF Services limited, Shopping Mall, Arjun Marg, DLF City, Phase –I, Gurgaon – 122002 (Haryana), through authorized signatory, Sh. K.K. Bhattacharya.
Petitioner No. 1
2. DLF Universal Limited, Shopping Mall, Arjun Marg, DLF City, Phase –I, Gurgaon –122002 (Haryana), through authorized signatory, Sh. Manjit Singh.
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. Chief Engineer (Operation), Dakshin Haryana Bijli Vitran Nigam Ltd. (“DHBVNL”), Sector –18, Gurgaon (Haryana)
Respondent No. 3
4. Sub-Divisional Officer, OCC, Dakshin Haryana Bijli Vitran Nigam Ltd. (“DHBVNL”) Sector –31, 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. Tewatia, 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 (non-domestic) electricity connection for 2.4344 acres Queensdale (Centre Court), DLF City, Phase-V, 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 10.09.2002 for 2268 KW load.
 - 1.1 That the Petitioner no. 1 DLF Services Limited is a company duly registered under the Companies Act, 1956 having its registered office at DLF Centre, Sansad Marg, New Delhi – 110001 and also having its office at Shopping Mall, Arjun Marg, DLF City, Phase-I, Gurgaon (Haryana). The present petition/complaint is being filed through K.K. Bhattacharya, who has been authorized to sign and file the present Complaint.
 - 1.2 The Petitioner no. 1 is a subsidiary of a company i.e. DLF universal Limited (“**DLF Universal**”), the Petitioner no. 2 herein, 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 “Queensdale, Centre Court”.
 - 1.3 The Respondent No. 1 i.e. Haryana Vidyut 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. Dakshin Haryana Bijli Vitran Nigam Limited (**DHBVNL**).
 - 1.4 The Petitioners have impleaded all respondents 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 The petitioners filed an application for non-domestic bulk supply connection for their Commercial Complex, ‘Centre Court’ located at DLF City, Phase V, Gurgaon vide application dated 29.8.2002. The petitioners have deposited a

Demand Draft No. 654811 dated 21.5.2002 for Rs.349472 in respect of ACD in favour of respondent No. 3. The application was accepted by respondent No. 4 on 10.9.2002 vide receipt bearing No. A&A No. 4188/BS/NDS dated 10.9.2002.

- 1.6 The petitioners followed up with various officials of the respondents for release the connection, the respondents did not release the connection. The petitioners apart from meeting officials of the respondents also sent various reminders (dated 05.09.2003, 09.09.2003, 07.01.2004, 21.01.2004, 23.01.2004, 04.03.2004, 22.07.2004 & 17.09.04) requesting for release of connection but the said connection was not released.
- 1.7 That in spite of so many references made to the respondents 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 respondents are 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 on the other they have released connection to the applicants who applied at a later date which is a clear case of discrimination against them.
- 1.10 That DLF is the only colonizer who has erected a 66 KV Substation in Gurgaon at their own cost and handed it 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. 1.8 Crore (approx.) per annum to the respondent and state exchequer. Apart from this petitioner's 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 premise within the area of supply, provide connection to 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 respondent's 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 :

- a) Issue appropriate directions to the respondents for release of the aforesaid electricity connection under non-domestic bulk supply category forthwith for the property DLF Centre Court.
- b) Issue appropriate directions against the respondents to pay interest on the ACD equivalent to Rs. 3,49,472/- deposited by the petitioner on 29.08.2002 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 petitioner's connection.
4. In para-wise reply, the respondent 2 vide filing dated 9.12.2004 and 26.4.2005 and respondent 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 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. Queensdale, Phase-V, DLF City Gurgaon for 2268 KW load applied vide A&A No. 4188/BS/NDS dated 10.9.2002 in the office of SDO OP Sub Divn. Maruti, DHBVNL, Gurgaon could not be released due to the fact that M/s. DLF on their part have not got the site and capacity of new 66 KV S/stn. finalized. Besides this, M/s. DLF have not come forward for the creation of already sanctioned 2 No. 66 KV S/stns. at F&U Blocks with proposed capacity of 32 MVA and other S/stns. as per load demand of the area being developed as a private colonizer.

The petitioner is yet to submit the electrification scheme as per revised norms of the Nigam. In the absence of getting the complete electrification scheme sanctioned from the competent authority by M/s. DLF Universal Limited no further action could be taken for further processing the application of new connection.

Further, since both the power transformers of 12.5/16 MVA installed at 66 KV S/stn., 'Q' Block are fully loaded, the release of further connection will not be possible till such time. M/s. DLF do not construct their new 220 KV and 66 KV Substations as already agreed upon by them.

The para 3 of the memorandum of understanding between HVPNL/DHBVNL and DLF Universal Ltd., held at Panchkula on 9.1.2002 states:-

“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 -

Electric connection in the name of M/s. Queensdale, Phase-V, DLF City Gurgaon for 2268 KW load applied vide A&A No. 4188/BS/NDS dated 10.9.2002 in the office of SDO OP Sub Divn. Maruti, DHBVNL, Gurgaon could not be released earlier 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/stns. at DLF Q-Block, F&U Block having capacity of 2x12.5/16 MVA, 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-II, Delhi vide Memo No.Ch.18/406/K-100 dated 09.01.1996. Copy of same was endorsed to M/s. DLF Universal Ltd. vide Ch.18/406/K-100 dated 09.01.1996 and 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/stn. Further, it is intimated that 4th 12.5/16 MVA 66/11 KV T/f with associated works is also to be provided by M/s. DLF Universal Ltd. at 66 KV S/stns, DLF Q-Block Gurgaon. Para starting with – “Regular meetings were held: and ending with - could not be released”- Same as above.

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/stns.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 at the department management level as has been mentioned in the Para No.4.6 above. M/s DLF Universal Ltd. 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/stns. 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 -

The application of new connection could not be further processed due to the fact that the source of power supply has not been identified. The petitioner is yet to submit the electrification scheme of this area as per revised norms of the Nigam or actual requirement of load in the case the load demand is still more than the revised norms. 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/stn. 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 HVPNL 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 agreement based on the status of grid and Power Supply conditions”.

Thereafter, an MoU was signed between HVPNL/DHBNL 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 DHBNL 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.

DHBNL 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 DHBNL 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 16/02/2005, 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 HVPNL to facilitate the release of new electricity connections to their various 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 11.4.2005 have submitted as under:
 - 5.1 The main point taken by the DHBVNL in reply to petition filed in this case is that the connection could not be released as 66KV Q-block S/stn. was overloaded and DLF could not take any action to provide 4th transformers at this S/stn. and also to erect new 220 KV S/stn. and 66KV S/stn. as per the MoU of 9.1.2002
 - 5.2 That we would like to submit that no MoU was signed on 9.1.2002 even though a meeting took place. The MoU circulated by DHBVNL mentioning Sd/- against each name is not correct as no one has signed the same. This is further clear from the letter dated 24.1.2002 sent by Director /Tech. HVPNL to MD, DHBVNL, Hisar for getting it signed from DLF and then returning it for getting signature of MD, HVPNL. This, however, was never sent by DHBVNL to DLF.
 - 5.3 In accordance with the agreement entered with DLF at the time of construction of Q-block S/stn. at DLF City, Phase II, the first two transformers were entirely for feeding load of DLF and the 3rd transformer was to first feed the load of DLF and then of remaining consumers. But DHBVNL released 4MVA load to consumers other than DLF from first two transformers and no load has been released to DLF from 3rd transformer. Also as per agreement HVPNL agreed to refund an amount of Rs 79.3 lacs on commissioning of above said S/stn. but inspite of several follow-ups the refund has not yet been made although the S/stn. has been commissioned in April 1999.

- 5.4 Regarding erection of 4th transformer approval once accorded by HVPNL was subsequently withdrawn and the case is still with HVPNL for approval.
- 5.5 DLF is the only colonizer which has erected 66KV S/stn., as it is the prime duty of the licensee to provide electricity to consumers. Even there is no provision in EA for the consumer to provide S/stn. to get electricity supply.
- 5.6 The connection has now been released by DHBVNL 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 19,50,000/- as share cost and Rs 11,34,000/- towards FSC which needs to be refunded.
6. The Commission vide its communication dated 19.4.2005 directed the respondents to submit their reply to the petitioner's said rejoinder (para 5) 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 Reply to be submitted by DHBVN, the Distribution & Retail Supply Licensee. HVPN's submission in this regard is as per Sr. No. 7.3 below.
- 7.2 Regarding MoU signed on 9th January 2002, it is mentioned that the issues were discussed in the meeting and the consensus arrived at as per the draft minutes of meeting submitted by DHBVN with the Hon'ble Commission. Shri K.K. Bhattacharya of M/s DLF and Er. R.K. Jain, the then Director/C&A, HVPN initialed the said minutes in token of confirmation about the proceedings of the meeting. The MoU/Minutes of the meeting were still to be signed by various participants/representatives of the organizations involved, pending finalization of the language and other final details of the contents. Under such conditions, language/spellings can vary with other requisite minor modifications, however, the basic issues and policies remain as discussed and decided in the meeting. The contents of draft MoU/Minutes, therefore, should be treated as having been decided in the meeting dated 9th January 2002. Moreover, DLF have at no stage denied or rejected contents of the proceedings of the meeting.
- 7.3 66 KV substation DLF Q-Block, Guragon is definitely an overloaded substation. Originally two transformers were installed by M/s DLF and the 3rd transformer was installed by HVPN. Another transformer (4th) was proposed to be added. However, it was not technically feasible to feed this transformer and operate this substation with four transformers unless and until 2nd bus arrangement was completed. At present, only one circuit of Badshahpur-Dundahera line is passing through this substation, which cannot handle the load of four transformers under any circumstances. For connectivity of the 2nd circuit to this substation double bus arrangement is a technical necessity. The issue has been deliberated at all possible levels and HUDA was prepared to provide additional strip of land to

accommodate 2nd bus in this substation. M/s DLF were entrusted with follow up with HUDA for necessary release orders. The said orders are still awaited and consequently 4th transformer cannot be installed/commissioned although, M/s DLF are prepared to provide space in the yard for the said transformer bay.

As far as HVPN is concerned, two transformers installed by M/s DLF are supplying load of DLF only and no load relating to any other party has been released from these two transformers. The management of 11 KV system is with DHBVN, the exact details can be supplied by them. The third transformer caters to the load of the consumers other than DLF.

With regard to a refund of Rs.79.3 lac, the clause No. 5.01 of agreement dated 11.03.1999 provides that “SE/Op, HVPN, (now DHBVN) Gurgaon will examine amount deposited by the colonizers as share cost of 66 KV substation Dundahera and settle adjustment of full amount paid by the colonizers after the colonizer stops drawing power from Dundahera 66 KV substation”. Accordingly, the case is being initiated by DHBVN.

7.4 It is submitted that the permission/approval for installation of 4th power transformer at DLF Q-Block Substation has not been withdrawn by HVPN at any point of time.

7.5 In addition to M/s DLF, M/s HSIDC have also created power infrastructure for meeting the load demand of the area/colonies developed by them. They have created a 220 KV substation at IMT Manesar, which is likely to be commissioned during May/June 2005. In addition, they have already commissioned 66 KV substation at Sector-3, IMT Manesar whereas 66 KV substations at Sector-2, Sector-4, Sector-7 and Sector-8 IMT Manesar are ready for commissioning in near future.

M/s HLF have also come forward and have agreed to create a substation in their Ambience Island Project (Sector-24, Gurgaon) along with associated transmission line.

M/s Unitech have also agreed to construct 66 KV substation. They have also entered into an agreement for the purpose. However, the feeding arrangement is under review in view of the recent developments in the power system in the area having taken place.

It is submitted that under Clause-46 of Electricity Act, 2003 it is provided that :
“46. Power to recover expenditure – The State Commission may, by regulation, authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Sec. 43 and expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply”.

In view of above provision, the Hon’ble Commission is competent to impose reasonable expenses for supply of electricity.

It may be pertinent to bring to the notice of Hon’ble Commission that according to the provisions of license granted by the Commissioner & Secretary to Government Haryana, Town & Country Planning Department to various colonizers/developers during 1982, the following stipulation was made:

That you shall pay proportionate development charges if the main lines of roads, drainage, sewerage and electricity etc. are to be laid out and constructed by the Govt. of Haryana, Urban Development Authority or any Local Authority. The proportion in which and the period within which such payment is to be made shall be determined by the Director, Town and Country Planning.

As per license issued to M/s DLF and others by the Director, Town & Country Planning, Haryana under Clause-1 b(vii) of Agreement LC-IV, it is provided that :
“ 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 & Country Planning will recover the cost from the colonizer and deposit it with HVPN”.

A photocopy of the above two documents as well as copy of license issued to M/s Neelgiri, Gurgaon have been supplied.

M/s DLF have also consented to construct a 66 kV substation in their Phase-V area for which they have already offered a piece of land measuring 2.5 acres and have submitted tentative GELO (General Electric Lay Out) drawing for approval by Chief Engineer/D&P, HVPN. The route of connecting line has also been identified and is under approval.

A photocopy each of the relevant circulars issued by erstwhile Haryana State Electricity Board, a statutory body and its successor Nigams, from 1998 onwards is supplied.

- 7.6 The above 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 – Date of hearing. The hearing was held on 28.4.2005 as per the schedule. During the course of this hearing, DHBVNL 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 has been 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 & In reply regarding MOU signed on 9th January 2002, it is mentioned that the
9.2 issues were discussed in the meeting held on 9.1.02 and the consensus arrived at as per the draft minutes of meeting submitted in reply to original plant of DLF. It is now submitted that the said minutes were initialed by Shri K.K. Bhattacharya of M/s DLF and Er. R.K. Jain, Director/C&A, HVPN in token of confirmation about the proceedings of the meeting. The MoU/minutes of the meeting were still to be signed by various participants/representatives of the organizations involved pending finalization of the language and other final details of the contents. Under

such conditions, language/spellings can vary with other requisite minor modifications, however, the basic issues and policies remain as discussed and decided in the meeting. The contents of draft MoU/Minutes, therefore, should be treated as having been decided in the meeting dated 9th January 2002. Moreover, DLF have at no stage denied or rejected contents of the proceedings of the meeting though they may deny that they ever initialed the minutes.

- 9.3 In reply it is submitted that 66 KV Substation DLF Q Block, Gurgaon is definitely an overloaded substation. Originally two transformers were installed by M/s DLF and the 3rd transformer was installed by HVPN. Another transformer (4th) was proposed to be added. However, it was not technically feasible to feed this transformer and operate this substation with four transformers unless and until second bus arrangement was completed. At present, only one circuit of Badshahpur-Dundahera line is passing through this substation which cannot handle the load of four transformers under any circumstances. For connectivity of the second circuit to this sub station double bus arrangement is a technical necessity. The issue has been deliberated at all possible levels and HUDA was prepared to provide additional strip of land to accommodate 2nd bus in this sub station. M/s DLF were entrusted with follow up with HUDA for necessary release order. The said orders are still awaited and consequently 4th transformer cannot be installed/commissioned although M/s DLF are prepared to provide space in the yard for the said transformer bay. Two transformers installed by M/s DLF are supplying load of DLF only and no load relating to any other party has been released from these two transformers. The 3rd transformer caters to the load of the consumers of adjoining areas.
- 9.4 In reply it is submitted that the matter relates to HVPN, but to the best of our knowledge the HVPN has not withdrawn the approval for installation of 4th power transformer at DLF Q Block substation.
- 9.5 In reply it is submitted that in addition to M/s DLF, M/s HSIDC have also created power infrastructure for meeting the load demand of the area/colonies developed by them. They have created a 220 KV Sub stations at IMT Manesar, which is likely to be commissioned during May/June, 2005. In addition, they have already commissioned 66 KV Sub Station at Sector – 3, IMT Manesar whereas 66 KV sub stations at Sector – 2, Sector – 4, Sector – 7 and Sector – 8 IMT Manesar are ready for commissioning in near future. M/s HLF have also come forward and have agreed to create a substation in their Ambience Island Project (Sector-24) alongwith associated transmission line. M/s Unitech have also agreed to construct 66 KV Sub station. They have entered into an agreement for the purpose.
- It is also submitted that under clause 46 of Electricity Act 2003, it is provided in Section 46 – “Power to recover Expenditure”- The State Commission may, by regulations, authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that

supply. In view of above provisions, the Hon'ble Commission is competent to impose reasonable expense for supply of electricity.

It may be pertinent to bring to the notice of Hon'ble Commission that according to the provisions of licence granted by the Director, Town & Country Planning Department, Govt. of Haryana to various colonizer/developers during 1982, the following stipulations were made in the licenses – “That you shall pay proportionate development charges if the main lines of Roads, drainage, sewerage and Electricity etc. are to be laid out and constructed by the Govt. of Haryana, Urban Development Authority or any local authority. The proportion in which and the period within which such payment is to be made shall be determined by the Director, Town and Country Planning”.

Even as per licence issued to M/s DLF and others by the Director, Town and Country Planning, under clause 1 (vi) of Agreement LC-IV, it is provided that :

“ 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 & Country Planning will recover the cost of such electrification from the Colonizer and deposit it with HVPN.

- 9.6 In reply it is submitted that as regards share cost, 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 66 KV S/station to be created by M/s DLF Universal Ltd. That M/s DLF Universal Ltd. letter dated 8.01.2005 is supplied 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 31.03.2005 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 the shifting of above load to 66 KV S/Station to be created by M/s DLF.

As regards the demand to refund FSC (fixed service connection charges) it is submitted that 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. That even the draft guidelines allow the charging of FSC.

In this regard 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 as per the Nigam instructions and as per HERC draft guidelines on supply of electricity 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 We do not agree that by simply putting initials we have given our consent to the MoU. As already informed neither DLF nor any officer of HVPNL & DHBVNL have put their signature on it and as such the so called MoU does not hold good. A letter dated 4.2.02 was also sent by DLF to Director HVPNL in this regard wherein DLF contended that the meeting on 9.1.2002 was called to discuss the issue of sanction of loads only and issue of sub-stations was not on the agenda. M/s DLF requested for a separate meeting to discuss the future planning of 220 KV and 66 KV sub-stations with regard to load growth of DLF.
 - 11.2 It is for HVPN & not DLF to pursue with HUDA as the substation belongs to HVPN and DLF has no locus standi.
Also it has been conceded by HVPNL that this 3rd transformer is catering to the load of consumers other than DLF which is in contravention to the agreement dated 11.3.1999 between DHBVNL/HVPNL & DLF (para 1.05).
 - 11.3 According to letter dated 5.11.2003 issued by HVPNL provision of 4th transformer at 66KV Q-Block substation is not technically feasible in the available land which in other words mean that the approval already accorded does not hold good. Even thereafter DLF offered additional land with layout on 5.1.04 but the layout has not been cleared by HVPN till date
 - 11.4 It may be true that HSIDC & some colonizers have offered to construct 66KV substation but none of the colonizer has started construction, whereas DLF has constructed 66 KV substation more than 6 years back & handed it to HVPN. Additional land has also been offered at this site, and site for more 66 KV substation has also been offered, but delay to sanction / approval of the same lies with HVPNL. The issue of share cost is the purview of Hon'ble Commission as per Electricity Act 2003.
 - 11.5 After long persuasion the Chief Engineer P&C, HVPN Panchkula has no doubt accorded approval for construction of 66 KV substation in sector 43, DLF Phase-V, but the conditions stipulated their in are not acceptable, as we intend to utilize the load from this substation only for use in DLF area. We have accordingly made a reference to HVPN vide on letter dated 18.5.2005, which may kindly be perused.
(The petitioners have certain comments on the approval for the substation accorded by the respondents and have conveyed to the respondents the detail of

infrastructure reasonably required for meeting their load and which they intend to construct.)

The condition of the respondent that 11 KV line from 220 KV substation Sector 52A is an interim arrangement & as it is a temporary work, FSC rightly chargeable is not correct as it does not find any such mention in the demand notice and sanction letter issued by the DHBVNL. We however agree to undertaking that any addition work required for shifting the load from Sector 52-A substation to our proposed 66KV substation DLF Phase-V will be done by us at our own 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:

(a) 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.

(b) Delay in the refund of Rs. 79.3 lacs deposited by the petitioner towards the share cost of 66 KV Dundahera sub-station.

12.1 The respondent No.2 was directed to submit its filing to the Commission by 9.6.2005 with a copy to the petitioner 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 have supplied the details of load of other consumers being fed from the 66 / 11 KV 16 MVA T/FS (T-1 & T-2) at 66 KV 'Q'-Block sub-station provided by petitioners. The load of village Nathupur, Sikanderpur, Chakarapur 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 a total load of 2998 KVA of other consumers is being fed from the transformer T-1 and T-2 at 66 KV Q block substation. DHBVNL 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.

12.3 The respondents have submitted their reply dated 16.6.2005 giving reasons for not refunding Rs 79.3 lacs paid by the petitioners towards share cost for 66 KV Dundahera substation. The respondents have stated that the petitioners have constructed 66 KV substation in Q-block, Phase II, DLF City, Gurgaon with two transformers each of 66/11KV, 16 MVA capacity. The petitioners have also constructed a non residential building required for operation and maintenance of the substation. However, it has been pointed out that the petitioners have not constructed 8 residential buildings – 4 Nos. three-room residences and 4 Nos. two-room residences -for O & M staff of the substation as specified in the clause 1.02 of the agreement dated 11.3.1999. The respondents have further intimated that the petitioners had supplied to the respondents the drawings of the residential buildings on 9.7.1999 for necessary approval. However, these drawings were not approved by the respondents and were returned on 12.10.1999 to the petitioners with certain observations. Subsequently, a reminder was sent on 3.5.2000 but no reply was received from the petitioners. The respondents have further intimated that the land earmarked for construction of residential buildings for the O & M staff will be made available by shifting the capacitor bank.

12.4 The petitioners were required to transfer title of 1.25 Acre of land used for construction of the 66 KV substation, in Q block, Phase V, DLF City, Gurgaon alongwith connected residential and non-residential buildings to HVPNL free of cost. It has also been stated that as per the agreement HVPNL is required to provide necessary certificate from Govt. of Haryana for exemption of stamp duty in respect of transfer of title of land, otherwise the stamp duty will be borne by the HVPNL.

The respondents have stated that since the petitioners have not constructed the residential buildings and have not transferred the title of the 1.25 acre of land used for construction of 66 KV Q block substation, the share cost of Dundahera substation deposited can not be refunded / adjusted.

13 The petitioners' 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 this transformer.

- 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 petitioners have also prayed to the Commission to direct the respondents to release their further 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.

- 13.4 The petitioners had completed the 66/11 KV, Q block substation, in January, 1999, as approved by erstwhile HSEB. Before energisation the HVPNL insisted the petitioners on signing an agreement which was signed on 11.3.1999. At the time of signing of agreement the HVPNL further insisted on provision of residential building within the substation premises to accommodate respondents' staff, which the petitioners agreed as a gesture of goodwill. The substation was energized in April, 1999 and was handed over to the respondents free of cost. The respondents stopped drawing power from Dundahera substation w.e.f. April, 1999 and all their load was transferred to Q block substation.

The petitioners have contested the argument given by the respondents - that the share cost of Dundahera substation was not refunded as per the clause 5.01 of the agreement because the petitioners had not complied with the provisions of the clause 1.02 and 1.03 of the agreement viz. construction of the residential quarters and that the title of the land used for Q block substation and non residential building have not been transferred to HVPNL. The petitioners consider the stand taken by the respondents as unjustified and have put forth following arguments in support of their reply :

- a) The refund of share cost as per clause 5.01 of the agreement was subject to stopping of drawl of power by the petitioners from Dundahera substation and not subject to compliance of any other clause of the agreement.
- b) Compliance of clause 1.03 is the responsibility of HVPNL and not the petitioners, as till date respondents have neither sent the petitioners the necessary certificate from the Govt. of Haryana for the exemption of the stamp duty nor they have agreed to pay the required stamp duty. The substation, including the entire 1.25 acre land is in the possession of the HVPNL for the last 6 years and the they had not taken any initiative to get the title transferred in their name, hence the petitioners should not be made responsible for non compliance of clause 1.03 of the agreement.
- c) Regarding clause 1.02 of the agreement for construction of residential building , it has been stated that the petitioners initially had not received approval from HVPNL, of the drawings of these buildings and now there is no space for construction of the houses as HVPNL has subsequently used the part of land for installation of capacitor banks.

Also for installation of 4th transformer at Q block substation the control room will have to be extended to accommodate 11 KV breakers, relay and control panel etc. which will further eat away the balance land.

It is further stated that the residential accommodation of operating staff inside the substation premises is not an essential standard requirement of HVPNL as all the newly constructed substations by them at Sector -56, Sector -44 and Sector -52 A do not have any residential building.

The petitioners, in view of the above have prayed to the Honourable Commission to direct the respondents to arrange refund of Rs. 79.3 lac unduly held by them for last 6 years.

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 submitted in their filing that the petitioner didn't augment 66 KV "Q" Block sub-station by providing 4th 66 / 11 KV 16 MVA transformer. This proposal was linked with bringing in the second-circuit of 66 KV Badashahpur-Dundahera (Double-circuit line) at 66 KV Q Block sub-station entailing creation of second bus at the sub-station and consequent additional land to be had from HUDA for the purpose. However, as brought out by the petitioners, the respondents, till date, have neither sent the petitioners the necessary certificate from the Govt. of Haryana for the exemption of the stamp duty nor they have agreed to pay the required stamp duty as laid down in the agreement dated 11.3.99. The Commission observes that there was lack of effective follow up both by the respondents and the petitioners with HUDA authorities leading to sufferage of concerned electricity consumers.
- 14.1.4 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.

- 14.1.5 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.

14.1.6 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).

14.1.7 It is evident that the explanation and arguments given by the respondents for not releasing the connection of the petitioners until 16.2.2005 are unreasonable and unjustified. It gets corroborated by from the fact that they released the connection of the petitioners within four months after the filing of the petition (by them) before the Commission, which otherwise was kept pending for about 2 ½ 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 ½ 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 respondent 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.11,34,000/- 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.

14.4 Refund of share cost of Dundahera substation

- 14.4.1 The petitioners had deposited Rs. 79.3 lacs with erstwhile HSEB as share cost of 66 KV Dundahera sub-station in 1989. The respondents, as per clause 5.01 of the agreement dated 11.3.99, were required to settle adjustment of said full amount of share cost of 66 KV Dundahera sub-station, deposited by the petitioner, after they stopped drawing power from 66 KV Dundahera sub-station. The petitioners, as per their filing dated 20.6.2005, stopped drawing power from 66 KV Dundahera sub-station w.e.f. April, 1999. The issue, despite the written agreement referred to above, has been hanging fire since then and the sum of Rs. 79.3 lacs has not been refunded / adjusted to the petitioners though a period of about 6 years has elapsed.
- 14.4.2 The respondents, in their filings have taken the plea that the share cost of Dundahera substation was not refunded to the petitioners as they had failed to implement clause 1.02 and 1.03 of the of the agreement dated 11.3.1999.
- 14.4.3 We have studied the filings of the petitioners and respondents with a view to ascertain the extent of compliance of the various provisions of the said agreement by the two parties, in general; and with reference to the clause 1.02 and 1.03, in particular.
- 14.4.4 As per clause 1.03 of agreement dated 11.3.1999, the petitioners were required to transfer the title of the 1.25 Acre of land used for construction of the 66 KV Q block substation, DLF City, Gurgaon alongwith connected residential and non-residential buildings to HVPNL, free of cost. To accomplish this transfer the Respondent No. 1 (HVPNL), as per the agreement dated 11.3.1999, was required to obtain the necessary certificate from the Govt. of Haryana for the exemption of the stamp duty in respect of transfer of the title of the land or otherwise to bear themselves the financial implications of the stamp duty.

However, the respondent No. 1 (HVPNL), since taking over the possession of the 66 KV Dundahera S/Stn. from the petitioners, free of cost, in 1999, has neither conveyed to the petitioners, the procurement of necessary certificate from the Govt. of Haryana for exemption of the stamp duty nor intimated their willingness to pay the required stamp duty, which was a pre-requisite for transfer of the title of the said property in the name of the respondents. Apparently, the respondents have failed in getting the title of the land transferred in their name.

As such, the onus for non-compliance of the clause 1.03 of the agreement lies with the respondents themselves and it is totally improper to put blame on the petitioners and withhold the refund of share cost of Dundahera substation on this account.

14.4.5 As per clause 1.02 of the agreement dated 11.3.1999, the petitioners were required to construct 4 Nos. 3 room and 4 Nos. 2 room residential buildings within 1.25 acre land meant for 66 KV, Q- block, substation, for O & M staff on the pattern of residences existing at 66 KV S/Stn. Dundahera.

14.4.6 The Respondent No. 2, in its filing dated 16.6.2005 has stated that the petitioners had submitted on 9.7.1999, the drawings of the residential accommodation to the Respondent No. 2 for approval so that they could construct the residential accommodation. These drawings were forwarded to Respondent No. 1 on 10.8.1999 for approval and were returned to the Respondent No. 2 on 20.8.1999 with certain observations. The drawings were forwarded by the Respondent No. 2 to the petitioners on 12.10.1999 and a reminder was given on 30.5.2000 (copy not supplied). The Respondent No. 2 has also stated that till date no reply has been received from the petitioners.

However, the representative of Respondent No. 1 in its memo. No. Ch-7/406/K-100 dated 7.6.2005 to the Respondent No. 2 has mentioned that a letter dated 10.2.2000, from the petitioners, forwarding the modified drawings was received by them. It has further been pointed out that as desired by the Respondent No. 1, in letter dated 20.8.1999, the petitioners had given some specifications to be followed by them in construction but the modified drawings, as stated in the letter of the petitioners were not received. Intimation in this regard was sent by the Respondent No. 1 to the petitioners.

Though the Respondent No. 2, as per its statement in filing dated 16.6.2005 has filed the reply on the basis of above referred letter of the Respondent No.1, it has concealed the information regarding receipt of a letter dated 10.2.2000 from the petitioners intimating the specifications of construction as asked for by the Respondent No. 1 and forwarding the modified drawings (which were not received).

We have further noted that in the MoU dated 9.1.2002, which was not eventually signed by the two parties, it has been mentioned with reference to construction of residential buildings by the petitioners that - “DLF agreed to construct these buildings after receipt of approved drawing layout”

It clearly indicates that the petitioners even on 9.1.2002 i.e. after about 3 years of shifting of their load from Dundahera substation, were ready to make the compliance of the clause 1.02 of the agreement dated 11.3.1999 (construction of the residential buildings for staff of respondents), provided the approved drawings, which were to be supplied by the respondents, were received by the petitioners. In the draft MoU dated 9.1.2002, referred by the respondents in their filing, it is nowhere mentioned that any action was lacking on the part of the petitioners regarding drawings of the residential accommodations.

If the drawings supplied by the petitioners to the respondents did not meet the requirement of the respondents, and if, the modifications required were too many, the respondents could have supplied their standard drawings for two-room and three-room residential quarters (adopted at Dundahera substation or at any other place in the State) to the petitioners for execution of the work. The lack of keenness on the part of respondents to get the residential quarters constructed is obvious from the fact that they have failed to supply the requisite drawings to the petitioners for execution of the work even after lapse of a long period of over 6 years of signing of the agreement dated 11.3.1999.

The petitioners can only be held responsible for non-compliance of the clause 1.02 of the agreement if they had refused or conveyed their reluctance to construct the residential quarters in accordance with any of the drawings supplied by the respondents.

Evidently the petitioners could not make compliance of the clause 1.02 of the agreement for want of final drawings of the residential quarters which were to be supplied by the respondents to the petitioners. In view of the above facts we are of the opinion that the petitioners can not be held responsible for non-compliance of clause 1.02 of the agreement as there had been grave and unjustifiable lapse on the part of respondents themselves in supplying the final drawings to the petitioners which were an essential pre-requisite for compliance of the provision 1.02 of the agreement by the petitioners. Not only this, the respondents subsequently installed capacitor banks over the land which was to be used for construction of residential accommodations.

Moreover, as far compliance of other provisions of the agreement is concerned, the respondents have also grossly violated the stipulations of the clause 1.05 of the agreement dated 11.3.1999 and discriminated against the petitioners with regard to release of connections to the loads of the petitioners as brought out at para 14.1.1 above.

14.4.7 In view of the above we find it against natural justice to link the issue of refund of share cost of Dundahera substation with the non-compliance of clause 1.02 and 1.03 of the agreement dated 11.3.1999.

14.4.8 We direct the respondents to first shift the capacitor banks, as offered by them in their filing, to make the land available for construction of the residential buildings. The issue of finalization of the drawings for construction of the 4 Nos. 3 room and 4 Nos. 2 room residential buildings should then be sorted out with the petitioners, to facilitate construction of

these residences by the petitioners at the 1.25 acre, 66 KV, Q block substation.

As per the clause 5.01 of the agreement dated 11.3.1999 the respondents were required to refund the full amount of the share cost of 66 KV Dundahera substation deposited by the petitioners after they stopped drawing power from this substation which they stopped w.e.f. April, 1999. Therefore, we direct the respondents to refund to the petitioners the share cost amounting to Rs.79.3 lac of Dundahera substation deposited by them within one month of issue of this order.

T.S. Tewatia
Member

Lt. Col.(Retd.) Raghbir Singh
Chairman

In regard to the paragraph 14.4, I express difference of opinion as under :-

1. Refund of Share Cost of Dundahera Sub-station

- 1.1 The petitioner deposited Rs. 79.3 lacs with erstwhile HSEB as share cost of 66 KV Dundahera sub-station in 1989. The respondents were required to settle adjustment of said full amount of share cost of 66 KV Dundahera sub-station, deposited by the petitioner, after they stopped drawing power from 66 KV Dundahera sub-station, as per clause 5.01 of the agreement dated 11.3.99. The petitioners, as per their filing dated 20.6.2005, stopped drawing power from 66 KV Dundahera sub-station w.e.f. April, 1999. The issue, despite the written agreement referred to above, has been hanging fire since then and the sum of Rs. 79.3 lacs has not yet been refunded / adjusted.
- 1.2 A perusal of the filings made by Respondent No. 2 on 16.6.2005 and the petitioner's counter-comments dated 20.6.2005 thereon establishes that the agreement dated 11.3.1999 has not fully been honoured both by the petitioner and the respondents. The respondents have violated clause 1.05 of the said agreement as brought out at para 14.1.1. There has been lack of initiative on the part of Respondent No.1 in getting the title of the land transferred to HVPN as per clause 1.03 of the said agreement and there has been collective failure on the part of the petitioner and the respondents in implementing clause 1.02 of the above agreement. Thus both the respondents and the petitioners are to be blamed for the in-ordinate delay in the refund / adjustment of share cost of 66 KV Dundahera sub-station. In my opinion, an agreement has to be read and implemented holistically. I, therefore, direct both the parties to take most prompt steps for implementing clause 1.02 and clause 1.03 of the agreement dated 11.3.99 so as to pave the way for settling adjustment of Rs.79.3 lakhs (paid by the petitioner as share cost of 66 KV Dundahera sub-station) as per clause 5.01 of the agreement

dated 11.3.99. The petitioner and the respondents must ensure completion of their respective activity / action by 31.12.2005.

T.R. Dhaka
Member

1. In terms of Section 92 (3 & 4) of the Electricity Act 2003 (Act 36 of 2003), the majority view of Lt. Col. (Retd.) Raghbir Singh, Chairman and Sh. T.S. Tewatia, Member will be the order of the Commission.
2. This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 15th July, 2005

Date : 15th July, 2005

Place : Panchkula.

T.S. Tewatia
Member

T.R. Dhaka
Member

Lt. Col.(Retd.) Raghbir Singh
Chairman