

In the matter of:

The levy of additional tariff on Industrial Consumers of Baddi, Barotiwala and Nalagarh area affected by damage of transformer at Katha, Baddi on 4<sup>th</sup> August, 2009.

**CORAM**  
**SUBHASH C NEGI**  
**CHAIRMAN**

**ORDER**

The Himachal Pradesh State Electricity Board Ltd. (hereinafter referred as “the HPSEBL” or the “Board”), which is a distribution licensee, has moved this petition with a prayer to allow additional tariff of 14 paise per unit to be levied on all industrial consumers of the areas affected due to damage of transformer at Katha in Baddi, Barotiwala and Nalagarh area, on the energy consumption for the period 09.09.2009 to 14.02.2010, in order to recover 50% share of the Industrial Consumers in the affected areas as per the order passed by the Commission on 29.08.2009 in case No.149/2009.

**Background:**

2. The Commission after taking cognisance of the news items appearing in the Tribune dated 6<sup>th</sup> August, 2009, 10<sup>th</sup> August, 2009 and 15<sup>th</sup> August, 2009 about the damage of 220kV Sub-station due to fire/transformer burning at Katha Village near Baddi District Solan (HP), on midnight of 4<sup>th</sup> August, 2009, issued the Suo Moto Notice on 20.08.2009 to the HPSEB, the predecessor of the HPSEBL, to file its reply within two weeks. In the meanwhile the M/s Baddi Barotiwala Nalagarh Industrial Association (in short BBNIA) through its President, filed Petition No.149/2009 containing a proposal to mitigate the problem of power restriction due to damage of one number 220/66 kV, 80/100 MVA Power Transformer at Katha (Baddi), Sub-station of HPSEB, on midnight of 4<sup>th</sup> August, 2009. The BBNIA proposed to meet the shortfall of approximately 40 to 45 MVA by utilizing the DG sets capacities available with the industrial units in the affected area subject to the condition that the cost of generation from these D.G.sets be compensated by the HPSEBL by sharing the cost on 50:50 basis.

3. HPSEBL in its response, vide M.A. No.159/09, submitted a detailed proposal prepared in consultation with BBNIA and after approval of the State Govt. to mitigate the problem due to

damage of the transformer of 80/100 MVA capacity at 220/66 kV system at Katha sub-station which resulted in system constraints in supply of power to the extent of 80 MVA and after re-organisation/redistribution of loads in the systems at Baddi and Barotiwala including supplies to Parwanoo, Nalagarh etc. capacity constraint of about 40 MVA was determined. HPSEBL proposed to meet the supply gap on account of system constraints by utilising the generation capacities of captive Diesel Generating (DG) and Furnace Oil Generating (FOG) sets installed by industrial units in the affected area. It was envisaged that power generated will be procured by HPSEBL at rate worked out on generation cost basis, separately for D.G. and FOG sets, and power so generated, in most cases, will be consumed by the owners of these sets under the supply agreement and the consequential relief on the Bus was proposed to be utilised to meet the demand of the other consumers so that total demand of all the consumers is met. BBNIA also simultaneously came up with the similar proposal to mitigate the problem of Power restriction due to accidental damage of the said Transformer at Katha and also voluntarily offered that 50% of the gap between the accrued amount and the amount payable to the generator should be borne by the Industrial Consumers of Baddi Barotiwala Nalagarh area and the remaining 50% should be borne by HPSEBL/Government.

4. The captive generation to the extent of 39MVA through DG/FOG sets was envisaged as under:

Sr. No.	Name of firm	Generating Capacity (MVA)	Supply Voltage Level of consumer	Generation Voltage of captive power
<b>A: Baddi Area</b>				
1.	Vardhman	20	66kV	415 V & 11 kV
2.	Unichem	1	11 kV	415 V
3.	Birla	4	66 kV	11kV & 415 V
4.	Nicholas	1	66 kV	415 V
<b>Total :</b>		<b>26 MVA</b>		
<b>B: Nalagarh</b>				
1.	GPI	6 MVA	66 kV	415 V
2.	Him Chem	1 MVA	11 kV	415 V
3.	Indag	1 MVA	11 kV	415 V
<b>Total :</b>		<b>8 MVA</b>		
<b>C. Barotiwala</b>				
1.	Winsome	2 MVA	66 kV	415 V

2.	P&G	2 MVA	66 kV	415 V
3.	Colgate	1 MVA	66 kV	415 V
<b>Total :</b>		<b>5 MVA</b>		
<b>Grand Total</b>		<b>39 MVA</b>		

The total financial implication was estimated as Rs.49.12 crores for the period upto 30<sup>th</sup> November, 2009 i.e. the date by which the new transformer at Baddi sub-station was expected to be installed/ commissioned. Out of these projections, a sum of Rs. 20.50 crores was expected to be generated on account of sales of surplus energy available, which had been tied up for normal supply, outside the State and the balance amount i.e. Rs. 28.62 crores was to be realised as under:-

- (i) 50% i.e. 14.30 crores to be shared and borne by the BBNIA; and
- (ii) balance 50% i.e. Rs. 14.30 crores to be borne by the State Government or the HPSEBL as pass through in its ARR.

5. Keeping in view the larger public interest, the Commission vide its Order dated 29.08.2009, passed in the petition No.149/2009 and M.A. 159/09, approved the above proposal in principle subject to the condition that these sets may commence generation w.e.f. 01.09.2009 or thereafter and the Commission shall exercise prudence and consider all parameters relating to this proposal at the time of truing up of the annual Revenue Requirement of the HPSEBL and would pass appropriate orders at that time in the context of adequate conditionality juxtaposed on this proposal by the Board and after full fledged hearing is held with other stakeholders.

6. The difference in the amount to be paid for the actual D.G./FOG generation and the revenue from surplus energy sold outside the State has been worked out as Rs. 20.09 crores and is required to be shared in 50:50 ratio to be borne by the HPSEBL and the industries in the affected areas. Thus Rs. 10.045 Cr. was to be borne by the HPSEBL and accordingly the HPSEBL included this amount in the true up petition for FY 09-10 in the power purchase cost.

7. The Commission allowed a sum of Rs. 10.045 Crores in the true up order for FY 2009-10 to be recovered in the Tariff of 2011-12. In order to recover the balance amount of Rs.10.045 Cr. from the Industrial Consumers of Baddi, Barotiwala and Nalagarh Area (BBNIA) in line with the in principle approval of the Commission and also in pursuance to the agreement already arrived at between them. A meeting was convened by the Board on dated 18.01.2011 in which BBNIA representatives agreed for the payment of the balance amount on prorated consumption basis. The HPSEBL, after considering the approved arrangement, worked out the per unit charge

to be levied and proposed that prorated per unit additional tariff @ 13.77 paise say 14 paise be allowed to be levied through energy bills of the various Industrial Consumers of the affected areas.

8. In pursuance to the directions given by the Commission, on the admission hearing of this petition, the HPSEBL impleaded parties, objectors/stakeholders in the original tariff petition, including the Consumer Representative. The HPSEBL also took action to publish, under section 64(2) of the Electricity Act, 2003 read with sub-regulation (5) of the Regulation 16 of the HPERC (Conduct of Business) Regulations, 2005, the salient features of the petition in the abridged form in different newspapers on 18.01.2012 and 20.01.2012 in English and Hindi, having wide circulation in the State of Himachal.

9. The Commission received objections from :-

<b>Sr. No.</b>	<b>Name of the Objector</b>	<b>Individual/ Collective</b>
a)	M/s Shri Rama Steels Ltd., Barotiwala, Tehsil Baddi, Distt. Solan (HP.).	Individual
b)	M/s Gilvert Ispat Ltd., Vill. Buranwala, P.O. Barotiwala, Teh. Baddi, Distt. Solan (H.P.)	Individual
c)	M/S Renny Steels Ltd., Vill. Kunjhal, Jharmajri, Teh. Baddi, B/W Distt. Solan (H.P.)	Collective
d)	M/s Mountain Steels, Vill. Buranwala, P.O. Barotiwala, Teh. Baddi, Distt. Solan (H.P.).	
e)	M/s Kundlas Loh Udyog, Vill. Balyana- Buranwala, near Hindustan Unilever Ltd (Material Gate), P.O. Barotiwala Tehsil Kasauli, District Solan (H.P.).	
f)	M/s Emm Tex Synthetics, Ltd. Jagat Khana, Nalagarh, Tehsil Nalagarh, Distt. Solan (H.P.).	
g)	M/S Radiant Castings, Plot No. 288, Vill Jharmajri, Tehsil Baddi, District Solan (H.P.).	
h)	M/S Nalagarh Steel Rolling Mills Pvt. Ltd, Vill Dadi Kania P.O. Nalagarh, Distt. Solan (H.P.).	
i)	M/S Atul Casting Ltd Vill Dadi Kania P.O. Nalagarh, Tehsil Nalagarh, District Solan (H.P.).	
j)	M/s Shree Kangra Steels Pvt. Ltd. Vill. Kripalpur. P.O. & Tehsil Nalagarh, District Solan (H.P.).	
k)	M/s Yamada Automation Pvt. Ltd. Vill Dherowal P.O. Manjholi, Tehsil Nalagarh. Distt. Solan (H.P.).	
l)	M/S Rupana Paper Mills Ltd. Vill Bir Palasi, Nalagarh-Ropar Road, Nalagarh, Tehsil Nalagarh, Distt. Solan (H.P.).	
m)	M/s Himachal Shots & Metal Pvt. Ltd. Vill Majholi Tehsil Nalagarh, District Solan (H.P.).	
n)	M/s Khuran Oleo Chemicals, Vill Maganpura, Tehsil Nalagarh, District Solan H.P.	
o)	M/s Pivot Fabrique, H.P. Village Dherowal. P.O. Manjholi, Tehsil Nalagarh Distt. Solan (H.P.)	

p)	M/S Karan Synthetic (India) Pvt. Ltd Vill, Goal Jamala, Tehsil Nalagarh District Solan (H.P.).
q)	M/S Karan Polypack Pvt. Ltd. Vill Goal Jamala, Tehsil Nalagarh District Solan (H.P.).
r)	M/s Eastman Auto & Power Ltd Villa Rakhram Singh, Kripalpur, Nalagarh, Tehsil Nalagarh, District Solan (H.P.).
s)	M/s Precision Moulds & Dies Pvt. Ltd Vill. Baghbaniya, P.O. Manpura, Tehsil Nalagarh, Distt. Solan (H.P.).
t)	M./s Citiline Texfab Pvt. NH-21A Manali Road, Adiwal, Tehsil Nalagarh Distt. Solan (H.P.).
u)	M/s Advantec Coils Pvt. Ltd. Vill. Dhadi Kanian, Adjoining H.P. Center, Tehsil Nalagarh, Distt. Solan (H.P.).
v)	M/S THEON Pharmaceuticals Ltd. Vill, Saini Majra, Ropar Road, Nalagarh, Tehsil Nalagarh, District Solan (H.P.).
w)	M/S Samrat Plywood Ltd, Vill Bir Plassi, Tehsil Nalagarh, Distt. Solan (H.P.).
x)	M/S INOX AIR PRODUCTS Ltd. Village Kunjhal, Industrial Area, Barotiwala, Tehsil Baddi, Distt. Solan (H.P.).
y)	M/S Aar Aar Castings Ltd. Village Jharmajri, Barotiwala, Tehsil Baddi, District Solan (H.P.).
z)	M/S Magbro Healthcare Pvt. Ltd. Village Mehssa Tibba, P.O. Manjholi, Tehsil Nalagarh, District Solan (H.P.).

10. The issues and concerns voiced by various objectors and the response and rejoinders have been carefully examined by the Commission. The major objections raised have been summarised hereinafter.

#### **Maintainability of the petition**

11. M/s Rama Steels Ltd, Barotiwala and M/s Gilvert Ispat Ltd. Buranwala, submit that the petition for making arrangement of costlier short term power and adjustment of extra amount should have been filed as per the provisions of the Electricity Act, 2003. M/s Renny Steels Ltd, Kunjhal, Jharmajri and other objectors contend that the petition does not disclose the provisions of the Act, in pursuance of which the additional tariff has been asked for. Further the gap of Rs. 10.05 Cr. in the Annual Revenue Requirement of the HPSEBL has already been allowed in the power purchase cost approved by the Commission in the tariff order dated 19.7.2011. Now this amount cannot be claimed again from the consumers of particular pocket.

#### **Response of Board**

12. Arrangements were worked out by the HPSEBL after due discussions with the various Industrial Consumers of the area. The proposal to mitigate the emergent situation, moved by both the BBNIA and HPSEBL, was concurred in by the State Government of Himachal Pradesh and approved in principle by the Commission.

### **Commission's view**

13. The Petition has been submitted by the Board for the levy of additional tariff on Industrial Consumers of Baddi, Barotiwala and Nalagarh area affected by damage of transformer at Katha, Baddi on 4<sup>th</sup> August, 2009. The Commission had allowed the amount of Rs. 10.05 Cr. in the ARR to cover 50% of the shortfall and it was envisaged that the remaining 50% shall be recovered from the industries in the affected areas. The proposed levy also carried an implicit approval of the commission. As such the plea taken by the objectors that the amount cannot be claimed again from the consumers of particular pocket is therefore not correct. The Commission observes that in principle approval can, at best, provide a rough estimates and that would necessarily have to be fine tuned at a subsequent stage. The Hon'ble Tribunal for Electricity in number of cases i.e. **Karnatka Power Transmission Corporation Ltd V/s Karnatka Electricity Regulatory Commission and others 2007 ELR (APTEL) 223; (followed in its decisions in Appeal No. 129 of 2007 JSEB V/s JSERC and order dated 4<sup>th</sup> Dec., 2007 passed in Appeal No. 100 of 2007 – KPTCL V/s KERC and others); in Appeal No. 11 of 2008 decided in 19.1.2009 M P Power Trading Company Ltd V/s Torrent Ltd; and others and its decision dated 6.10.2009 rendered in appeal No. 36 of 2008 – BSES Rajdhani Power Ltd V/s DERC and others reported as 2009 ELR (APTEL) 886** has concluded that the in principle approval is granted to provide guidelines. The Commission can always correct the discrepancies at the time of actual determination of the issues involved. In principle approval given by the Commission at an initial stage does not give the free hand to the licensee. Hence it should not mean that prudence check of the Commission should be sacrificed altogether. While undertaking tariff fixation, the Commission cannot ignore the field conditions and practicabilities. It will still be open to the Commission to take appropriate view in the matter.

14. Keeping in view the Apex Court decision rendered in **U.P. Power Corporation Ltd V/s NTPC Ltd and Ors. 2009 ELR (SC) 0013** that the making of a tariff is a continuous process, the tariff can be amended or altered by the Commission, if any occasion arises thereafter.

15. The Hon'ble APTEL in its decision rendered in **Konark Power Projects Ltd V/s Bangalore Electric Supply Company Ltd and Anr. 2012 ELR (APTEL) 429**, has observed that the State Commission has the power to modify the tariff in the larger public interest to maintain a balance so that the generators may also not suffer unnecessarily.

16. In light of the above discussion this petition moved by the HPSEBL is maintainable.

### **Trading without a license**

17. M/S Renny Steels and others objectors, listed at serial Nos. d) to z) in para 9 of this order, have raised technical objection that the captive generators, generating power through DG/FOG sets, have traded in electricity, during the period 9.9.2009 to 14.2.2010, without a licence under section 14 of the Act, and have thus contravened the provisions of the Act.

### **Response of the Board**

18. The HPSEBL submits that these arrangements to purchase FOG/DG sets generated power, as available with the captive generators in the area, were undertaken to mitigate the emergent situation. Proposal was put up to the State Government and the Commission approved the same in principle. In the instant case the power was purchased by the HPSEBL and hence there was no question of trading by the generators.

### **Commission's view**

19. The affected area has been reeling under acute power shortage. Under such circumstances it should be the endeavour to arrange energy to the extent possible. The proposal was to purchase power for short term in view of the critical constraints in the specific area and the need to augment short-term capacity by way of this arrangement was approved by the Licensee, the State Govt. and the Commission in the larger interest of consumers.

20. In a similar situation where the State of Karnataka was reeling under acute power shortage and in order to mitigate the shortage, the Government of Karnataka vide its Order dated 6<sup>th</sup> April, 2010 approved the short term purchase of power @ Rs. 5.00 per kwh and directed all the Biomass based generators to feed power into the grid at this rate. The above rate was provisional and subject to approval of KERC. Such emergent arrangements were not set aside by the APTEL in **Konark Power Projects Ltd V/s Bangalore Electric Supply Company Ltd 2012 ELR (APTEL) 429**. The Apex Court in another case **Union of India (through General Manager Northern Railways) V/s Chairman UPSEB and Ors. 2012 ELR (SC) 0283** has also concluded that even under the Electricity Act, 2003, a direct sale of power by a generating company to a consumer was specifically permitted under section 10(2).

21. The Apex Court in **Tata Power Company Ltd V/s Reliance Energy Limited and others (2009) 16 SCC 659**; has observed that the Parliament by making Act of 2003 clearly

acknowledged the necessity of providing a greater room for generation of electrical energy so as to enable the country to meet its requirements. Apex Court further observed that the delicensing of generation as also grant of free permission of captive generation is one of the main features of the Act, 2003 and the primary object was to free the generating companies from the shackles of licencing regime. Section 10(2) and proviso to section 9(1) of the Act provides that a generating company/captive generating plant may supply electricity to any licensee in accordance with the Act, rules and regulations framed thereunder. Moreover in the instant case the power was not being supplied to the consumers directly but was being purchased by the HPSEBL for further supply to the consumers.

22. In view of the above, the objections raised that the captive generators were trading without a licence in violation of the provisions of the Act have no substance.

#### **BBNIA not competent to represent all industrial consumers**

23. The objectors contend that they were not at all party for costlier power procurement/ consumption nor in any way affected by the damage to the transformer. It has also been contended that the individual industries have signed separate agreements with the HPSEBL and as such the BBNIA is not competent to give consent on behalf of them. Further the objectors, not being the members of BBNIA, are not bound by the undertaking given by BBNIA for 50% sharing of additional cost.

#### **Commission's view**

24. The consumer association, groups, fora or bodies corporate are eligible to put in their petitions before the Commission. Moreover, under sub-regulation (4) of regulation 10 of the Conduct of Business Regulations, the Commission may allow any consumer group or association or any persons duly authorised by such consumer group or association to appear in any proceedings before the Commission. The BBNIA is the society registered under the Societies Registration Act, 1860 to represent its members, who are comprised of small, medium and large industrial units and hoteliers in the State of Himachal Pradesh. The Association is represented by its office bearers, who being consumers and being impacted by the emergent situation caused by the abrupt shut down of the transformer have the right to appear and put up their view point or stand before this Commission.

25. In the present case the Commission, in order to tackle the emergent situation, has in case No. 149/2009, accorded in principle approval to the temporary arrangements proposed by the

HPSEBL and the BBNIA vide its Order dated 29.8.2009. Obviously the Commission was to fine tune the said proposal at a subsequent stage of tariff determination in accordance with the provisions of the Act and the regulations framed thereunder.

26. In order to recover 50% share, as per the order passed on 29.8.2009 in case No. 149/2009, the present petition has been moved by the HPSEBL with a prayer to allow additional tariff of 14 paise per unit to be levied on all the Industrial Consumers of affected area of Baddi, Barotiwala and Nalagarh on the energy consumption during the period 9.9.2009 to 14.2.2010. The HPSEBL has impleaded the parties, objectors/stakeholders in the tariff petition, including the Consumer Representative, as parties in this petition and supplied them the copies of the petition and the HPSEBL has also taken steps to publish, under section 64(2) of the Act, read with sub-regulation (5) of regulation 18 of the CBR Regulations, the salient features of the petition in abridged form in the different newspapers in English and Hindi languages, having wide circulation in the State of H.P. While refixing the tariff, as a sequel to the Commission order dated 29.8.2009, the Commission is to follow the procedure, hear and consider the representations and objections received in relation thereto.

27. Personal hearing is not required in discharge of the function such as tariff determination. Tariff determination is in the nature of a legislative function. A Constitution Bench of the Supreme Court in **M/S Shri Sitaram Sugar Co. Ltd V/s Cynamide India Ltd (1987) 25CR 841** has held that the legislative action, plenary or subordinate, is not subject to rules of natural justice. A price fixation measure does not concern itself with the interest of an individual manufacturer or producer. It is a direction of a general character.

28. In **Prag Ice and Oil Mills and Anr. Etc. U/s UOI AIR 1978 SC 1296** it is observed that a legislative measure does not concern itself with the facts of an individual case. It is meant to lay down a general rule applicable to all persons or objects or transactions of a particular kind or class.

29. The Constitution Bench of the Supreme Court in **K.T. Plantation Pvt. Ltd and Anr. V/s State of Karnataka AIR 2011 SC 3430; (2011 (8) SCALE 583 para H 52)** held that –

“52. Delegated legislation which is legislative in character, cannot be questioned on the ground of violation of the principles of natural justice, especially in the absence of any such statutory requirement. Legislature or its delegate is also not legally obliged to give any reasons for its action while discharging its legislative function (see also, **State of Punjab Vs. Tehal Singh and Ors. AIR 2002 SC**

**533; (2002) 2 SCC 7; West Bengal Electricity Regulatory Commission Vs. CERC Ltd (2002) 8 SCC 715; Pune Municipal Corporation and Anr. Vs. Promoters and Builders Association and Anr. AIR 2004 SC 3502; (2004) 10 SCC 796 and Bihar State Electricity Board Vs. Pulak Enterprises and Ors. (2009) 5 SCC 641)**

30. The Commission, in pursuance to the provisions of section 64 (2) of the Act has got the salient features of the petition published in the local newspapers for inviting public objections and the objections/suggestions received from the affected persons, in relation thereto, have been taken into consideration while allowing this petition. The principle of natural justice as envisaged under the Act stands complied with.

31. For the reasons, and following the settled principles of law, the Commission does not find any merit in the contentions which have been urged on behalf of the objectors, that the individual industries have since signed separate agreements with HPSEBL, should have been given personal hearing. The additional tariff is to be fixed for all the industrial consumers in the affected areas and is not to be limited to the members of BBNIA. The consent of each individual consumer is not required for tariff determination.

#### **Retrospective amendment of the Tariff Order.**

32. M/S Renny Steels and other objectors assert that the additional levy of 14 paise per unit proposed by the HPSEBL will be operational retrospectively and under the law no retrospective amendment in the tariff is permissible,

#### **Commission's View**

33. Commission gave in principle approval for the special scheme on 29.08.2009 involving additional cost of power purchase and specific recovery mechanism thereof to be operationalised from 01.09.2009 or thereafter till operationalisation of the new transformer. Exact amount was worked out after closure of the scheme. 50% of the additional amount was provided in the ARR at true up stage and balance 50% was payable by the concerned consumers as per scheme jointly prepared. Therefore, it is payable like arrears by such consumers.

34. In the case **SIEL Ltd. New Delhi V/s Punjab State Electricity Regulatory Commission and ors. 2007 ELR (APTEL) 931**, where the industrial consumers have questioned determination of tariff by the Commission on the ground that the effect of tariff order to pay enhanced tariff given from a retrospective date, the APTEL held that the Commission had

jurisdiction to pass tariff order with retrospective effect. In the present case the retrospective operation covers only a short period. The Apex Court in **UP Power Corporation Ltd V/s NTPC Ltd and ors. 2009 ELR (SC) 0013**, has laid down that making of a tariff is a continuous process. It can be amended or altered by the Commission, if any occasion arises thereof. The Commission is not power less to issue orders and directions relating to matters having a bearing on and nexus with the determination and fixation of tariff. In view of this, there is no merit in this objection.

### **Additional Levy on the entire industry is not justifiable**

35. The objectors M/s Rama Steel and M/s Gilvert Ispat contend that the objectors were neither affected nor benefited and the entire industry was not affected due to the damage of the transformer and only some of the industry was benefited from the mitigating arrangements. It was entirely local problem affecting the industry fed from the damaged transformer and putting the additional burden of 14 paise per unit on all the consumers is not justified. Proposed surcharge cannot be levied for the reason that –

- (i) at Katha 220 kV Sub-station there are two transformers of 80/100 MVA 220/66 kV, one of which got damaged and supply of the step down transformer could only be affected and only the industry under the command of these transformers could be affected. Objectors' power supply on 132 kV from Jharmajri Sub-station has nothing to do with the damaged 220/66 kV transformer at Katha Sub-station;
- (ii) shortage of power and transmission capacities are two different eventualities. There was no shortage of power and no link with 132 kV level supply from Jharmajri Sub-station;

### **Response of Board**

36. The theory of power shortage and transmission capacity has no relevance in the context of present petition. Industrial consumers including objectors, remain in integrated mode of operation. The entire industry was affected due to damage of transformer because all the radial feeders to feed various industrial consumers, including objecting consumers emanate from Baddi Nalagarh Barotiwala area Sub-stations, which always remain in integrated mode of operation. It has been stated that, in nut shell, all the industrial consumers whether fed from 220/ 66kV

substation Baddi or Nalagarh or Barotiwala were benefitted by the arrangement due to integrated system.

### **Commission's View**

37. Before addressing other objections raised by objectors a) & b), the commission finds it relevant to examine other legal and policy aspects of this scheme specially designed for mitigating the problem. Section 43 and section 42 of the Act cast duty and responsibility upon the distribution licensee to supply electricity on charges as per provisions of section 45. State Commission is duty bound to determine supply tariff and regulate electricity purchase and procurement process including price under section 86 (1) (a) and (b) in accordance with section 61, 62 and 64 and other provisions of Act, Policies and Regulations.

38. Power purchase is planned and approved from various long term sources from within the state and outside and such sources vary from conventional sources like thermal, gas, nuclear, hydro to non- conventional sources like small hydro, solar, wind etc. The price from different sources and also from same/ similar source from different stations also vary. For rural electrification in unconnected areas under the distributed decentralised generation, power is generated from D.G. Sets and Solar PV systems also. Hence, DG/FOG sources, as in this case, is a valid source for procurement by licensee. Captive generating plants can sell the surplus power without any license to the licensee. However, if long term sources are not adequate or if such sources fail to supply as per long term arrangement any time during the year, licensee can purchase power on short term basis from any source like exchange, U. I. Mechanism, bilateral sources on mutual agreement basis and such purchases and rates for purchase are subject to Commissions approval/regulations/orders.

39. While procurement price varies from source to source, supply price as per current regulations and tariff orders is uniform for delineated consumers categories across the State. Licensee cannot discriminate for the supply of power among the similar placed consumers of a category and therefore, due to systems constraints leading to supply restriction (not the availability constraints) proportionate cut on all consumers of similar category, which in this case is the industries, would have followed for these 5 months period. The mitigation measure of procuring power from captive DG/FOG sets to meet the supply gap for such a long period of 5 months is an innovative and forward looking measure evolved by licensee on the initiative and support of some of the affected consumers. The measure is aimed at reliable supply to consumers, who are party to such decision including willingness to pay extra charges. Such

arrangements are prevalent in the country and one such popular model called Pune model is on similar lines where, for the purpose of reliable supply, additional power is arranged from local diesel sets generation and also additional power purchase for additional requirement for Pune town and consumers pay additional charge on account of additional power procurement.

40. Therefore, there is no legal infirmity in the special scheme so made in this case with mutual agreement of the BBNIA and the Distribution Licensee. In fact, it is a very good initiative was taken by the Industrial Consumers, HPSEB Ltd. & H. P. Govt. to come out with an innovative and practicable scheme in the interest of consumers in general and industrial consumers in particular in view of the importance of power in manufacturing. The rate for Power Purchase for short term during that period was very high and volatile, which is apparent from the fact that market sale price (outside the state) of the power rendered surplus due to system constraints for supply consequent on damage transformer was assumed as Rs. 7.00 per unit by HPSEB Ltd., it could have been easier option for HPSEB Ltd. to impose power cuts and earn sufficient revenue by sale of surplus power. However this would have been adversely impacted the industrial production/ development in that region, which is industrial hub of the state.

41. In view of the discussions in the preceding paragraphs, the Commission does not find merit in any of the objections raised by objectors c) to z). The objections raised by objectors a) & b) except those covered in para 35 have also been adequately been discussed in the preceding paragraphs and the Commission does not find any merit on these objections also. Now the commission proceeds to examine the objections mentioned in para 35.

42. In view of above, Commission finds that the proposal for levy from the affected consumers is perfectly in order. However, the Commission finds it appropriate to go into the question as to whether the areas in which objectors are located are benefitted due to running of DG/FO sets.

43. M/S Rama steel Ltd. have stated that the entire industry was not affected due to damage of transformer in question. They have stated that in case of damage to one transformer the step down transformers and the supply to only the industry under the command of those transformers could have been affected. It has further been stated that the objector's power supply which is given at 132kV from Jharmajari sub station has nothing to do with the damaged 220/66kV transformer at Katha substation. M/S Gilvert Ispat have also made similar submissions excepting that their supply of power is at 66 kV.

44. HPSEBL have stated that the entire industry was affected due to damage of transformer in question, because all the substations e.g. Barotiwala, Nalagarh, Baddi and Akkanwala, from where radial feeders are emanated to feed the various consumers including the objectors, always remain in integrated mode of operation and there is no isolated mode of operation as alleged by the objector. In their subsequent submission they have, however, stated that normally even though the possibility of supplying power from one substation to 220 kV substation was permissible as the lines are interlinked yet the system is made to run electrically in radial mode. The operation and flow was in radial mode only. The 66kV line between Baddi and Barotiwala was though available yet was not loaded. Before damage, the 66/33kV substation Nalagarh was drawing 28-32MVA from Baddi s/stn and 33 MVA from Barotiwala s/stn. whereas power was made available to the extent of 45MVA from Barotiwala after the damage and hence there was a deficit of 20MVA for which a rotational cut of 20 MVA was imposed on daily basis to all the consumers. It has further been stated that due to system constraints only 85MVA could be drawn from 132/66kV 3\*25/31.5MVA transformers at Barotiwala and 80/100MVA, 220/66kV transformer at Baddi.

45. The consumer representative has stated that in absence of undisputable technical studies he reiterates that 132kV consumers of BBN area receiving power directly are outside the purview of affected area and that consumers serviced from 132/11kV transformer bus are not affected by the transformer failure. The consumer representative has also stated, based on the power flow pattern studied by him, that he does not support that the DG/FO captive power would have benefitted the consumers on 66kV bus/feeders at Barotiwala but it is best that the load flow study is carried out to conclusively establish the consumers who might have been benefitted by the captive power.

46. Based on the information submitted by the HPSEB Ltd. the Commission examined the feeding arrangements through which the objectors were supplied electricity and observed the following:

<b>Sr. No.</b>	<b>Name of Feeder/ System</b>	<b>Sr. No. of objectors (as per paragraph 9) to whom power was supplied through this Feeder/ System.</b>
1.	132 kV Barotiwala Substation	a)
2.	66 V Barotiwala Parwanoo line	b) to e)
3.	66 kv Barotiwala Baddi circuit	g), y)
4.	66 kV INOX feeder from Barotiwala	x)
5.	66/33/11 kV Sub Station Nalagarh and Manjholi	f), h) to w) and z)

47. Prior to the damage of 220/66kV transformer at Baddi, the 66kV system of 66/33/11kV substation at Nalagarh was being partly fed from 66kV Barotiwala- Nalagarh feeder and partly from 220/66 kV transformer at Baddi through 66kV Baddi -Nalagarh feeder. The 66kV bus at Nalagarh had been split to feed 66/33kV transformers and the 66kV GPI feeder from Barotiwala and the 66/11kv transformers from Baddi. The load on these feeders, prior to the damage, was of the order of 27 MVA and 25 MVA respectively. The HPSEBL while devising the scheme took a holistic view for the entire area of Baddi- Barotiwala- Nalagarh to provide supply with minimum restrictions. The 66kV Baddi Nalagarh feeder switch was opened at Nalagarh to disconnect supply from 220/66kV s/stn. Baddi and both parts of 66 kV bus at Nalagarh were fed from Barotiwala- Nalagarh feeder on which load to the extent of 400Amp (40 MVA approx.) was allowed from Barotiwala. The average load has been intimated to be 323 Amps. The CT ratio installed at this feeder at Barotiwala end has been intimated to be 400-200/1Amp .The normal capacity of the feeder with Wolf conductor {AAAC (37/2.88 mm<sup>2</sup>) for a small length} is also of the same order. HPSEBL has also stated that the healthy 132/66kV transformers at Barotiwala remained under loaded due to overloading of outgoing feeders and other system constraints. This feeder was loaded to the maximum extent of 400Amps even after the DG/FO sets were run i.e. from 09-09-2009 onwards. The original arrangement was restored after 14.02.2010.

48. The Commission also observes that even though scheme specially designed for mitigating the problem of power restrictions due to damage of the transformers was prepared by taking a holistic integrated approach for the Barotiwala, Baddi and Nalagarh area in its entirety, but the system was not actually run in an integrated mode. Captive generation of 39 MVA was envisaged in the different areas i.e. Baddi (26MVA), Nalagarh (8MVA) and Barotiwala (5MVA), the Captive generation actually materialised was in case of M/s Vardhman (I,II), M/s Unichem (II,III), M/s Birla and M/s GPI. The captive generation which actually materialised includes the generation in Baddi and Nalagarh areas. The captive generation of 5 MVA which was envisaged in the command area of 132 kV Barotiwala Substation (i.e. Winsome, P&G and Colgate) did not materialise. As such there was no captive generation under this scheme in the command area of Barotiwala Substation. The Barotiwala Sub-station which is normally run in isolation from Baddi sub-station remained isolated during the period of running of DG/FOG sets also. The command area of Barotiwala sub-station (except 66 kV Barotiwala Nalagarh feeders) was thus not benefitted even though it was a part of the operational arrangements for reorganisation of loads. The load as considered equitable and feasible was allowed on 66 kV

Barotiwala-Nalagarh feeder and the remaining available capacity was used by the consumers falling in said command area. As such there was no direct benefit to these consumers due to running of DG/FO sets. The indirect benefit, if any, cannot be considered for the purpose of levy of the additional tariff as these consumers did not fall under the command area of the damaged transformer. Accordingly, the Commission decides to not to levy the proposed charge from the consumers falling in the command area of 132 kV Barotiwala substation (other than through 66kV Barotiwala-Nalagarh feeder) which shall also include the consumers mentioned at serial no a) to e), g), x) & y) who were fed from Barotiwala substation.

49. As discussed above particularly in para 40, 47 and 48 the consumers from 66/33/11 kV sub station at Nalagarh and Majholi, including those from 66 kV Barotiwala-Nalagarh feeder and also including the objectors mentioned at serial nos. f), h) to w) and z) as well as the industrial consumers of the other affected areas were equitably benefitted from the implementation of the scheme specially designed to mitigate the problem of power restrictions and accordingly are liable to pay such charge. The Commission also finds it to be equitable to levy such charge at a uniform rate from all the industrial consumers in the Baddi, Akkanwali and Nalagarh areas including the consumers fed from 66 kV Barotiwala- Nalagarh feeder. In absence of Captive Generation from DG/FOG sets, the power supply to the industrial consumers of these areas would have been further restricted. The Captive Generation was facilitated due to the initiative taken by the industrial consumers, HPSEB Ltd. and HP Govt. in the interest of consumer in general and the industrial consumer in particular.

50. In view of the above, the Commission approves the proposed levy @ 14 paise per unit of the total energy sold to the industrial consumers in all the affected areas from 09.09.2009 to 14.02.2010 along with the late payment surcharge as per the Schedule of Tariff on the dues, if any, from the date of billing of the said amount on the basis of the in principle approval of the Commission as per order dated 29.08.2009. No such charge shall however be levied on the consumers falling in the command area of 132 kV Barotiwala substation, other than 66 kV Barotiwala-Nalagarh feeder in view of the position discussed in Para 46. In case where such a charge has already been recovered but is not payable in view of above, the excess amount so recovered, shall be refunded along with the simple interest at the rates applicable for the security deposits for the respective years in accordance with the HPERC Security Deposit Regulations 2005 by way of adjustment against the outstanding dues, if any, or future/ next bill (including the demand for additional security deposit, if any). The Commission observes that the interest rates

applicable for the security deposits in respect of the year 2011-12 and 2012-13 are 6% and 9.5% respectively.

51. The commission observes that this approval may lead to short fall in the recovery of amount of Rs 10.045 crores. However the commission has retained of such charges at 14 paise per unit only as it does not find appropriate at this stage to allow any increase in the said rate, distribution licensee may reconcile the net short fall, if any, duly taking into account the amount already recovered by it from sale of power, rendered surplus, outside the state and the amount billed as per the approved rate.

52. The arguments were last heard on 16.06.2012 and the public hearing closed with the directions to the Board to furnish, within two weeks, the technical analysis of power flow, supported by facts and figures, before and after the damage of 100 MVA transformer at Katha. The officers of the Commission also pursued the matter with the Board to furnish the information. The HPSEB Ltd. submitted the information vide letter dated 23.01.2013 wherein they submitted the single line diagrams before, during and after the damage of transformer, Transformer Capacities, Line Capacities, details of feeders, feeding arrangements for various feeders/ consumers, switching arrangements/ constraints for interchanging/shifting. The time gap between the closure of public hearing and issue of this order is mainly attributed to delay in submission of data by HPSEBL.

This petition is disposed of accordingly.

Dated :16.02.2013

**Subhash C. Negi**  
**Chairman**