

Case No. 334/05

In the matter of:

Contravention of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005

Present for : HPSEB

Sh. Kuldeep Singh Advocate  
Sh. R.K. Punshi  
Director (SERC), HPSEB

Consumer Representative  
(under section 94(3) of the Electricity Act, 2003)

Sh. P.N. Bhardwaj

### ORDER

The news item “Udyogpatiyon se bakaya 96 crore vasulega Board – Rajya Viniyamak Aayog ki Sipharishon ke anurup recovery ke liye notice jaari” appearing in the Amar Ujala of the 30<sup>th</sup> October, 2005, reported that the HPSEB shall recover outstanding amount to the tune of Rs. 95.97 crore from the industrialists for supply of electricity under the garb of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. By taking note of the said news item this Commission initiated suo motto action and clubbed this matter with other similar complaints filed by the PIA and CII registered as case No. 268/05.

2. Section 46 of the Electricity Act, 2003 (hereinafter called the Act) provides that the State Electricity Regulatory Commission may by regulations authorize a distribution licensee to charge from a person requiring supply of electricity in pursuance of section 43 any expenses, reasonably incurred on providing electric lines or electrical plant for the purpose of supplying the electricity. Sub-section (4) of section 46 provides that while fixing the charges the distribution licensee is not to show undue preference to any person or class of persons or discrimination against any person or class of persons. For this purpose the Commission has framed the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, which have come into force w.e.f. 4.4.2005. Regulations 3, 4 and 5 of the said regulations lay down the procedure for estimation of the cost of electrical plant and civil works based upon the latest cost data, as approved by the

Commission and published under regulation 13. Further under regulation 15 until the cost data book is published in accordance with regulation 13 or a period of one year from the date of the commencement of the said regulations, whichever is earlier, the licensee is permitted to use the cost data published for the year by the Rural Electrification Corporation in respect of works of 33 kv & below and the cost data used by the Power Finance Corporation, in respect of works above 33 KV in the latest schemes of the licensee.

3. The respondent Board filed its reply on 9.12.2005. Sh. Rahul Mahajan, learned Counsel, in both the cases, contested that the Chief Engineer (Commercial) of the HPSEB, through letter No. HPSEB/CE(Comm.)/LS-Cost Sharing/2005-13945-14235 dated 3.10.2005, conveyed to the field officers that in pursuance to the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, the Board has decided to recover the expenditure incurred amounting to rupees 95.97 crores for providing connections from Sub-Stations in industrial areas being augmented/capacity being added under short term plan scheme and the amounts per kVA to be recovered were mentioned therein. It also stated that the amount is recoverable with effect from 1.4.2005, the day on which the said regulations came into force. The respondent Board denied that augmentation carried out was premature or ill-planned and tried to justify the respondent Board's stand that the augmentation was well planned.

4. The learned consumer representative Sh. P.N. Bhardwaj submitted that the different rate, as the cost per kVA to be recovered, is without any rationale and is inconsistent and in contravention of the said regulations and the cost per kVA to be recovered is almost 10 times the cost recovered earlier. In respect of the augmentation of Parwanoo Sub-Station in 1999, there was absolutely no justification for the augmentation or recovery of expenditure so incurred and collecting the money from various prospective consumers upto the present demand of some 20 MVA on the sub-station.

5. The augmented capacity of Parwanoo Sub-station has still not been used up even after connecting 71 prospective consumers with applied load of 3796 KW. The demand had not exceeded the rated capacity of unaugmented transformers. The transformers have short term over rating capacity also and the old transformers could have been capable of taking additional demand and releasing many more connections from the same transformers. Per observations made in interim orders dated 5.11.2005 and 9.12.2005 the project report, for the augmentation of 66/11 kv 2x10 MVA transformer to 2x20 MVA at Parwanoo alongwith 66 kv S/C line from Barotiwala to Parwanoo at estimated cost of Rs. 313 lacs, was found to be fictitious and the augmentation carried out in the year 1999 was held premature, infructuous and ill planned. There is no question of recovery of expenditure on blanket and adhoc rates per kVA. It is inconceivable that the expenditure for providing supply to all the consumers in future shall be same regardless of the location and the loading or the staging. The cost data has yet to be submitted by the Board and yet to be approved by the Commission. Hence, this Commission has no hesitation to confirm that the recovery of expenditure of Rs. 95.97 crores, only through the industrial consumers regardless of the staging of the connections is without any basis, rationale and justification and strikes down the respondent Board's letter dated 3<sup>rd</sup> October, 2005, as per observations recorded in this Commission's interim order dated 9.12.2005.

6. Before holding the respondent Board guilty of the contravention of the aforesaid regulations and imposing penalty under section 142 of the Act, an other opportunity has been afforded to the respondent Board to answer the interrogatories as per regulation 62(3) of the HPERC (Conduct of Business) Regulations, 2005. Now the respondent Board has stated that they have withdrawn their letter dated 3.10.2005, which has been held void and struck down by the Commission. The directions have been issued for the refund/adjustment of the amount already recovered. Further, the respondent Board has submitted that its action was only in pursuance of the regulations framed by the Commission and it has never violated any of the directions/regulations and neither it has any wrongful gain or unfair advantage derived, nor contra loss or disadvantage caused to any person, nor there is any motive which can be attributed, nor there is harm

or impairment to the objects and purposes of the Act. Since the respondent Board has stopped recovering the expenditure for supply of electricity from consumers there is no repetitive nature of the non-compliance. Though technically speaking the respondent Board has contravened the provisions of the Recovery of Expenditure for Supply of Electricity Regulations framed by the Commission, yet the Commission, keeping in view the response and unintentional violation on the part of the respondent Board, refrains from imposing any penalty as envisaged under section 142 of the Act.

7. The Commission, after taking into consideration the facts and circumstances of the case and arguments advanced, directs that the respondent Board shall estimate again and recover the justifiable cost of the electrical plant and works strictly in accordance with the provisions of the HPERC (Recovery of Expenditure for Electricity Supply) Regulations, 2005, based on the data cost published for relevant years by the Rural Electrification Corporation/Power Finance Corporation authorized to be used under regulation 13 of the regulations (ibid). The order passed in this case is to be considered supplemental to the orders passed in case No.268/05- Parwanoo Industries Association & CII V/s HPSEB.

Announced in the open court.

**Dated: 17.06.2006.**

(Yogesh Khanna)  
**Chairman**