

**BEFORE THE HIMACHAL PRADESH ELECTRICITY
REGULATORY COMMISSION SHIMLA**

Petition No. 82 of 2012

M/S Himachal Chamber of Commerce and Industry
C/O Goel Diesel Service, Bhupper,
Poanta Sahib, Distt. Sirmour (H.P.)

...Petitioner

V/s

1. The Himachal Pradesh State Electricity Board Ltd.,
Vidyut Bhawan, (Kumar House) Shimla-171004.
2. The Sr. Executive Engineer,
Electrical Division, Poanta Sahib,
Distt. Sirmaur, HP.
3. The Assistant Engineer
Electrical Sub-Division, Poanta Sahib,
Distt. Sirmour, (H.P.)

... Respondents

AND

Petition No. 88 of 2012

M/S Kala Amb Chamber of Commerce and Industry
Trilokpur, Distt., Sirmour, H.P.

...Petitioner

V/s

1. The Himachal Pradesh State Electricity Board Ltd.,
Vidyut Bhawan, (Kumar House) Shimla-171004.
2. The Chief Engineer (Commercial),
HPSEB Ltd. Vidyut Bhawan,
Shimla.

... Respondents

AND

Petition No. 122 of 2012

M/S Baddi Barotiwala Nalagarh
Industries Association (BBNIA)
C/O Single Window Clearing Agency
Industrial Area Baddi, Nalagarh-174101

V/S

1. The HP State Electricity Board Ltd.,
Vidyut Bhawan, (Kumar House) Shimla-171004.
2. The Chief Engineer (Commercial),
HPSEB Ltd. Vidyut Bhawan,
Shimla.

Petition Nos. 82, 88 and 122 of 2012

(Decided on 27-11-2012)

CORAM
SUBHASH C. NEGI
CHAIRMAN

Counsels:-

for the petitioner

Sh. Ajay Vaidya
Advocate
in petition No. 82 of 2011
and Sh. P.C. Dewan
in petition Nos. 88 and
122 of 2011

for the respondents

Sh. Romesh Chauhan
Authorised Representative

Consumer Representative
(u/s 94(3) of the Electricity
Act, 2003)

Er. P.N. Bhardwaj

ORDER

(Last heard on 30.10.2012 and Orders reserved)

M/S Himachal Chamber of Commerce and Industry, C/O Goel Diesel Service, Bhupper, Poanta Sahib, Distt. Sirmour (H.P.); M/S Kala Amb Chamber of Commerce and Industry, Trilokpur, Distt., Sirmour, (H.P.) and M/S Baddi Barotiwala Nalagarh Industries Association (BBNIA) C/O Single Window Clearing Agency Industrial Area Baddi, Nalagarh-174101 (hereinafter jointly referred as “the petitioners”) have moved three separate petitions, seeking directions of this Commission to the Himachal Pradesh State Electricity Board Ltd (hereinafter referred as “the respondent Board”) not to charge the KVA cost of IDC in violation of the Electricity Act, 2003 and the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 (hereinafter referred as the “Recovery of Expenditure Regulations”).

2. All these three petitions involve common issues and as such have been clubbed together for consideration. The petitioners had been paying advance cost for cost share (ACS)/ Infrastructure Development Charges (IDC) at the prevalent rates, notified from time to time. The petitioners paid at the rate of Rs. 200/- per kVA prior to the commencement of the Himachal Pradesh Electricity Supply Code, 2009 and thereafter at the rate of Rs. 1000/- per kVA. Recently various Industries have received notices, from the respondent Board, on account of Infrastructure Development Charges as per revised Advance Cost Share/ Infrastructure Development Charges, which has been stated to have been worked out at the rate of Rs. 1806.00 per kVA. In some cases the rate varies between Rs. 3341 per kVA to Rs. 4097 per kVA. The petitioners assert that this demand raised is highly illegal, arbitrary, without any sanction of law and is clearly a violation of Recovery of Expenditure Regulations.

3. Before dealing with these petitions, it would be proper to refer to the position which emerges out of the statutory provisions of the Electricity Act, 2003 (hereinafter referred as “the Act”) and the regulations framed thereunder. The recovery of expenditure incurred through cost sharing is not a new concept. The past practice of sharing cost has its roots in the Indian Electricity Act, 1910 (now repealed) and is being continued in the regulations framed by

various Regulatory Commission in the Country, in order to discharge the Universal Obligation to supply electricity on request to the Consumer's premises, as envisaged in section 43 of the Act, (which corresponds to section 22 of the Indian Electricity Act, 1910). The distribution licensee has binding duty, imposed by section 42(1) of the Act, to develop and maintain an efficient coordinated and economical distribution system in its area of supply. Section 42 cannot be read in isolation and it should be read conjointly with sections 43, 45, 46, 47, 48 and 50 of the Act. The perimeter of the network of the "distribution system" is determined by numerous "distribution mains" geographically dispersed and entering into various pockets of consumers in all directions within the area of supply and implemented in pursuance to the Utility's plan, to meet the projected growth in load and demand to facilitate making prompt supply connection to the consumer's premises from the nearest distribution mains in an efficient economical manner, as envisaged in sections 42 (1) and 43(1) of the Act. In other words, the licensee is responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. Section 46 of the Act provides that the State Electricity Regulatory Commission may by regulations authorise a distribution licensee to charge from a person requiring supply of electricity, in pursuance of section 43, any expenses reasonably incurred on providing electric line or electrical plant used for the purpose of supplying electricity. Thus the cost of extension and upgradation of the system for meeting demand of new consumer(s) is recoverable from the new consumer(s) through system loading charges/ strengthening charges/ infrastructure development charges (by whatever name called) and approved by the Commission.

4. The Commission, in exercise of the powers conferred by section 46, read with section 181, of the Electricity Act, 2003, formulated the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and under clause (x) of sub-section (2) of section 181 and section 50 of the Act formulated the Himachal Pradesh Electricity Supply Code, 2009. Clause (ii) of para 3.2.2 of the said Code enjoins the prospective consumers to apply for grant of Power Availability Certificates, on payment of advance cost share, towards infrastructural

development charges @ Rs. 1000/- per KW/KVA of the load applied for under para 3.3.5. The applicant consumer, after grant of Power Availability Certificate, may submit the application for supply of electricity to his premises and the licensee shall adjust advance cost share towards initial estimated amount payable under the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

5. Further in exercise of its statutory powers conferred by regulations 17 and 18 the HPERC (Recovery of Expenditure) Regulations and regulations 9.5 and 9.6 of the Himachal Pradesh Electricity Supply Code, the Commission, at the request of the respondent Board, issued the clarificatory order dated 2.5.2011 reiterating what was already provided in the regulations, without causing any alterations/ amendments in the regulations.

6. The estimates are to be prepared as per provisions of the regulations and on the basis of the charges approved by the Commission. In other words the licensee is to commence the work after the applicant deposits the full amount of the estimates.

7. This Commission, on the petition No. 3 of 2012 moved by the Baddi, Barotiwala Nalagarh Industries Association (BBNIA), who are also the petitioner in the present petition No. 122 of 2012, observed vide its Order dated 3.3.2012 that the matter relating to the implementation of the Recovery of Expenditure Regulations and the rationalisation of the demands revised for recovery of infrastructure development charges needs to be addressed through the intra-parties discussions in the first instance. In that case both parties expressed their intention to take recourse to intra parties discussions and were, therefore, asked to sort out the issues involved through their internal discussions and if the matter still remained unresolved, the petitioners were given liberty to approach the Commission and to seek the appropriate remedy as might be available to them under the law.

8. With the background as set out in the preceding para, the respondent Board, after holding intra parties discussions with the Baddi Barotiwala Nalagarh Industries Association based on mutually agreed methodology for working out the rationalised rates at various voltages for the system created/augmented by it after the commencement of the Recovery of

Expenditure Regulations fixed vide its circular letter dated 29.3.2012 the Infrastructure Development Charges on uniform basis (w.e.f. 1.4.2005, as under:-

S.No.	Supply voltage on which load is released	Per KVA Cost (IDC) to be charged
1.	66 kV Supply Voltage	₹ 3380/- per KVA
2.	33 kV Supply Voltage	₹ 3390/- per KVA
3.	11 kV Supply Voltage	₹ 3590/- per KVA

9. The Commission, on being satisfied that the petitioners have prima facie case to question the validity of the uniform charges to all the consumers across the State and the demand notices so served to them by the respondent Board, without going into the merits of the case, deferred the recoveries of the impugned Infrastructure Development Charges and asked the respondent Board to sort out the issues involved through intra parties discussions and ensure that the demands raised by it are in conformity with the applicable regulations and provisions of law.

10. Pursuance to the directions, as stated in preceding para 9, the respondent Board now submits that it has, after due deliberations in the High Power Committee constituted for the purpose, examined all the relevant infrastructure created, from time to time, and has reworked the charges on the basis of the information collated and has verified and reconciled the details of costs of various works executed and it has now finalised the voltage wise per kVA charges in conformity with the applicable regulations.

11. Keeping in view the fact that the respondent Board is reviewing its demands and that it has assured to make the said demands in conformity with the statutory provisions i.e. the provisions of the Act and regulations framed thereunder, the Commission vacates the interim order, deferring the impugned recoveries, passed during the proceedings before it.

12. It is noticed that the nature of the dispute is between the licensee and a consumer, for which the Electricity Act, 2003 stipulates an adjudicatory body in the form of the Consumers Grievances Redressal Forum set up under section 42 of the Act. The Ombudsman is yet another Forum which can be approached in case of the Consumers Grievances Redressal Forum does not satisfy the consumer. There is no provision in the Act which gives the

Commission jurisdiction to settle such disputes. The Commission, thererore, declines to entertain these petitions. If the petitioners still feel aggrieved by the action of the respondent Board, the petitioners will be at liberty to approach the appropriate Forum set up for the for the resolutions of such disputes.

The petitions are disposed of accordingly.

-Sd-
(Subhash C. Negi)
Chairman