

**HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,
SHIMLA**

In the matter of draft amendment regulations i.e. Himachal Pradesh Electricity Supply Code (Fourth Amendment) Regulations, 2020.

ORDER

The Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as “the Commission”) published the Himachal Pradesh Electricity Supply Code, 2009 in the Rajpatra, Himachal Pradesh, dated 29th May, 2009 (hereinafter referred as “the Supply Code”). The Supply Code came into force w.e.f. 29th May, 2009 and was subsequently amended on 11.06.2014, 31.07.2018 and 03.12.2018.

2. In order to remove the difficulties being experienced in the implementation of the existing provisions, the HPSEBL and Industries Associations submitted the proposals to carry out amendments/additions and clarifications in some of the provisions of the Himachal Pradesh Electricity Supply Code, 2009. In relation to some of the proposals submitted by the HPSEBL, the Hon’ble High Court of HP has also expressed its considered view on suggestions/recommendations of the HPSEBL that the proposal needs to be approved by the Commission.
3. In accordance with Clause 1.3.1 of the Supply Code, 2009, the Commission, vide notification published in the Rajpatra, Himachal Pradesh on 17.12.2019, reconstituted the Electricity Supply Code Review Panel and accordingly the Review Panel, after deliberations in its meeting held on 30.12.2019 at 11.30 AM in the Committee Room of the Himachal Pradesh State Electricity Board Limited, forwarded its recommendations to the Commission.
4. The Commission, after considering the recommendations made by the Review Panel, notified the draft Himachal Pradesh Electricity Supply Code (Fourth Amendment) Regulations, 2020 on 20.01.2020 which were published in Rajpatra, Himachal Pradesh on 24.01.2020 (hereinafter referred to as the “draft amendment regulations” or “the draft regulations”) in exercise of the powers conferred under Section 50 and clause (x) of sub-section (2) of Section 181 of the Electricity Act, 2003 (36 of 2003), read with Section 21 of the General Clauses Act, 1897 (10 of 1897).
5. As required under sub-section (3) of the section 181 of the Act, the Commission invited public objections and suggestions by way of insertions in

two News papers i.e. “Times of India” and “Dainik Bhasker” on 29.01.2020 under Rule (3) of Electricity (Procedure of Previous Publication) Rules, 2005 and the full text of the draft amendment regulations was also made available on the Commission’s website: www.hperc.org.

6. The Commission, vide its letter dated 31.01.2020, requested the major stakeholders, including Industries Associations, State Government, Directorate of Energy, HPPTCL, Hoteliers Association, Consumer Representative and Distribution Licensee to send their suggestions/objections as per the aforesaid public notice.
7. The Commission received suggestions/objections on the draft amendment regulations from the following stakeholders:-
 1. Himachal Pradesh State Electricity Board Limited.
 2. Industries Associations.

To facilitate fruitful discussions in the public hearing fixed for 13th March, 2020, the comments submitted by the HPSEBL were sent to the Industries Associations and similarly those submitted by the Industries Associations were sent to the HPSEBL in advance and they were requested to participate in the public hearing.

8. The Public hearing in the said matter was conducted on 13.03.2020 in the Commission. The list of participants who attended the public hearing is annexed as **Annexure-“A”**.
9. **Objections and issues raised during the public hearing.-**

During the public hearing, the stakeholders and their representatives presented their views. The issues and concerns voiced by them are given in brief as under:-

- (a) The representative of the HPSEBL stated that they have already submitted their comments in writing and do not have any further comments to offer. It was pointed out that the HPSEBL has submitted only generic comments stating that the draft amendment regulations are not in consonance with the order of the Hon’ble High Court of HP and these amendments are required to be aligned with the said order. During the course of public hearing, it was further observed that neither any item wise comments have been submitted nor the aspects in which the proposals are in conflict with the said Order have been spelt out. Accordingly, he was requested to clarify the stand of the HPSEBL

particularly keeping in view the fact that the proposal is based on the recommendations made by the Review Panel in its meeting held on 30.12.2019 which was chaired by the Director (Operation) and wherein the Chief Engineer (Commercial) of the HPSEBL have also participated as members of the Review Panel. The representative of the HPSEBL clarified that the comment given by the HPSEBL are meant simply to convey the limited issue that the item G of the order of Hon'ble High Court of Himachal Pradesh has not been incorporated in the proposal and they do not have any comments on the proposals made under the draft amendment regulations.

- (b) Shri Rakesh Bansal, representative of the Confederation of Indian Industries, Baddi Barotiwala Nalagarh Industries Association, Parwanoo Industries Association (PIA) and Kala-Amb Chamber of Commerce and Industry (hereinafter referred as "The Industries Associations") submitted that he does not have any major comments on the proposals except the proposal in relation to item 5.2.13 of the Supply Code which is related to recovery of the dues from the new consumers. He stated that the proposed provisions should be revisited in respect of the situations (i) where the power connection in the name of the previous occupier is transferred and continued to the new occupier; and (ii) where a fresh application of power connection is submitted by the new occupier. He stated that the recovery of dues from the new consumers should not be allowed in cases where he purchases the property through the auction process conducted under the provisions of Law governing the NCLT etc. He was also asked by the Commission to explain as to how the orders of Hon'ble Supreme Court and Hon'ble High Court of Delhi, as submitted by him, strengthen their stands in the matter keeping in view the fact that the orders were passed by the Hon'ble Courts in case specific situations and after taking into account the provisions existing in the conditions of supply of the respective Utilities. The representative of Industries Associations failed to establish as to how and why the licensee should not recover the outstanding dues from the new consumer if there are specific provisions in the regulations.

In relation to the proposal concerning para 5.2.13 of the Supply Code, Shri Bansal also suggested that the maximum limit of dues which can be recovered from the new consumer should be linked with the amount billed for last two months immediately prior to the temporary disconnection, instead of the average for last 12 months.

Shri Bansal also reiterated the suggestion made by them vide letter dated 5th March, 2020 relating to:-

- (1) the phasing out of connected load for categories covered under two part tariff.
- (2) rationalization of supply voltage for consumers upto 50 kVA of contract demand.
- (3) relaxation of limits of connected load/maximum contract demand for supply at 33 kV.

In this regard, he requested that even though these issues are not covered under the proposed amendments, the same may be considered and incorporated while finalizing the amendment regulations.

10 **Consideration of written submissions and viewpoints expressed at the public hearing by the stakeholders and Commission's views.-**

After having gone through all the written submissions and viewpoints expressed by the stakeholders at the public hearing, we now proceed to give our views on the various suggestions which have been considered to be relevant to the amendments proposed in the draft amendment regulations, as follows.-

(I) **Amendment of sub-para 3.2.2.-**

No comments have been received on the proposal. As such we decide to incorporate the proposed amendment in the final regulations without any change. Accordingly, for the sign “.” appearing at the end of sub-para 3.2.2 of the Supply Code, the sign “:” shall be substituted and thereafter the following proviso shall be inserted, namely:-

“Provided that the advance share towards infrastructure development charges to be recovered for the grant of PAC shall not exceed the amount of infrastructure development charges recoverable by the licensee under the provisions of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012.”

(II) **Amendment of para 3.9.-**

No comments have been received on the proposal. As such we decide to incorporate the proposed amendment in the final regulations without any change. Accordingly, for the existing para 3.9 of the Supply Code, the following para 3.9 shall be substituted, namely:-

“3.9 Delay to take supply or avail contract demand.-

In some cases the applicant may wish to build up the load in phases but requests for sanction of total contract demand in advance so as to avoid the need for completing the formalities for repeated extensions of load and also to facilitate

supply arrangements for the total demand envisaged for the ultimate scenario. In such cases the following shall apply:

- (i) the licensee may, upon receipt of request from the applicant, sanction the total contract demand which is likely to come up as per the applicants request;
- (ii) the licensee shall make the arrangements for the total contract demand so sanctioned after recovery of the charges corresponding to such total contract demand;
- (iii) after completion of the works required for supply of electricity to the applicant for the total sanctioned contract demand, the licensee shall issue a notice of 60 days to the applicant intimating its readiness to supply the total sanctioned contract demand; and
- (iv) in such cases the demand charges based on the tariff order shall be charged (during the interim period) on the following lines, namely;-

Sr. No.	Description	Minimum limit
1	Upto the end of billing month in which the notice period of 60 days expires	Maximum demand based on the data of actual consumption, if any.
2	For next 12 billing months	Maximum demand based on the data of actual consumption, if any; or 67.5% of the contract demand corresponding to the test report(s) submitted from time to time; whichever is higher.
3	For next 6 billing months	Maximum demand based on the data of actual consumption, if any; or 67.5% of the contract demand corresponding to the test report(s) submitted from time to time; or 30% of the total sanctioned contract demand; whichever is higher.
4	For next 6 billing months	Maximum demand based on the data of actual consumption, if any; or 67.5% of the total sanctioned contract demand; whichever is higher.
5	For the period beyond the expiry of time limit under Sr. No. 4 above	As per the normal provisions based on the total sanctioned contract demand alongwith the facility of temporary contract demand.

Provided that the chargeable demand limits, as given in items 2, 3 and 4, shall not be further decreased on account of tariff provisions relating to charging of demand charges for lesser quantum of demand due to non utilization or temporary reduction of total sanctioned contract demand:

Provided further that the term contract demand corresponding to the test report(s) submitted by the consumer shall be construed to mean the contract demand as may requested for by the consumer while submitting the test report(s) or the connected load (KW) as per the test report (KW converted into kVA by considering Power Factor of 0.9) whichever is lower:

Provided further that in case of violation of the contract demand corresponding to the test report(s), the contract demand violation charges as per the Tariff Order shall be applicable:

Provided further that in case where the Licensee has not issued the notice about its readiness to supply the total sanctioned contract demand as per clause (iii) above, the billing for the periods falling under serial number 3 and 4 in the above table shall also be done in the same manner as specified for serial number 2 till the expiry of 24 months from the date of release of connection thereafter provisions of serial number 5 shall be applicable:

Provided further that the schedule of tariff applicable for the total sanctioned contract demand shall be applicable for the interim periods also (i.e. as per serial number 1 to 4 of the above table).

Note:-(1) *The provisions of this para shall not be applicable in cases where the applicant submits or undertakes to submit the test report(s) for 80% (or more) for the total sanctioned connected load/total sanctioned contract demand before the release of connection.*

(2) *In case the consumer after taking the connection as per the provision of this para 3.9, submits the test report(s) for 80% (or more) of the total sanctioned connected load/total sanctioned contract demand, at any stage before the expiry of the permitted period(s) as per the table above, the provision of this para shall cease to be applicable from the date on which such test report(s) are verified and accepted by the licensee.”*

(III) Amendment of sub para 5.2.13.-

Comments:-

(a) The Industries Associations:

The Industries Associations have objected the proposal mainly on the following grounds:-

(i) It has been mentioned that the draft of sub-para 5.2.13 of Supply Code in its present form as being drafted in the amendment is not legally maintainable as the same is contrary to the law. The objector has furnished a copy of the judgement passed by Hon'ble Supreme Court of India, who in the Civil Appeal No. 7899 of 2012 arising out of SLP(C) No. 355573 of 2010, in which the Hon'ble Supreme Court

had upheld the orders passed by the lower courts in such matter, where the supply was not provided by the Utility because of arrears outstanding in the name of previous occupier. They have also furnished a copy of another judgement in a similar case which has been passed by Hon'ble Delhi High Court in the case of **M/s Tata Power Delhi Distribution Versus Neeraj Gulati on 22.01.2018 in case no. W.P.(c) 9671/2015, CM No. 23085/2015**. The Hon'ble Court in this judgment has also upheld that the dues of the previous occupier cannot be recovered from the next occupier when there is no case of transfer of connection.

It has been mentioned that from the summary of both the judgements referred above it is clear to the extent that unless and until there is no transfer of connection, the new occupier is not liable to pay any outstanding dues of the previous occupier.

- (ii) It has been submitted that the current draft of the amended sub-para 5.2.13 of Supply Code does not make any distinction among the two categories of successive occupiers viz.
- (a) where the power connection in the name of the previous occupier is transferred and continued to the new occupier; and
 - (b) where a fresh application of power connection is submitted by the new occupier.

It has been suggested that in the first category the liabilities, if any, are automatically carried over to the new occupier, whereas in the second category there is no reason for inheritance of past dues, if any.

- (iii) The present draft amendment seeks to recover almost all the dues of the previous occupier, even to the extent these are not allowed to be accumulated under the rules and regulations presently in force. It is amply clear that if the laid down rules and regulations are followed in true spirit, the dues of a consumer cannot accumulate to a period of more than two months, out of which at least one month is secured by the Advance Consumption Deposit (Security) deposited by the consumers in the categories having

monthly billing cycle. Therefore, in the cases of default by a consumer after permanent disconnection due to non-payment of dues or any other reason, the maximum amount that can remain outstanding and uncovered by security deposit would be equivalent to his last month's consumption bill.

The present draft of sub-para 5.2.13 of the Supply Code seeks to recover two months average monthly bill for last one year from the next occupier. The present draft also seeks to allow recovery of all other dues including Infrastructure Development Charges along with interest, which were due from the previous occupier from the next occupier of the premises. It is surprising that why should the word average appear in the draft, when it is only a question of the last one or two months dues that can legally remain outstanding towards previous occupier.

The draft amendment of sub-para 5.2.13 of the Supply Code if allowed by the Commission, will result in laxity on the part of the Utility as it will make them lethargic in recoveries, which will lead to excessive accumulation of dues. The officers of the Utility will choose not to act as they know that the dues are allowed to be recovered from next occupier, sooner or later.

The Utility has other remedies available under the law, which they should immediately exercise after the permanent disconnection and non-payment. Such remedies can be availed of by filing recovery suits with the NCLT (National Company Law Tribunal) in cases of companies and Civil suites in other cases. Recovery from the next occupier should never be their first action. Legal recourse should be initiated against the defaulter within three months of the default.

- (iv) The present draft of sub-para 5.2.13 of the Supply Code also fails to recognize the fact that whenever a consumer applies and avails a power connection from any Utility, the land and other fixed assets are in no way charged with the liability on account of electricity connection. In other words, there is no legally recognized mortgage/charge

created on the property of the consumer. As such the recovery of such dues are not legally maintainable under the law. Usually the properties/premises are mortgaged to the financial institutions, whose hold is legally recognized. Also, the documentation carried out while application for power connection does not allow the Utility to create a mortgage on property. Also, the anomaly comes to light when a power connection is released to a tenant, who is not a owner of the property. The landlord does not mortgage his property to the tenant or the supplying Utility in such cases.

- (v) The draft in its present form is bound to discourage future investment in the State as the land and building will never be put to use as the buyers will be afraid of buying such properties because of electricity dues of the previous occupiers. Lots of resources such as land, which is scarce in the State of Himachal Pradesh will remain idle for decades.

In view of the aforesaid submissions it has been requested :-

1. not to allow the draft amendment in sub-para 5.2.13 of Supply Code, in its present form in view of the submissions made.
2. to redraft the proposed amendment in order to make a clear distinction between the successive occupiers, seeking continuation of previous connection and the successive occupiers who apply for a fresh power connection.
3. to consider to provide an opportunity of personal hearing in the matter, if need be.

(b) **The HPSEB.-**

The HPSEBL has submitted general comments stating that they have already submitted their comments in writing and do not have any further comments to offer. During the public hearing, it was pointed out that the HPSEBL has submitted only generic comments stating that the draft amendment is not in consonance with the order of Hon'ble High Court of HP and this amendment is required to be aligned with the said Order and it was further observed that neither any item wise comments have been

submitted nor the aspects in which the proposal is in conflict with the said Order have been spelt out. Accordingly, he was requested by the Commission to clarify the stand of the HPSEBL particularly keeping in view the fact that the proposal is based on the recommendations made by the Review Panel in its meeting held on 30.12.2019 which was chaired by the Director (Operation) and wherein the Chief Engineer (Commercial) of the HPSEBL also participated as member of the Panel. The representative of the HPSEBL clarified that the comments given by the HPSEBL are meant simply to convey the limited issue that the item "G" of the Order of the Hon'ble High Court of HP has not been incorporated in the proposal.

Commission's view:-

We find that the Industries Associations have requested that the outstanding arrears from the new consumers should not be charged in cases where the new consumers have acquired the property through the process of auction etc. In this connection, they have relied upon the judgement passed by the Hon'ble Supreme Court on 09.11.2012 in Civil Appeal No. 7899 of 2012 and by the Hon'ble High Court of Delhi on 22.01.2018 in W.P.(C)9671/2015, CM No. 23085/2015.

We have gone through the ruling of the Hon'ble Supreme Court of India as referred to by the objectors (Industries Associations) and with all the humbleness at our command, we observe that this ruling does not in any way debar the SERCs to make suitable provisions in the regulations to provide for the recovery of outstanding dues of previous consumer from the new consumer to whom electricity is supplied at that premise.

- (i) In the Civil Appeal no. 7899 of 2012, the appeal filed by NESCO has been dismissed keeping in view the sub clause 10(b) of regulation 13 of the Electricity Supply Code of Odisha Electricity Regulatory Commission, as referred to by the NESCO in support of their claim, and also the fact that the request was not for the transfer from the previous owner to the purchaser but on the other hand, it was a request for a fresh connection. This decision is thus based on the case specific details and does not in any case debar the SERCs for making suitable provisions on the suggested lines in its regulations. As a matter of fact, the Hon'ble Supreme Court in their ruling has taken the cognizance of para 10 of its judgment in the matter of **Paschimanchal Vidyut Vitran Nigam**

Ltd. Vs M/s DVS Steels & Alloys Pvt. Ltd. 2009(1)SCC 210

which reads as under:-

“10) But the above legal position is not of any practical help to a purchaser of premises. When the purchaser of premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distribution can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them.....xxxxx.....xxxxxxxxxx.”

This only establishes that a stipulation can be made in the regulation that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distribution licensee can insist upon fulfillment of the requirements of such rules and regulations. However such conditions on the terms and conditions should not be arbitrary and unreasonable.

(ii) **WPC 9671/2015 before High Court of Delhi**

Similarly in case of 23085/2015 the petition filed by **Tata Power Delhi Distribution Ltd.** has been dismissed mainly because the regulation referred to by the petitioner is not applicable in that case as the respondent had requested for a new connection and also that it was not the case of the petitioner that a provision exists which provides that all dues to the petitioner from a consumer shall be charged on the property. However the Hon'ble Court has taken the cognizance of the findings of Hon'ble Supreme Court as per para 10 and 11 of their order which reads as under:-

“(10) But the above legal position is not of any practical help to a purchaser of premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would

supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distribution can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them.....xxxxx.....xxxxxxxxxx.

- (11) A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonably or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishment, provisions similar to clauses 4.3(g) and (h) of the Electricity Supply Code are necessary to safeguard the interests of the distributor. We do not find anything unreasonable in a provision enabling the distributor/supplier to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises. They can also incorporate in the deed of sale or lease, appropriate clause making the vendor/lessor responsible for clearing the electricity dues upto the date of sale/lease and for indemnity in the event they are made liable. Be that as it may.”

We observe that in this ruling also, no exception or distinctions have been drawn by the Hon’ble High Court on the aforesaid findings which, as per 11, specifically state that a “stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasoned or arbitrary”.

We also observe that the **Hon’ble Supreme Court of India have in their judgement in Civil Appeal No. 6817 of 2010 [Arising out of SLP (C) No. 16396/2006]** have also stated “that in **Paschimanchal Vidyut Vitran Nigam Ltd. V. DVS Steels & Alloys Pvt. Ltd. 2009(1) SCC 210**”

this court held, while reiterating the principle that the electricity dues did not constitute a charge on the premises, that where the applicable rules requires such payment, the same will be binding on the purchaser. This court held:

“A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor in title or possession, as the amount payable towards supply of electricity does not constitute a ‘charge’ on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises.

When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper, to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Provisions similar to clause 4.3(g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor.”

In the said judgement of 20.08.2010 Hon’ble Supreme Court have also summarized the legal position as under:-

The position therefore can may be summarized thus:

- (i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.
- (ii) Where the statutory rules on terms and conditions of supply which are statutory in character, authorize the supplier of electricity, to demand from the purchaser of a property claiming re-connection or fresh connection of electricity, the arrears due by the previous owner/occupier

in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser.

A perusal of the above findings of the Hon'ble Supreme Court also clearly show that the arrears of dues can be demanded from the next owner/occupier in cases where the statutory rules or regulations which are statutory in nature authorize the supplier of electricity to do so.

As regards the suggestion of the Industries Associations to distinguish between the transfers of a connection and the new connection, we feel that, as discussed in sub-para (i), the Hon'ble Courts have not restricted the scope of the provisions which can be made in the relevant regulation excepting that the same should not be arbitrary or unreasonable. No distinction has been drawn about the provision to be made for transfer of a connection and new connection. On going through the proposal submitted by the HPSEBL, we otherwise also find that the same was self contradictory and anomalous. In the background it has referred to the provisions made by the SERCs of Uttrakhand, Haryana and Delhi which provide for recovery of dues from the new consumers in specific conditions only. However, in the proposed text of the modification it has been proposed that *“any application for revival of the connection after permanent disconnection shall be treated as an application for new connection and would be processed only after clearance of all outstanding dues applicable for electricity connection permanently disconnected from the premises / unit”*.

We find that the electricity connection is not transferable and even in case involving change of name, the electricity connection in the name of old consumer is first disconnected permanently and then new connection is released to the new consumer. There can, however, be some relaxation in the formalities. The recovery of dues of the utility is of paramount importance of the mode of transfer of premises. After considering the matter in above context, we found it appropriate to provide for recovery of dues in all cases i.e. irrespective of the mode/channel under which the supply is sought to be restored or new connection is sought to be released. In this connection it is also relevant to mention here that the regulation 10 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 already provides for a package to the applicant for restoration of supply/new connection. According to such package the Infrastructure Development Charges (IDC) applicable to release of connection shall not be charged if the applicant undertakes to clear the dues against the previous connection for the applicants opting for the said package of the HPERC regulations for recovery of

expenditure. However, in case of applicants who do not opt for such package the pro-rata dues alongwith Infrastructure Development Charge of the load applied for shall be paid by them. The Commission felt that if such a provision is subjected to condition linked with the mode in which the supply to be disconnected, this may not only encourage the tendency to manipulate the situations in their favour where they may be able to avoid payment of dues and simultaneously also avail the facility of electricity at their premises in other name. The provision on the proposed lines will not only facilitate uniform and transparent implementation of the provision but shall avoid litigation in the subject to a large extent.

On going through the provisions made by different SERCs in their regulations on the subject, we observe that whereas some SERCs like Uttrakhand, Haryana and Delhi have provided for recovery of dues from the new applicants only under certain specific situations, some others like Gujrat and Punjab have provided for recovery of the dues against the previous connections as a condition precedent for release of new connection, reconnection, addition or reduction of load, change of name or shifting of service line i.e. in all situations. The provision has been made by the Gujrat Electricity Regulatory Commission as under:-

“4.30 An application for new connection, reconnection, addition or reduction of load, change of name or shifting of service line for any premises need not be entertained unless any dues relating to that premises or any dues of the applicant to the Distribution Licensee in respect of any other service connection held in his name anywhere in the jurisdiction of the Distribution Licensee have been cleared.

Provided that in case the connection is released after recovery of earlier dues from the new applicant and in case the licensee, after availing appropriate legal remedies, get the full or part of the dues from the previous consumer/owner or occupier of that premise, the amount shall be refunded to the new consumer/owner or occupier from whom the dues have been recovered after adjusting the expenses to recover such dues.”

We find it appropriate that in order to avoid any open ended burden on the consumers, the dues which can be demanded from the new consumers are also being restricted to an amount equivalent to the average bill of two months, in spite of the fact that in the States like Punjab and Gujrat no such limit has been specified.

As regards the comments of Industries Associations that the maximum limit for recovery of dues of previous connection should be limited to the bill for one month, instead of two months, we find that the proposed provision is already quite reasonable. We however otherwise feel that with the implementation of new Security Deposit rates, the incidence of accumulation of net outstanding dues may get reduced substantially

and in that case, the dues recoverable from the new consumer shall also get restricted suitably. However to avoid any undue burden on new consumers, we also decide to add a new provision to the effect that in case where the connection is released after recovery of earlier dues from the new applicant/consumer and the licensee, after resorting to appropriate remedies, recovers the full or part of the dues from the previous consumer/owner or occupier of that premise, the amount so recovered shall be adjusted against the expenses incurred to recover such dues as well as the balance outstanding dues against the original consumer, not recovered from the new consumer, and the balance, if any, after such adjustment shall be refunded to the new consumer/owner or occupier from whom the dues have been recovered. However, in order to avoid any confusion/ambiguity it shall also be simultaneously clarified in the regulations that where the new connection/supply is sought to be released in the name of the original consumer or owner or their legal heirs, the entire outstanding amount shall be recovered before release of new connection or release of supply for the premises.

We also find that the Industries Associations have also objected the proposal for linking the maximum recoverable dues with average bill for past 12 months. We however find the proposed provisions are more reasonable as this shall average out the variations in the consumption pattern as well as the tariff over the year. We feel that the plea stating that the previous outstanding shall always pertain to last 2 months immediately prior to the temporary disconnection, may not hold good in all cases as in some cases there may be old disputed dues also, including late payment surcharge, which might have been under litigation with the CGRF, Ombudsman or the Appellant Courts. Even otherwise only a generic provision is being made for the maximum limit upto which the dues against the previous consumer can be recovered from the new consumer and this is not linked it with the bills for any particular months. As such, we feel that the objections raised by the objector in this regard does not merit any change in the proposal on this account.

In regard to the submission made by the Industries Associations that the proposed provisions may have a discouraging effect on the industries, we feel that it is of paramount importance that the dues of distribution licensee should not remain unrecovered. As such, it is necessary to make suitable provisions in the regulations to cover various situations.

In view of above, we decide to amend sub-para 5.2.13 of the Supply Code as follows, namely.-

In sub-para 5.2.13 of the said Code -

- (i) the last sentence stating that ‘The licensee will not be entitled to require payments of such amount from the next occupier of the premises.’ shall be omitted; and*
- (ii) after the said sub-para, the following new sub-para 5.2.13 A shall be inserted, namely:-*

“5.2.13 A The licensee will also be entitled to recover, in addition to the charges recoverable by it under the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 and any other relevant regulations for providing connection and supply, the outstanding amount against the previous consumer from the next owner/occupier of the premises subject to a maximum limit of the amount equal to the average billing for two months worked out on the average for past twelve months immediately prior to the temporary disconnection of the previous consumer:-

Provided that in case the connection/supply is sought to be released in the name of the original consumer or owner or their legal heirs, the entire outstanding amount shall be recovered before release of new connection or release of supply for the premises;

Provided further that the amount to be recovered on this account shall not exceed the total updated outstanding amount, including the interest after permanent disconnection, but after adjustment of the security deposit of the previous consumer:

Provided further that the Licensee shall recover the balance outstanding amount, if any, after adjustment of the amount recovered from the new occupier, through any other means available to it;

Provided further that in case the connection is released after recovery of earlier dues from the new applicant / consumer and the licensee, after resorting to appropriate remedies, recovers the full or part of the dues from the previous consumer/owner or occupier of that premise, the amount so recovered shall be adjusted against the expenses incurred to recover such dues as well as the balance outstanding dues against the original consumer, not recovered from the new consumer, and the balance if any after such adjustment shall be refunded to the new consumer/owner or occupier from whom the dues have been recovered;

Provided further that in cases where the new consumer avails the relief in the infrastructure development charges payable by it as per the special provisions of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 whereunder the payment of entire outstanding dues is a pre-condition, the provisions of this sub-para shall not be applicable and in such cases the relevant provisions of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 shall have overriding effect.”

(IV) Amendment of sub-para 7.1.2.-

No comments have been received on this proposal. The HPSEBL who had given a general comment have also confirmed during the course of hearing that the submission has been made by them in relation to item G of the Order of the Hon'ble High Court. In view of above we decide to finalise the proposed amendment without any change as follow, namely.-

“for the sign “.” appearing at the end of the second proviso of sub-para 7.1.2 of the said Code, the sign “:.” shall be substituted and thereafter the following proviso shall be inserted, namely:-

“Provided further that in case of supply covered under two part tariff, if in special circumstance, the licensee has sufficient evidence to believe that the defaulting consumer is not likely to get the supply restored and the amount of dues exceed security deposit, it may order permanent disconnection before the expiry of six months, but not before three months of temporary disconnection, after giving at least two consecutive fortnightly notices, indicating such intention.”

(V) Amendment of sub-para 7.1.3.-

No comments have been received on this proposal. Accordingly, we decide to finalise the proposed amendment as under :-

“For the words “for a period of more than six months” appearing in sub-para 7.1.3 of the said Code, the words, sign and figures “for a period of more than six months, or any shorter period, if the supply is permanently disconnected before the expiry of the period of six months, as per the third proviso to sub-para 7.1.2” shall be substituted.

(VI) Amendment of sub-para 7.1.9.-

No comments have been received on this proposal. Accordingly, we decide to finalise the proposed amendment as under :-

“In sub-para 7.1.9 of the said Code -

- (i) for the sign and word “, and” appearing at the end of item (a), the sign “;” shall be substituted; and
- (ii) in item (b), for the sign “.”, the sign and word “; and” shall be substituted and thereafter following new item (c) shall be inserted, namely :-

“(c). the delayed payment surcharge shall not be charged for the period beyond the date of permanent disconnection and instead interest shall be charged on the outstanding amount, for the actual number of days for which such amount remains unrecovered / unadjusted, at a simple interest rate of 12% per annum:

Provided that in case of recoveries through the recovery suits under the relevant law/Code, if the competent authority, while passing the order for

recovery, orders specific rates to be charged on such dues, the interest rate so ordered shall be applicable.”

(VII) Amendment of sub-para 7.2.1.-

No comments have been received on this proposal. Accordingly, we decide to finalise the proposed amendment as follow, namely.-

“In sub-para 7.2.1 of the said Code-

- (i) in the first line for the words “the licensee shall resume supply of electricity”, the words “the licensee shall resume supply of electricity to the premises which has been temporarily disconnected” shall be substituted;
- (ii) the first proviso to this sub-para shall be omitted;
- (iii) in the second proviso for the words and sign “Provided, further that in case of temporary disconnection,” the words and sign “Provided that” shall be substituted; and
- (iv) the following note shall be added at the end of the sub-para

7.2.1,namely:-

“Note:- In case supply of power to a premises which had been permanently disconnected and the arrangement for supply of electricity as were being used for the supply before disconnection have not been removed or used for supply to other consumer, the supply should be given within 24 hours from the time the consumer completes the formalities for new connection.”

(VIII) Miscellaneous items:-

(A) Additional information from the high end consumers:-

During the course of public hearing, the representative of the HPSEBL stated that the comments submitted by them on the draft amendment regulations were only meant to convey that item G of the Order passed by the Hon’ble High Court has not been included in the proposal. The said item is reproduced below for ready reference:-

“(G) The provisions for permanent address alongwith details of properties/fixed assets of Board of Directors in case of Companies/ Firms/individual consumers where the security is more than five lakh is proposed to be incorporated in the Supply Code. The details are to be updated on change of ownership/partnership and regularly on yearly basis to have updated information of the consumer and recovery of outstanding amount.”

Commission's View:-

As pointed out by the Review Panel also in relation to said item G, we observe that as per sub-para 3.1.2 of the Supply Code currently in force already empowers the distribution licensee to standardize the supporting documents and the format(s) to be submitted by the applicant. In fact as per the format of the Application and Agreement form on which application for connection is received by the HPSEBL from the consumers, other than domestic connections, the applicant undertakes to “abide by the provisions of Electricity Act, 2003, all applicable laws, conditions of Supply, orders, Directives, Notifications issued and enforced under applicable laws by the HPERC/CEA/Govt. of India/Govt. of HP and any other instructions/circulars issued by the HPSEBL from time to time and as amended from time to time, for equitable and efficient distribution of electric energy”. In view of above, we feel that the HPSEBL can make further suitable provisions, if necessary, in the format of Application and Agreement form and can obtain all such information, as may be necessary to amend the Supply Code in order to attend the desired objectives, the HPSEBL should thus exercise the enabling powers already vested in it. In view of above, no changes in the Supply Code may be necessary. We, however, also decide to consider making suitable enabling provisions in the Security Deposit Regulations which are currently under modification, so as to vest more powers in the distribution licensee in this regard.

(B) Tariff related issues:-

The Industries Associations have raised the following additional points and requested that the same may also be considered while finalizing the amendment of the Supply Code. It has been mentioned that these items have emerged out of the tariff order for FY 2019-20 in which the Commission had mentioned that these points related to Supply Code shall be taken up separately while reviewing the Supply Code regulations.

(i) Connected load for industrial consumers:-

The Commission may relax the limits upto which the connected load be built up by the industrial consumers covered under two part tariff keeping in view the fact that in such cases the contract demand is fixed in kVA is the limiting parameter.

(ii) Rationalization of Supply of Voltage for Consumers upto 50 kVA of Contract Demand:-

The limit of 50 kW connected load in case of consumers having contract demand upto 50 kVA should be removed or else the same should be increased upto 100 kW.

(iii) **Relaxation of limits of connected load/maximum contract demand for supply at 33 kV.**

It has been suggested that the connected load upto 24MW and contract demand upto 18 MVA may be allowed to be availed on 33 kV on dedicated/joint feeders. It has also been mentioned that in view of the provisions of LVSS, the HPSEBL has nothing to loose.

Commission's View:-

We observe that the additional items (i) and (ii), as aforesaid, were discussed by the Review Panel in its meeting held on 30.12.2019 but could not be concluded and are to be discussed again by the Review Panel. As regards, additional item iii, the Review Panel discussed the agenda item and after discussion, the agenda was considered as withdrawn. In view of the foregoing it is felt that it will not be appropriate to include these items for amendment of Supply Code, being taken at present.

We, after consideration of the objections raised and suggestions made by the stakeholders on the draft regulations and the deliberations of the public hearing conducted thereon and the recommendations made by the Hon'ble High Court of Himachal Pradesh, finalise the proposed draft regulations and direct the amendments as stated above we carried out in the Supply Code.

-sd-
(Bhanu Pratap Singh)
Member

-sd-
(S.K.B.S. Negi)
Chairman

Place: Shimla

Date: 03/07/2020