BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Suo Motu Case No. 20/07

In the matter of:-

The President Mehatpur Industries Association

V/S

The Himachal Pradesh State Electricity Board

ORDER

(This case was last heard on 26.5.07 and decision thereon was reserved)

1. The facts leading to the initiation of the suo motu action under section 142 of the Electricity Act, 2003, are as under:-

In January, 2007 the President Mehatpur Industries Association, Mehatpur, Distt Una (H.P.) (in short hereinafter referred to as "the complainants" brought to the notice of this Commission, that Mehatpur, Sub-Station had its existing capacity of 10 MVA and its existing utilisation is 4.5 MVA. The HPSEB, (in short hereinafter referred to as "the Board") has augmented the said Sub-station from its existing capacity of 10 MVA to 12.6 MVA. This augmentation is stated to be premature and unnecessary. Unless some old industrial unit is sold no new unit can be set up/ established in Mehatpur Industrial Area. No industrial consumer has been benefited by this unnecessary augmentation. Out of the enhanced capacity power is being supplied for domestic connections and part of it to Industrial Area Tahliwal. Mehatpur Industries have further submitted that the Board, therefore, is leving unjustified and arbitrary charges for the aforesaid premature augmentation, without any benefit of the augmentation to them. In support of this, the complainants Mehatpur Industries, have also submitted copies of three demand notices of the Board as per details given below:-

Name of Company	Date of demand notice and amount	Date of sanction of load/sanctioned load
M/S Swiss Garnier Life Science	8.12.06 for Rs. 3,04,300/-	8.2.06 for 258 KW
M/S Majestic Agronomics	8.12.06 for Rs. 1,24,350/-	19.10.05 for 147 KS
M/S Seagull Laboratories	8.12.06 for Rs. 83,935/-	19.5.06 for 98.615 KW

2. On Scrutiny of the documents/information supplied by the complainants i.e. Mehatpur Industries, the Commission noticed: -

(1) that the complainants are the existing consumers of the licensee and their loads have been sanctioned by the licensee 7 to 14 months before the date of issuance of demand notices;

(2) that the complainants have not applied for additional load or for the augmentation of the existing system;

(3) that the existing capacity of the sub-station, as per the details given in the complaint, was much more than the connected load;

(4) that the benefit of the augmented capacity is being given to the Industrial consumers of Tahliwal and the domestic consumers;

3. This Commission has framed the HPERC (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004 (in short hereinafter referred to as "the Licensee's Duty for Supply Regulations") and the HPERC Recovery of Expenditure for Supply of Electricity) Regulations, 2005 (in short hereinafter referred to as "the Recovery of Expenditure for Supply of Electricity Regulations") under sections 43 and 46 of the Electricity Act, 2003 (hereinafter referred to as "the Act") Regulation 3 of Licensee's Duty for Supply Regulations provides that the demand notice, clearly indicating deficiencies and the amount of charges etc. should be given for 11 KV Supply within 15 days on receipt of the application and the electricity supply should be given by the licensee to the 11KV Consumers within 30 days from the date of making good the deficiencies, completion of codal formalities and payment of charges by the applicant as indicated in the demand notice,.

4. Sub Regulation (3) of said Regulation 3 of the Licensee's Duty for Supply Regulations provides that the distribution licensee is to give supply of electricity to the premises: -

(a) in cases where no extension of distribution mains or commissioning of new sub-station is required for effecting such supply, within twenty days from the completion of codal formalities and the payment of charges and security amount stated in the demand notice, and

(b) in cases where such extension of distribution mains or commissioning of new sub-station is required but there is no requirement of erecting and commissioning of new 11KV sub-station, within 30 days from the date of completion of codal formalities required vide demand notice.

5. The distribution licensee has to approach the Commission for extension of time where the magnitude of extension is such that the licensee will require more time, duly furnishing the details in support of such claim for extension and if satisfied with the justification given by the distribution licensee, the Commission may extend the time for commissioning the supply.

6. Regulation 4 of the aforesaid licensee's Duty for Supply Regulations, lays down that the distribution licensee where fails to comply with the time frame for supply of electricity stipulated in regulation 3 shall be liable to pay penalty as may be decided by the adjudicating officer of the Commission in accordance with section 43 (3) of the Act. The liability to pay penalty under said section for default does not absolve the distribution licensee from the liability to pay compensation to the affected person under section 57 (2) of the Act.

7. The Commission's Recovery and Expenditure for Supply Regulations lay down the procedure for recovery of expenditure incurred by the distribution licensee. In the case of applications for supply of electricity where there is need to erect, strengthen, augment or extend the 11KV, 22KV or LT line in order to establish a distribution transformer and extend supply to the applicant, the distribution licensee is to estimate and recover the cost of such section of 11 KV, 22KV or L.T Line per Kilometre basis based upon the approved latest cost data as published by the distribution Licensee. In case

there are subsequent applications for supply or additional supply and the existing electrical plant has adequate spare capacity to meet the additional demand or spare capacity but not sufficient to meet additional demand and there is need to strengthen/augment the exiting electrical plant for meeting the additional supply, the licensee is to estimate and recover, under regulation 6(1) the cost of amount of augmentation. The cost of electrical plant and/or electrical line, after deducting amount payable by the applicant, is either invested by the licensee's or paid by the applicant and where the licensee's investment approval does not permit this cost the licensee is to recover the total balance cost from the applicant. The balance cost is to be refunded to the applicant as and when new connections are installed or given from the electrical plant and/or electrical line on prorata basis with the interest rate of 8% compounded annually and the balance cost due is recoverable from the subsequent applicants and the bills of the consumer, who had paid the balance cost, are to be invariably flagged continuously until paid fully. The licensee has to be render to the applicant/consumer the account of expenditure showing the excess or deficit in relation to initial estimated amount within three months after the release of connection. The demand notice valid for 90 days stipulating all the conditions of these regulations as well as of other regulations has to be sent under regulation 14 by the registered A.D post to the applicant within the time frame laid down in the Licensee's Duty for Supply Regulations.

8. In the present case the complainants assert that they are the existing consumers and have not applied for extension of load and their loads have been duly sanctioned. The demand notices have been given to them after the period of 7 to 15 months from the date of sanction of their existing loads. Presumably they must have paid the requisite charges at the time of sanction of their original load. The demand notice issued by the licensee does not have any reference to the regulations concerned. Further the amount have been asked to be deposited within 30 days against the stipulated period of 90 days for the demand notice.

9. The facts as disclosed above are enough to indicate the non-compliance of the aforesaid regulations of the Commission. In these

circumstances the Commission felt it necessary to initiate suo mottu action under section 142 of the Act for non compliance of aforesaid regulations.

10. In its reply to the notice served under section 142 of the Act the Board, without touching the merits, tenders unconditional and unqualified apology in case the Commission comes to the conclusion that the Board has committed any default in compliance of the directions issued by the Commission. Further the Board has submitted: -

(i) that initially the consumers, namely Majestic Agronic, M/S Seegull Laboratories and M/S Swiss Garnier applied for sanction of load to the Board on 3.9.2005, 18.11.2005 and 6.10.2005 respectively. At the time of the application of the consumers, the existing capacity of 33/11 KV S/Stn. Mehatpur was fully loaded and proposal of its augmentation was under process. After sanctioning of the load and before completion of the augmentation of the Sub-Station, provisional demand notices were issued to the consumers and they deposited the amount as per their respective demand notices. All these consumers were made aware of the fact that the demand notices issued to them are just provisional and they will have to bear the balance of expenditure, cost being incurred by the Board for augmentation of the Sub-Station. The aforesaid consumers after accepting the aforesaid things also submitted undertaking to the Board that they will make good the deficiency of the demand notices whichever would be leviable in future. It is also stated that keeping in view the urgency of the consumers and without delaying the connection and to avoid any inconvenience to the aforesaid consumers to start their industries, the connections were released to the consumers immediately after augmentation of S/Stn. was completed and without waiting for calculations of actual and final expenditure incurred for augmentation of 33/11 KV Sub-Station, Mehatpur, which was augmented during the month of Feb., 2006;

(ii) that the Board after completion of augmentation and releasing the connection to the consumers calculated the cost on the basis of actual expenditure incurred by it. The competent authority i.e. the Chief Engineer, in the present case, decided to recover the expenditure incurred on the augmentation of 33/11 KV Sub-Station, Mehatpur as per HPERC Recovery of Expenditure for Supply Regulations from the new Industrial consumers as their load were to be released on H.T. as well as the existing HT consumers seeking extension of load @ 945 per KVA, which decision was conveyed by the Superintending Engineer vide letter dated 22.11.2006. Since the connection was released to the consumers on HT after augmentation of 33/11 KV S/Stn.

Mehatpur, the aforesaid three consumers were treated as new consumers and as per their own undertaking they were liable to pay the difference of the initial demand notices and the actual expenditure incurred and fallen in the share of aforesaid three consumers. As such the Board vide fresh demand notices dated 8.12.2006 called upon the aforesaid consumers to deposit the balance amount of expenditure charges with the Board but the consumers through its Association has approached this Commission without disclosing the above mentioned facts and especially the fact of their tendering undertakings to the Board. The consumers wanted earlier connection so as to start their industry without any undue delay and in order to avoid such inconvenience to the aforesaid consumers the Board has accepted their undertaking and issued provisional demand notices which were complied with by the aforesaid respective consumers. As such the Board has not committed any disobedience of regulations 31 and 32 of HPERC (Licensees Duty for Supply of Electricity on Request) Regulation, 2004;

(iii) that regarding violation of para (ii) of the third proviso to clause(B) of sub Regulation (1) of Regulations 3 of the Recovery of Expenditure for Supply of Electricity Regulations, the Board submitted and reiterated that the connection was released to the aforesaid prospective consumers after completion and augmentation of 33/11 KV Sub-Station Mehatpur, without waiting for calculations of actual expenditure incurred by the Board for such augmentation and on the assurance and undertakings, as submitted above, submitted by the aforesaid consumers. As such, the Board has raised the demand strictly in accordance with the aforesaid regulations from the aforesaid consumers;

(iv) that regarding 1st and 2nd provisos of Sub-Regulations (1) of Regulation 6 of Recovery of Expenditure for Supply Regulations, it is submitted that these consumers have deposited part of infrastructure charges @ 200/- per KVA at the time of issue of PAC and for additional cost they filed an undertaking before the Board to make good the deficiency of expenditure incurred by the Board on augmentation of 33/11 KV Sub-Station Mehatpur after finalisation of cost incurred by the Board on such augmentation of sub-station Mehatpur all new connections have been given by charging expenditure @ 945 KVA from prospective consumers after augmentation and finalisation of expenditure incurred for augmentation of 33/11 KV Sub-Station Mehatpur and credit of amount already received @ 200/- per KVA has been duly given in the demand notice;

(v) that so far regarding time limit of 90 days as provided in Regulation 14 of the Recovery of Expenditure for Supply

Regulations the Board tenders unconditional and unqualified apology for inadvertently mentioning the period of 30 days instead of 90 days. However, it is submitted that even after the completion of 30 days of issuance of aforesaid notice no coercive method has been adopted by the Board knowing fully well that under the Regulations period of 90 days is to be given to the consumers but inadvertently in a bonafide mistake instead of mentioning 90 days period has been mentioned.

11. The complainants have filed a rejoinder to the reply filed by the Board. The complainants have stated that before the regulations came into force the Board is required to formulate rules for their implementation. The standard cost data should have been submitted to the Commission by the 31st December of each year and this data is to form the basis for making estimates. In case the cost of augmentation is to be recoverable the Board is first to establish "Need to Erect" new transformer/equipment etc. and thereafter to intimate the applicant about the estimated cost recoverable based on the latest approved cost data. Further the licensee is to render to the consumers an account of expenditure incurred within 3 months of the release of connection and manner in which the payments are to be paid and the option of payments in monthly rental, if available. The standard cost data books are not available. The Board has not so far authorized the Superintending Engineer to take action on its own under the regulations. The existing load of industrial consumers of the Industrial Area, Mehatpur was only 4 MVA as against 10 MVA installed capacity. The Board has not clarified whether any assistance was obtained from the Central Govt., State Govt. or any other agency. There was no need to augment the Sub-Station/or the system solely for the aggrieved consumers as the maximum demand of Industrial Area, Mehatpur on this Sub-Station for which it was primarily established was approx. 4.0 MVA as against the installed 10 MVA (before augmentation). Since there was surplus capacity available at this sub-station there was no need to augment it and consequently no reason for raising any demand. The Board has violated the stipulated time frame. The Board and its officers are causing unnecessary harassment to the complainant and are misusing their authority/official position for extraneous considerations. The consumers under duress have to submit undertakings for release of connection. In view this it has been stressed that the Commission

should invoke the penal provisions of the Act against the Board and its officers.

12. Sh. P.N. Bhardwaj, the Learned Consumer representative has also expressed his concern over the non-compliance of the regulations, on the part of the Board, and emphasized the need to take the stern action against the Board and its Officers.

13. The Commission, for proper verification of the facts of the case, called for from the Board the additional information/record alongwith the justification for augmentation of Mehatpur Sub-Station, which the Board has submitted on 26.5.2007. The Commission has gone through:-

(a) 3 No. consumer files (except consumer estimates).

(b) Estimate of augmentation of 33/11KV Sub-Station, Mehatpur.

(c) MAS Expenditure Accounts;

(d) APDRP Scheme with provision for augmentation of 33/11KV Sub-Station, Mehatpur.

14. From the pleadings of this case, the issues which have arisen for consideration and decision are as under: -

1. Was the augmentation premature or unjustified.

2. Were the provision of regulations followed in letter and spirit?

Issue: 1. Was the augmentation premature or unjustified?

From the facts as available on records of this case it is crystal clear that 2x5 MVA Power Transformers were installed at the 33/11KV Sub-Station, Mehatpur during the year 1993. This Sub-Station was feeding Industrial Area Mehatpur and about 21700 general consumers in and around Mehatpur. This load was reported continuously increasing since 1993 and in June, 2005 the maximum demand of this Sub-Station was recorded as 177 Amp on 33KV side. With the declaration of new Industrial Policy a few Industrial houses had approached for new loads and a few existing Industries wanted to extend their loads. PAC for 549 KVA load stood issued and PAC 600 KVA were in pipeline. Besides this, in the sanctioned APDRP Scheme of Una District there was a provision to

augment the 33/11KV Mehatpur from 2x5 MVA to 2x6.3MVA. With this background augmentation of 2x5MVA Power Transformer to 2x6.3 MVA at 33/11KVA Sub-Station, Mehatpur was commissioned in June, 2005 and completed in June, 2006. The consumers namely M/S Majestic Agronomics, M/S Seegull Laboratories & M/S Swiss Garnier applied for sanction of load to the Board on 3.9.05, 18.11.2005 and 6.10.2005, respectively, when the augmentation of the Sub-Station was in process. At the time of the application the consumers Sub-Station was fully loaded. Thus in view of the fact that, when applications for new connection were made, the maximum demand of the Sub-Station was more than the rated capacity, the contention of the complainants that the augmentation of the Sub-Station was premature or unjustified does not hold good.

Issue 2. Were the provisions of regulations followed in letter and spirit?

The complainants have alleged the contravention of this Commission's two regulations i.e. the Licensee's Duty for Supply Regulations and the Recovery of Expenditure of Electricity Regulations. Section 43 (1) of the Act, provides that where supply of electricity requires extention of distribution mains or commissioning of new Sub-Stations, the distribution licensee is to supply the electricity immediately after such extension or commissioning or within such period as may be specified by the Commission.

The expression " distribution mains" appearing in section 43 (ibid) is required to be understood in light of the expressions "distribution main", "main" and "service line" defined in clauses (18) (42) & (61) of section 2 of the Act. Thus the distribution mains mean any portion of electric supply line through which the electricity is, or is included to be supplied, to a consumer or group consumers. Regulation 3(1) of the Licensee's Duty to Supply of Electricity Regulations lays down the time frame for the issue of the demand notice to the applicants, clearly indicating all deficiencies to be made good; codal formalities to be completed; and the exact amount of charges and security to be deposited, by the applicant. Sub-regulations (2) & (3) of regulation 3 (ibid) lay down the time frame within which the Licensee is to supply the electricity. In cases where extension of distribution mains or commissioning of new Sub-Station is required, but there is no requirement of

erecting and commissioning a new 33/11 KV Sub-Station, the Licensee is to provide supply within a period 30 days from the date of completion of codal formalities vide demand notice. In specific cases, where the magnitude of extension is such that the licensee will require more time, on duly furnishing the details in support of such claim for extension and if satisfied within the justification given by the distribution licensee, the Commission may extend the time for commissioning the supply. In the present cases the applications for new connections were received during the period when the augmentation of the project was in process. Keeping in view the urgency of the consumers and to avoid inconvenience to the consumers to start their industries, the connections were released to the consumers immediately after augmentation of the Sub-Station. Thus as no delay in releasing the connections is involved. The question of contravention of the provisions of regulation 3 of the Licensee's Duty to Supply Electricity Regulations does not arise.

The second/subsequent demand notice isasued by the Board is actually for the cost to be recovered from the consumers, after release of connection in respect of augmentation of 33/11KV Sub-Station and the undertakings were only to make the consumers understand and believe that there shall be recovery of expenditure at a later stage so as not to cause a shock to the consumers at the later stage. The Board is within its right to recover the cost. Expenditure /KVA (Rs. 1189.146 per KVA) is more than what is being charged by the Board from the consumers (Rs. 945 per KVA) Expenditure is less than the sanctioned cost. The Board has asked the consumers vide said notice to pay the balance cost in proportion to their contract demand, but after the expiry of period (3 months from the release of the connection) specified in regulation 6(2) and without rendering to the consumers account of expenditure showing the excess or deficit i.e. itemwise estimation and itemwise actual expenditure. Thus by non preparation of estimates and non-rendering the accounts of expenditure, to the consumers the Licensee (Board) has contravened the provisions of regulation 6(2) of the Recovery of Expenditure Regulations and is liable to be dealt with under section 142 of the Act. This issue is, therefore, decided against the Board.

The Board has tendered unconditional and unqualified apology for its default incompliance of the regulations/directions of the Commission,

the Commission, therefore, taking lenient view, directs the Board and its Officers to strictly follow the regulations/directions punctually and in their letters and true spirit and in future any such dereliction shall be seriously viewed.

Announced in open Court.

The file be consigned in the record room.

Dated. 4.8.2007 (Yogesh Khanna)
Chairman