HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

In the matter of:

M/S Zenith International, Village Brahman Beli, Tehsil Nalagarh, District Solan, HP-174101
- Complainant

Vs

1. **Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
2. **The Assistant Executive Engineer (E), Electrical Sub-Division-II, HPSEBL, Nalagarh, District Solan, HP-174101**
3. **Sr Executive Engineer, Electrical Division, HPSEB Ltd, Nalagarh, District Solan, HP-174101**
4. **Sr Executive Engineer, Electrical System Division, HPSEB Ltd, Nalagarh, District Solan, HP-174101**

- Respondents

Complaint No. 05/2021 (Registered on 17/03/2021)
(Orders reserved on 12/10/2021, Issued on 23/12/2021)

CORAM

Er. K. L. Gupta
HP Electricity Ombudsman

Counsel for:
The Complainant: **Sh. Rakesh Bansal (Authorized Representative)**
The Respondents: **Sh. Anil Kumar God advocate, Sh. Kamlesh Saklani Law Officer**

Order

The case was registered on 17/03/2021. The case was first listed for admission hearing on 17/04/2021. The Respondents were to file their reply by 31/03/2021 and the Complainant was to file his rejoinder by 09/04/2021. The reply was filed by the Respondents on 13/04/2021. The case was further listed for 29/05/2021. Due to Covid-19 Pandemic lockdown, the hearing was postponed and was re-listed for 03/07/2021. The rejoinder/ additional submissions were made by the Complainant on the next date of hearing. Case was further listed for final arguments on 26/07/2021.

Since the Respondent No. 4 prayed for additional time for submitting the IDC calculations which as granted till 06/08/2021 and the Complainant was to file his response by 09/089/2021. The case was listed for arguments on 09/08/2021. The Rn submitted his calculations but the Complainant prayed for some time to file his response which was granted till 21/08/2021 and the case was listed for final arguments on 26/08/2021.

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Based on arguments/ calculations etc, some additional information was sought from the Respondents and also from the Chief Engineer (Commercial). The case was further listed for final arguments on 16/09/2021. Due to visit of His Excellency 'The President' of India, the case was postponed to 25/09/2021. Since some information was still pending from Respondents side, the case was listed for 12/10/2021 for final arguments. The arguments were closed on 12/10/2021 and the orders were reserved. Hence the delay.

A – Brief facts of the case:

1. M/S Zenith International, Village Brahman Beli, Tehsil Nalagarh, District Solan, HP-174101 have filed an application through Sh. Promod K Singh (hereinafter referred to as 'The Complainant') under the provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the orders passed on 25/07/2019 by the Consumer Grievance Redressal Forum 1432/2/18/021, dated 03/05/2018 and in Complaint No. 1432/4/18/063, dated 05/10/2018.

2. The Complainant have prayed to either quash or suitably modify the orders passed by the Forum, not to charge IDC on load of 100 kW and also direct the Respondents to refund the excess IDC alongwith 15% per annum interest and also refund security held in excess by them. They have further prayed to quash the disconnection notice and pay interest on security refund also.

B – The Complainant's submissions:

PROLOGUE

1. The Complainant submits that this representation is being filed in accordance with the HPERC (CGRF & Ombudsman) Regulations, 2013 as he is aggrieved by the orders dated 25/07/2019 passed by the Ld. Forum in the Complaint no. 1432/2/18/021 and 1432/4/18/063 titled as Zenith International v. HPSEBL and others, whereby the Forum had observed that the procedure laid down in the HPERC (Recovery of Expenditure for Supply of Electricity has been vitiated. The Forum held that the Respondents have erred and further ordered them to provide details as per Regulations within a period of six months and determine his exact liability within the said period. Besides, having other specific grievances with respect to orders of the Forum, he was left with no choice than to wait for the period of six months to see the result of such overhauling. He is thus approaching the Hon'ble Electricity Ombudsman as no such computation of exact liability was communicated to him in spite of the directions of the Forum. Besides this, he also has specific grievances against the orders of the Forum.

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2. The Complainant submits that he had deposited towards IDC Rs. 2,16,000/- as per following detail, which stands verified by the detail provided by the Respondents in Annexure C3 of the Complaint:

   a) Rs. 20,000/- vide Rct. No. 00931551 dated 07/10/2005;

   b) Rs. 25,400/- vide Rct. No. 0139538 dated 21/08/2008;

   c) Rs. 1,45,000/- vide Rct. No. 0145815 dated 18/11/2008

   d) Rs. 25,600/- vide NEFT on 05/05/2018 as per directions of CGRF.

   The Regulation 33 of the HPERC (CGRF & Ombudsman) Regulations, 2013, pre-conditions for entertaining the representation have been defined. Pre-condition 33(1)(g) reads as follows:

   "The Complainant has deposited with the Ombudsman, an amount equal to 50% of the amount assessed by the Forum, if any:"

   In the present case the Forum has not assessed any amount to be paid by him, therefore, the pre-condition of 50% stands complied with. However, a sum equivalent to one-third of the total IDC worked out by the Respondents stands deposited by him.

FACTS OF THE CASE

3. The Complainant submits that he was committed a load of 100 kW of load with 80 kVA of demand vide PAC dated 19/01/2005 (as also has been stated in the demand notice dated 18/07/2014) out of which 98 kW with 80 kVA of Contract Demand was finally sanctioned. The Respondents charged a sum of Rs. 20,000/- @ Rs. 200 per kW as per prevailing rates of IDC before the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 were notified. An increase in load was committed vide PAC dated 01/09/2008 vide which additional 127 kW was allowed in addition to 98 kW previously released to him. This time to a sum of Rs. 25,400/- were recovered from him @ Rs. 200 / kW on 127 kW. An additional Contract Demand of 145 kVA was sanctioned to him resulting in the total sanctioned Contract Demand of 225 kVA as per sanction letter dated 20/09/2008. He also deposited a total security of Rs. 2,25,000/- for 225 kVA @ Rs. 1,000/ kVA with the Respondents as per their demand. Thereafter, the Contract Demand was reduced to 90 kVA in January, 2013, which was further reduced to 40 kVA in due course of time. Presently he is operating at 40 kVA of Contract Demand.

4. The Complainant submits that his supply emanates from 2 x 10 MVA 66/11 kV transformers, later augmented to 2x 20 MVA 66/11 kV transformers at Nalagarh 66/33/11 kV substation. One transformer of 20 MVA capacity was commissioned on 22/02/2006 and the second was commissioned on 02/09/2007. The Complainant further submits that he paid IDC as and when demanded to the Respondents at the time of application. The

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Respondents on 18/07/2014 issued notice to him for recovery of Rs. 4,56,475/- towards additional IDC, thereby demanding the IDC @ Rs. 2,875/ kVA in addition to the sum of Rs. 1,90,400/- recovered earlier. The liability of Rs. 6,46,875/- was calculated for the Addition of 66/11 kV 2x20 MVA Transformer at 66/33/11 kV Sub-station at Nalagarh on 11 kV. The overall cost of the scheme was mentioned as 11.50 Crores, while a cost of planning/ estimate was also mentioned as Rs. 9.78 Crores. On the basis of actual escalated cost of Rs. 11.50 Crores a rate of Rs. 2,875/ kVA was calculated and applied to calculate the demand of Rs. 6,46,875/- on 225 kVA of demand.

5. The Complainant submits that he approached the CGRF vide Complaint number 1432/2/18/021 which was initially filed before the CGRF, aggrieved with the demand notice dated 18/07/2014. Another Complaint 1432/4/18/063 was subsequently filed on the issue of CAPEX loaded in the ARR by the Respondents. The Respondents never clarified how the amount demanded by them was claimable under the HPERC (Security deposit) Regulations, 2005. The Respondents only insisted on recovery of the actual cost, even though the regulations did not allow the pass through of the entire cost to him.

6. The Complainant submits that the Forum passed the identical final orders dated 25/07/2019 against the Respondents in both the Complaints stating that they have vitiated the procedure set out in the regulations and also directed the Respondents to overhaul his account while following the provisions and procedures of the Regulations within a period of six months from the order. He was never given an estimate which was mandatory under the HPERC (Security deposit) Regulations, 2005. He kept waiting for six months period allowed by the Forum to the Respondents to overhaul and as such no amount was demanded after carrying out the procedure as per the directions of the Forum. Almost 1.75 years passed after which the Respondent issued a disconnection notice dated 03/03/2021.

7. The Complainant submits that aggrieved by the disconnection notice dated 03/03/2021, he was left with no option than to file the present representation. He is also aggrieved by the orders of the Forum as it had not passed speaking orders in his specific grievance, but rather passed a general order, without taking into account the peculiarity of his case. He had to wait for a period of six months for overhauling as was ordered by the Forum, to see the results of the overhauling but no such overhauling was carried out. The Respondents did not send any communication to him even after waiting for several months, even giving them enough time to react on the orders passed by the Ld. Forum. Since the orders in both the Complaints were identical, he has chosen to file a single representation before the Ld. Electricity Ombudsman.

8. The Complainant submits that the Respondents, even after raising the dispute before the CGRF, who ordered the deposit of one third of the disputed amount, did not transfer the balance amount into the column of disputed amounts separately provided in the energy

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bills as per procedure defined in the Electricity Supply Code, 2009 during the pendency of the dispute. As a result, they continued to add late payment surcharge to the disputed amount even though the matter was not resolved/ settled.

9. The Complainant submits that the present representation is filed within the time period of one month allowed as the period of 30 days is to be calculated from the fresh cause of action which arose due to the disconnection notice dated 03/03/2021 served by the Respondents. The Hon'ble Electricity Ombudsman is the only efficacious remedy available to him as the CGRF is not empowered to adjudicate on the same matter more than once.

CONTENTIONS OF THE APPELLANT/ COMPLAINANT

Preliminary Contentions:

10. The Complainant submits that the demand raised by the Respondent is hopelessly time barred under the various provisions of law. As per Regulation 6 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, the Respondents were bound to provide him, the final account of infrastructure cost if any payable under the regulations, within the time frame of three months of the release of connection, which the Respondents failed to do so, even within a reasonable delay. The Respondents till 2012 never raised the matter of any such pending dues nor served any demand notice to him. The demand notice was issued to the Complainant only in the year 2017 for the first time. It is clearly proved that the demand notice was raised on him as an afterthought, just to gain undue advantage in financial terms. The Respondents are trying to take undue advantage of him being in monopoly supplier threatening with power of disconnection of supply.

11. The Complainant further submits that the demand is also hit by limitation u/s 56 (2) of the Electricity Act, 2003, which provides for recovery of dues which are more than two years old, only if such dues have been continuously shown as recoverable arrears in the electricity bills issued to a Consumer. Even though the Respondents had in their knowledge the per kVA rates notified vide the Respondents' circular issued in the 2012 in which the overall cost and cost per kVA of each substation was notified. The rates were well within the knowledge of the Respondents, assuming that they were allowed under the HPERC (Security deposit) Regulations, 2005, but the Respondents failed to initiate recovery. The latest judgement of the Apex Court, in the case of Ajmer Vidyut Nigam Limited versus Rahamatullah Khan alias Rahamjulla in Civil Appeal No. 1672 of 2020 bars the Respondent to take coercive action. The Respondents have contravened the provisions of law and have taken coercive action by issuance of a disconnection notice dated 03/03/2021. The Respondents are liable to action against them under section 56 of the Electricity Act, 2003, which bars them to issue such disconnection notice in respect of the dues which are more than two years old.

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12. The Complainant submits that also in the same judgement, the belated recovery of dues over two years have been allowed in the case of a mistake or bona fide error. The present demand is not due to any mistake or bona fide error. Hence, the demand is not allowed in view of the judgment passed by the APEX Court.

13. The demand notice is further hit, by limitation period of three years provided under the Limitations Act, 1963. As this is not a case of mistake or error, the Limitation period of three years will commence from the due date which is 3 months after the date of release of connection provided in the HPERC (Security deposit) Regulations, 2005.

14. The Complainant submits that the Respondents remain silent for almost fifteen years and have lost their right to recover, even if such dues are considered recoverable under any rules and regulations. His case was neither under litigation and nor was any interim stay orders were issued by any court of law, restricting the Respondents from recovery of the demand in question. The Respondents' plea that the matter was sub judice till 2017 cannot be held correct and cannot be applied on him. No Court has issued orders staying the recovery of IDC in general. However, only a few Consumers had gone into litigation and he was not a part of such litigation even if the stay orders were issued by any court of law in such specific cases. Therefore, the demand notice dated 18/07/2014 deserves to be quashed and set aside.

15. The Complainant submits that the orders of the Forum are bad in the eyes of law and liable to be modified, as the same has not been issued as per the Regulations framed under the Electricity Act, 2003 by Himachal Pradesh Electricity Regulatory Commission. Regulation 26 (4) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 reads as "***The order of the Forum shall be reasoned and the reasons given by the Forum in support of the order, including those by the dissenting member, if any, shall form a part of the order, and the Members who heard the matter shall sign the order.***"

    The orders issued by the Forum in this Complaint lacks reasoning and orders are silent on most of the issues raised by him.

Non-Compliance of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.:

16. The Complainant submits that the recovery of Infrastructure Development Charges (IDC) by the Respondents is bad in the eyes of law and is liable to quashed and set aside as even in the absence of standard cost data, the Respondents were required to provide the **account of expenditure to him within three months of the release of load** to him, which was never provided. Regulation 6 of the IDC Regulations, 2005, specifically provides that the cost will be recovered only in the cases ***where the licensee's investment approval does not permit this cost, the licensee shall recover the total balance cost from the Applicant.*** He further stress that whether the scheme formed a part of the investment plan of the licensee, which was approved by the HPERC in the form of CAPEX. Rs. 1326 Crores were approved by HPERC in

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Tariff Order 2008-09 covering the generation, transmission and distribution functions of the Respondents for the Control Period FY 2009 to FY 2011. Similarly, the capital expenditure was sanctioned during every year for investment in the distribution network. The scheme for which he has been charged most likely would have formed a part of the CAPEX plan, the depreciation and interest components would have been considered while calculation of Annual Revenue Requirement and was a pass through to the Consumers. The recovery on account of the supplying sub-station, if already accounted in CAPEX is not justified and is illegal on the part of the Respondents. Alternatively, if the scheme was funded by way of any grant/ subsidy, such cost cannot be recovered from him. The Hon'ble Forum should inquire into the details of CAPEX for the supplying substation, before establishing that cost to be recovered from him.

17. The Complainant submits that the Regulation 6 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 is reproduced below:

*"6. Recovery of cost.- (1) Subject to the provisions of sub-regulation (2), the **balance cost** of electrical plant and or electric line after deducing the amount payable by the Applicant under sub-regulation (1) of regulation 3, regulation 4 and regulation 5 shall be **either invested by the licensee or paid for by the Applicant** and where licensee's investment approval does not permit this cost, the licensee shall recover the total **balance cost** from the Applicant:*

Provided that the balance cost shall be refunded to the Applicant as and when new connections are installed or given from the electrical plant and/or electrical line on pro-rata basis with the interest rate of 8% compounded annually.

Provided further that notwithstanding anything contained in any other law for the time being in force, balance cost due shall be recoverable from subsequent Applicant(s) and the bills of the Consumer who had paid the balance cost shall be invariably flagged continuously until paid fully.

*(2) The licensee shall render to the Applicant/Consumer the account of expenditure showing the excess or deficit in relation to initial estimated amount **within three months after release of connection** giving details of item-wise estimation and actual expenditure along with the item wise figures of variance to the extent possible and, if Applicant requires any additional information, the distribution licensee shall furnish the same within ten days of receipt of such requisition;*

Provided that where the actual expenditure;

(a) is less than the initial estimated cost by more than 3% the licensee shall refund the excess amount, within 30 days from the date of submission of the account, or

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(b) ***exceeds the initial estimated cost by more than 3%,*** *the Applicant shall pay the difference between the initial estimated cost and the actual expenditure to the extent of 3% only and any amount in excess of 3% shall be borne by the licensee.*

(3) Notwithstanding anything to the contrary contained in these regulations the expenditure on the electrical plant and/or electric lines incurred from any grant or subvention from the Central or State Government or any other agency shall not be recoverable.

(4) Where, after the payment of the estimated cost and,-

(a) before the completion of work, if the Applicant declines to take the supply, the amount paid by him shall be refunded within thirty days, after deducting there from, the actual reasonable expenditure incurred; or

(b) before starting the work of laying of electric line, erection of electrical plant and creating any other facilities for extending supply to the Applicant seeking new connection, if Applicant declines to take the supply, total amount of estimate shall be refunded by the licensee to the Applicant within thirty days."

The Regulation 6 (1) clearly says that the balance cost which does not form a part of the licensee's investment plan can only be recovered from the Consumer as per mechanism and details applicable in Regulation 3, 4 and 5 applicable to LT, HT, and EHT respectively.

In the circular issued by the Respondents listing the 34 sub-stations, the licensee has nowhere deducted the expenditure approved by the Commission in the investment plan/ CAPEX plan. The expenditure incurred by the Respondents as a part of CAPEX is already a pass through to the Consumers as part of the tariff recovered from Consumers as the cost of such infrastructure is part of the Annual Revenue Requirement (ARR) approved by the Commission. The Respondents are only entitled to recover the amount which is not allowed in CAPEX plan. Also, as per Regulation 6 (3) the amounts received in the form of grants or subventions from the Central/ State Governments, or any other agencies, are not allowed to be recovered from the Consumers.

The Respondents have not deducted the expenditure covered by investment plan, while arriving at a rate of Rs. 2875 per kVA.

18. The Complainant submits that the investment carried out by the licensee in general and not specific or dedicated was never to be recovered as per HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. He falls under the purview of regulation 4 (1) (a) of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, which reads as below:

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*"a) in the case of the application for new connection, where such supply requires only extension of high tension line from the **existing** network to the Consumer's premises, ..."*

19. He further submits that the language clearly indicates that it is the cost of the work that is required to be carried out to provide supply to the Consumer, that should be recovered from the Consumer, that being a dedicated infrastructure cost. The intention of the regulation is to enable recovery of dedicated expenditure on infrastructure, but not the general infrastructure, which has to come through CAPEX/ investment plan/ ARR and such cost is recovered through tariff.

20. The Complainant submits that In his case/ application, only the 11 kV line had to be extended or only the service line was to be extended to his premises and there is no logic to recover the cost of substation and upstream network as the same was not created specifically for him. The Respondents have recovered all other expenses such as common line cost share, service line cost and such costs which were dedicated or jointly dedicated between a small group of Consumers.

21. The Complainant submits that the Respondents have calculated the rate of Rs. 2,875 per kVA, without deducting the cost of infrastructure, which was not allowed to be recovered from the Consumers as per Regulations. The Respondents may have even included the cost of residential complexes built in sub-station premises and such other expenses.

22. The Complainant submits that the Respondents in the circular listing the per kVA rates for each sub-station has given the rate of Rs 2,875 per kVA at Sr. No. 31 of the said circular. The overall cost of the scheme was estimated at Rs 9.78 Cr, whereas a sum of Rs. 11.50 Cr have been taken for arriving at a figure of Rs. 2,875/- per kVA. He further points out that instead of 3% variation allowed by the Regulations, the cost has overshot by 17.58 %. If the scheme was not taken in CAPEX or investment plan and was planned to be funded by the Consumers, the excess over 3% is not recoverable as per regulations.

23. The Complainant further submits that the Respondents have also included the cost of upstream lines that were feeding the Nalagarh 66/11 sub-station. The cost of 220 kV line from Rehru to Uperla Nangal and 66 kV lines from Uperla Nangal have also been included in rates calculated at Rs 2,875/- per kVA. The clarification issued in Petition No. 315/05 by HPERC clearly says at Sr. No. 5 that

"the recovery of cost shall be for the upgradation of the feeding sub-station and the line only and not the upgradation of the upstream substation/ line"

24. He further submits that the Respondents have not maintained the record of capacity which is important for determining his liability, if any. Many Consumers approached the

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Respondents and some of them even closed down their enterprises very soon. The repetitive selling of such capacity surrendered has an impact on the cost to be recovered from the future Applicants. Over many years, the Respondents may have already recovered more than the cost of the scheme, even upto the time when he approached. Such exercise should have been carried out as to determine and keep track of the scheme-wise recovery of cost. The Respondent should have stopped recovering once the total cost was recovered. The delayed action of the Respondents in determining the per kVA rates has led to the loss of Consumers as many such Consumers who closed down during the period 2005 to 2012, left without paying such dues, which now cannot be loaded on the other Consumers.

25. The Complainant submits that the Respondents have also included the load of 100 kW for which the PAC was issued even before the HPERC (Security deposit) Regulations, 2005 was notified.

Non-adherence to the provisions of HPERC (Security deposit) Regulations, 2005.

26. The Complainant submits that the Regulation 8 (2) of the HPERC (Security deposit) Regulations, 2005 provides that when the Contract Demand/ Connected Load is reduced by a Consumer, the security deposit has to be reduced on pro-rata basis. It is further provided that simple interest @ 12% per annum has to paid for the delay period from the effective date of reduction of load / Contract Demand. The relevant regulation in its form before the second amendment was notified in 2015, is reproduced below:

"8(2) Where contract demand/connected load is reduced by the Consumer or the billing cycle is reduced, the licensee shall reduce the amount of security on pro-rata basis and refund excess amount, after making adjustments for the amounts outstanding from the Consumer to the licensee, within one month of the effective date of reduction of contract demand/connected load;

Provided that if such refund is delayed beyond the period of one month as specified above, the licensee shall pay simple interest on such deposit @ 12 % per annum from the effective date of reduction of contract demand/connected load, without prejudice to other rights of and remedies available to the Consumer."

The contract demand in his case was reduced from 225 kVA to 90 kVA in 2012 and to 40 kVA thereafter. The Respondents are still retaining the security of Rs. 2,25,000/- deposited for 225 kVA of Contract Demand. He is thus eligible for interest and refund of security as per the Regulations.

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Prayer:

27. The Complainant thus prayed that the representation may kindly be allowed and the findings of the Consumer Grievances Redressal Forum in the order dated 25/07/2019 passed in the Complaint number 1432/2/18/021 and 1432/4/18/063 in the Complaint titled as Zenith International Vs. HPSEBL and others, whereby the Ld. Forum has denied the relief sought in the Complaint as the order is vague, is bad in law and deserve to be set aside or modified suitably in the interest of justice or any further orders which this Hon'ble Electricity Ombudsman may deem fit and proper. In the facts and circumstances of the case may kindly be passed in his favour and against the Respondents/ distribution licensee.

28. In view of above submissions, the Complainant thus prayed that; **a)** to quash demand notice dated 18/07/2014 and/ or further suitably modify in the interest of justice the orders dated 25.07.2019 issued by the Consumer Grievance Redressal Forum of HPSEBL in Complaint number 1432/2/18/021 and 1432/4/18/063 as the same has been issued in contravention of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005; **b)** to direct the Respondents not to charge IDC on the load of 100 kW, as per HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, the PAC for which was issued prior to the notification of these regulations; **c)** to direct the Respondents to refund the excess amount of IDC and pay interest on the same @ 15% p.a. or a rate as per applicable regulations and in the interest of natural justice, on the period for which the amount claimed in excess was kept by the Respondents; **d)** to direct the Respondents to refund the security which has been held in excess of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 as amended from time to time; **e)** to direct the Respondents to pay interest as security for delay in refunding, at the rate defined in Regulation 8(2) of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005; **f)** to quash the disconnection notice dated 03/03/2021, which has been issued in contravention of the section 56 of the Electricity Act, 2003 and in contravention of orders passed by Consumer Grievance Redressal Forum; **g)** to condone the delay, if any, in the filing of this representation, as the cause of action has only arisen on 03/03/2021, when the demand and disconnection notice has been issued by the Respondents; **h)** to direct the Respondents to transfer all the arrears on account of IDC to the disputed section of the bill till the disposal of this Complaint; **i)** to direct the Respondents not to disconnect the electricity of him till this matter is disposed by the Ld. Ombudsman; **j)** to initiate action against the Respondents for unlawfully issuing the disconnection notice to him and thereby not following the rules in respect of arrears; **k)** cost of Complaint to an extent of Rs. 50,000/-; **l)** call for the record of the case and; **m)** any other or further orders which this Hon'ble Ombudsman may deem fit and proper, in the facts and circumstances of the case may kindly be passed in favour of the Complainant company and against the Respondents/distribution licensees.

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C – The Respondents' submissions:

Preliminary submissions: -

1. The Respondents submit that the present representation is patently time barred in view of the provisions of Regulations No. 28 (2) (b) in as much as the ld. FRGC had decided the Complaint No. 1432/2/18/021 vide order dated 25/07/2019 and the Complaint No. 1432/4/18/1063 vide order dated 25/07/2019 and the present representation having been filed in the month of March, 2021 is not maintainable at this stage. In view of above, the representation under reply deserves only dismissal.

2. The Respondents submit that vide impugned orders dated 25/07/2009, the ld. CGRF had directed the Respondent Board to provide the initial estimate and subsequent account of expenditure to the Complainant and to decide whether the estimated cost has increased or decreased and to take action in finalizing the exact liability of the Complainant. They further submitted that they had tendered the account to the Complainant in pursuance of the order/directions dated 25/07/2019 vide letter dated 27/01/2020, wherein it was intimated to the Applicant/ Complainant that rate of Rs. 2,875/- per kVA pertaining to the recovery of cost/ IDC on account of supply of electricity is just and proper. Since the Connected Load of the premises of the Applicant/ Complainant was 225 kW, therefore, the Applicant/ Complainant was liable to a sum of Rs. 6,46,875/- on account of IDC. Since the Applicant/ Complainant had already deposited a sum of Rs. 2,16,000/- therefore, he was liable to pay the balance amount of Rs. 4,30,875/- Since the Applicant/ Complainant did not deposit the balance amount of IDC as stated herein, therefore, the Applicant/ Complainant was served with Notice dated 03/03/2021 requiring the Applicant/ Complainant to deposit the IDC charges within a period of 15 days. Thus, the action of the Replying Respondent is perfectly legal, intra-vires bonafide one and is in consonance with the directions of the ld. CGRF, therefore, the representation deserves only dismissal.

3. The Respondents submit that as already stated in para supra, the Complaint No. 1432/2/18/021 and 1432/4/18/063 were decided vide order dated 25/07/2019 and the Notice dated 03/03/2021 is only in consequence of implementation thereof. Since 25/07/2019, the Applicant/ Complainant slept over the matter which means that he had accepted the order dated 25/07/2019 passed by the ld. CGRF in as much as the same was not assailed or challenged before this ld. Forum in any way or in any manner, within the period of limitation. Therefore, the Applicant/ Complainant is now estopped by his act & conduct and acquiescence assail the same by means of the present representation at this stage.

4. The Respondents submits that the present representation is also not maintainable before this ld. Forum in as much as each Complaint has separate cause of action and has been decided by the ld. Forum vide separate order, though of even date. Since the Applicant/

Complainant had assailed both the orders passed in 2 separate Complaints in one representation, therefore, the present representation is also not maintainable and deserves only rejection.

5. They further submit that the present representation is nothing but the sheer misuse of the process of law and consequently is liable to be rejected in limine.

On Merits:-

6. The Respondents admitted to the extent that the Applicant/Complainant filed Complaint No. 1432/2/18/021 & 1432/4/18/063 before the Ld. CGRF and same has been decided on dated 25/07/2019. They denied rest of the contents.

7. The Respondents submits that the contents of the para are admitted partially being a matter of record but it is specifically denied that they never clarified the amount demanded. The details of actual expenditure as provided by Electrical System division, HPSEBL, Nalagarh was provided to the Complainant on 27/01/2020 as per the Hon'ble CGRF order dated 25/07/2019. If the Complainant had any queries/ objection regarding details of actual expenditure provided to the Complainant, he must have asked to them or approached to this Hon'ble Forum earlier. The Complainant neither raised any query nor challenged the order till the notice served on 03/03/2021. The Complainant intentionally remain silent for more than a year without any query or objections. They further mention that the Complainant has filed the present representation on twisted and distorted facts.

8. The Respondents submit that the actual expenditure was provided to the Complainant on 27/01/2020 as per the orders of Hon'ble CGRF. After that the Complainant remained silent till the notice was served on 03/03/2021 by them to the Applicant/ Complainant for the deposit of balance IDC.

9. The Respondents submits that to challenge the disconnection notice dated 03/03/2021, the Complainant does not fulfill the parameters on which this representation can be entertained, because as per regulations if the Complainant is aggrieved by issuance of the notice dated 03/03/2021, the Complainant has remedy to approach to the appropriate Forum and if dissatisfied by the order(s) of the Ld. Forum thereafter the Complainant can approach to the Ld. Ombudsman. The Complainant is abusing the process of Law by passing the appropriate Forum. Further the present petition is filed under Regulation 28 (1) (b) of the HPERC, Consumers Redressal (Consumer Grievances Redressal Forum & Ombudsman) Regulations, 2013 which clearly provides representation "if the Complainant is not satisfied with the order passed by the Forum". They further mention that the Complainant has filed the present representation on twisted and distorted facts which are far off from the reality to justify the present representation is

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not time barred. Because the orders passed by the Ld. Forum have been barred by limitation in view of the Regulation No. 28 (2) (b) of the HPERC (CGRF), Regulations 2013. As per said Regulation, representation shall be made within 30 days after issuance of the Order by the Forum within 30 days after the time limit specified for the implementation of the order. Here in the present case representation does not fulfill the aforesaid conditions, as the Ld. Forum has passed the orders on 25/07/2019 and time limit was six months which stands expired on 25/01/2020. Therefore, the Complainant is not entitled for the relief because the representation has been filed after more than one year after the order passed by the Ld. Forum. Therefore, the same was time barred as per the provision of Regulation 28(2)(b) of the HPERC (CGRF), Regulations 2013 as the period of limitation for filling the representation is 30 days as such the representation is not maintainable and same is liable to dismissed.

10. The Respondents submit that the Hon'ble Supreme Court has held in a recent judgment that the provisions of section 56(2) of Electricity Act, 2003 does not put any limitation for raising the demand of past dues or arrears, if not discovered or pointed out earlier due to any mistake, liability to pay accrues when quantified and bill/ notice/ demand is raised. License is entitled to raise the bill and once in compliance of the said bill amount due is not paid then the sum becomes first due, then the licensee has a right to take recourse to legal procedures for recovering its due as is provided in the Electricity Act 2003, Supply Code 2009 and Sales Manual. Hence, the impugned demand/ energy bill issued by the Respondents are legal one and the Applicant is liable to pay the same accordingly. They further submit that demand become due and the limitation for recovery thereof commences only when the demand/ bill thereof has been raised and the Consumer has not paid the amount of demand notice. Further, that the demand as is raised by them is not hit by the provision of Section 56(2) of the Electricity Act 2003, The word "due" under Electricity Act, 2003 section 56(2) means due and payable after a valid bill has been sent to the Consumer and not prior thereto. The Delhi High Court in **H.D. Shourie V/s Municipal Corporation of Delhi**, has held that, "The amount of charges would become due and payable only with the submission of the bill/demand notice not earlier. It is the bill which stipulates the period within which the charges are to be paid. The Hon'ble Appellate Tribunal for Electricity (**Appellate Jurisdiction)** in its judgment dated 14/11/2006 delivered in Appeal No. 202 & 203 of 2006 in the matter of Ajmer Vidyut Vitran Nigam Chittorgarh, Rajasthan V/S M/s Sisodia Marble & Granites Pvt. Ltd. & Ors, F-101, 102 RIICO Industrial Area, Chittorgarh- 312 001 & Ajmer Vidyut Vitran Nigam Chittorgarh, Rajasthan V/s Safe Polymers Pvt. Ltd. & Anr., 64-65, Udyog Vihar, Sukher, Udaipur, Rajasthan held as under:-

Thus, in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the

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licensee to the Consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running".

11. The Respondents further submit that the judgment cited by above passed by the ld APTEL in the matter of Ajmer Vidyut Vitran Nigam Limited vs. M/s Sisodia Marble & Granites Private Limited and others, has held that the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the Consumer and, thus, the date of the first bill/ demand notice for payment shall be the date when the amount shall become due and the period of two years has to be counted from the said date in terms of Section 56(2) of the Act.

12. Further, the present representation of the of the Complainant is time barred as per provisions of the Regulations mentioned above and as per law Complainant cannot assail to order passed in two separate Complaints in single representation and to condone delay the Complainant is taking help of notice dated 03/03/2021. This action of the Complainant shows that he is abusing the process of Law by passing the appropriate Forum. Further, the present petition is filed under Regulation 28(1)(b) of the HPERC, Consumers Redressal (Consumer Grievances Redressal Forum & Ombudsman) Regulations, 2013 which clearly provides representation "if the Complainant is not satisfied with the order passed by the Forum". They further mention that the Complainant has filed the present representation on twisted and distorted facts which are far off form the reality to justified the present representation is not time barred. Because the orders passed by the Ld. Forum have been barred by limitation in view of the regulation 28(2)(b) of the HPERC (CGRF), regulations 2013. As per said regulation representation shall be made within 30 days after issuance of the Order by the Forum or within 30 days after the time limit specified for the implementation of the order. Here in present the present representation does not fulfill the aforesaid conditions, as the Ld. Forum has passed the orders on 25/07/2019 and time limit was six months which is expired on 25/01/2020. Therefore, the present representation deserves dismissal.

13. The Respondents thus prayed that the representation filed by the Applicant/ Complainant may kindly be dismissed, in the interest of justice.

D – The Complainant's additional submissions through rejoinder:

1. The Complainant submits that at the outset he repeats, reiterates and confirms all the statements and averments made by him in the complaint and deny all the statements and averments made in the said reply unless and until the same are specifically admitted by him. The objections raised by the Respondents are lacking merit.

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Preliminary Submissions:

2. The Complainant denied that the present representation is time barred. As per the orders dated 25/07/2019 passed by CGRF in Complaint No. 1432/2/18/021 and 1432/4/18/063, a period of six months was given to the Respondents to carry out the compliance of the orders of CGRF, which expired on 24/01/2020. He further submits that the Respondents did not act on the compliance of orders passed by the CGRF, but only provided the cost of the scheme and there was no demand as such no revised demand was raised by the Respondents. He was all time under the impression that the Respondents have foregone their demand as it was not possible to comply with the provisions of Regulations 3,4,5 and 6 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, in a retrospective manner.

3. The Complainant further submits that the cause of action for filing this representation only arose, when the disconnection notice dated 03/03/2021 was issued to him. Surprisingly, even the revised amount of demand, after observations of the directions of the CGRF, were not supplied to him. As such the calculation of IDC claimable was never re-visited by the Respondents as was observed by the CGRF. He, after the issue of disconnection notice dated 03/03/2021, approached the Hon'ble Ombudsman in the form of representation on 15/03/2021, which is a reasonable time considering the circumstance. He prays that under the circumstances the representation filed by him is maintainable and be allowed.

4. The Complainant denied that the Respondents have complied with the orders dated 25/07/2019 passed by CGRF as they seem to grossly mis-understood the orders in entirety. The CGRF in Para 5 of the Order has observed that:

   ".....However, the exact amount i.e. payable by the Consumer has not been worked in a transparent manner. The Regulations in question have already provided a mechanism as to how this amount is arrived at vide Regulation No. 3, 4, 5 & 6."

   Further in Para 6 of the order the CGRF has observed that:

   "we feel that the procedure laid down has been vitiated. Accordingly, we hold that the Respondent Board has erred on this account and we, therefore, order the Respondent Board to provide the initial estimate and subsequent account of expenditure to the Complainant which was mandatory under the Regulations, and decide within the next six months, whether the estimated cost had increased or decreased and take action in finalizing the exact liability of the Complainant, as provided in the Regulations in question. The demand as raised by the Respondent Board, in question, does not hold good, in view of the above discussions and requires to be visited again."

5. The Complainant submit that the only action that the Respondents have taken is to arrange a copy of abstract of the expenditure on the scheme. Expenditure could be any

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amount, but only the amount permissible under the Regulations 3, 4, 5 and 6 was payable by him. The entire demand raised by the Respondents is specifically wrong in following respects:

a) As per Regulation 6 only the balance cost is claimable from the Consumers which is not provided in the investment plan of the licensee. The Respondents have allegedly never excluded the Nalagarh Sub-station upgradation scheme from the investment plan and now after the lapse of almost fifteen years, the cost the said scheme would already stand recovered through depreciation on fixed assets in the ARR, which is further a pass through to the Consumers as a part of the tariff.

b) As per Regulation 4 a), which is directly applicable to him, as only the HT line was required to be extended to the premises of the complainant, the cost of the 11 kV service line has been separately recovered by the Respondents and no other infrastructure cost is legally claimable from him over and above the cost of the service line extended particularly for him. As the 11 kV line was existing, even the line cost share of common 11 kV line (feeder) has also been recovered by the Respondents, the Respondents are treating his case under regulation 4(b), under which the cost of power transformer also becomes payable by the Consumer. He further mentions that a load of 100 kW / 80 kVA of load was already committed to thim even when the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 were not notified. The Respondents have grossly erred in applying the said regulations on the pre-committed load.

c) That going by the observation of the CGRF that it was mandated under the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, to provided initial estimate, it is very important to understand the word **'initial'.** An estimate was to be provided by the Respondents initially when he applied for power connection/ load extension. This initial estimate was to be provided reflecting the tentative cost that the Consumer will have to bear. No such, estimate was provided for the cost of the sub-station and the upstream cost at that stage, neither in 2005 nor in 2008. The Consumer was led to believe that there was no more future liability. There is no scope of serving initial estimate at this stage in any form as the Respondents have contravened the regulations years ago.

d) The CGRF also observed that the increases and decreases from the initially estimated cost were to be factored in, which still remain pending.

e) The deduction of cost of upstream infrastructure has not been carried out.

Likewise, there are many issues which were pointed out in the orders passed by the CGRF, which still have not been addressed and the Respondent is simply asserting his monopoly position to exploit him.

6. The Complainant denied the content of para as there is no question of him to sleep over the issue, whereas, the directions were issued to the Respondents by Consumer

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Grievance Redressal Forum and it were the Respondents who slept over the issue. The implementation of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 is still an issue which the Respondents have failed to carry out. The earlier notice was found defective and in contravention of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 in its form, and therefore, lost its standing after the orders passed by the CGRF. The Forum specifically pointed out that ***"The demand as raised by the Respondents does not hold good..... and requires to be visited again."*** This clearly means that the demand was to be intimated again after revisiting, specifying his ***exact liability***. The re-visit and intimation of exact liability, if any, after considering all the observations made by the Forum as well as the provisions of the Regulations, is still not given by the Respondents. However, the Respondents are still withholding the amount deposited by him on the directions of the Forum.

7. The Complainant denied that the common representation is not maintainable in the present case, when it is very clear, that both the grievances had been filed against the same demand notice dated 03/03/2017 for recovery of Infrastructure Development Charges. Even the Forum has passed the exactly same orders in both the Complaints. It would have amounted to waste of paper and time to unnecessarily to file two representations, when even the compliance of the two orders cannot be different.

8. The Complainant denied that the present representation has been filed misusing the process of law. However, the basic reason for the creation of this Hon'ble Forum is clearly stated in the preamble to the HPERC (CGRF & Ombudsman) Regulations, 2013. The Electricity Act, 2003 being a beneficial legislation, the interest of the Consumer cannot be ignored under all circumstances.

Rejoinder on Merits:

9. The Complainant submits that the denial of the Respondents just not have any justification. The Respondents are totally missing the whole issue, either deliberately or ignorantly. The actual cost on infrastructure would have although formed the basis of carrying out further calculations for computing his exact liability, but does not satisfy the intent of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and the orders passed by the CGRF. There was no reason for the complainant to act, until and unless the fresh demand was raised. That is why he has approached the Hon'ble Ombudsman to issue clear speaking orders unlike the orders passed by the Forum, which the Respondents are interpreting in a different manner, whereas his understanding is contrary.

10. The Complainant denied the para reply as he only accepts that the details of the entire scheme and its cost were only provided and whereas no further working was carried out after the previous demand notice was left in abeyance by the CGRF with specific remarks.

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On the contrary, the delay is on the part of the Respondents who could not resolve the matter even in the period of six months provided by the CGRF, to revisit the issue.

11. The Complainant denied the averments of the Respondents as the disconnection notice dated 03/03/2021 has been issued by grossly mis-understanding and mis interpretation of the orders passed by the CGRF. The Ld. Ombudsman is the only legal remedy available to him when the orders passed by the CGRF are in question. In this case, however, the question has cropped up only when the disconnection notice was issued. The Respondents had even forgotten to issue a revised demand notice keeping in mind the orders of the CGRF and the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. The issuance of the disconnection notice is a clear proof that the orders passed by the CGRF are either defective or have been not complied. In either of the cases, the Consumers are required to approach the Ld. Ombudsman for redressal. The Respondents in fact, had no right to issue the disconnection notice until and unless the demand was re-established.

12. The Complainant submits that the Respondents have referred the judgement of the Supreme Court of India, the reference of which was taken by him. The said judgement bars the Respondents to take coercive action, if the dues are more than two years old. The Respondents, even if they raise a demand notice, coercive action cannot be taken by the Respondents by issuing disconnection notice, as has been done by the Respondents. It is a gross contempt of the Apex Court observations in the said judgement.

13. The Complainant submits that the demand raised by the Respondents defy the limitation period in every possible way. The power connection was released in 2007 and 2008. HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 were in existence since 2005. Respondents issued circular for recovery for various schemes in 2012. The demand notice was served in 2017 thereafter after a period of five years. The Respondents are entitled to raise their demand, whether correct or wrong, but no coercive action can be permitted in view of the Apex Court judgment.

    The other judgements referred to by the Respondents have been put to rest after the judgment of the APEX Court.

14. The Complainant submits that the Respondents have not filed any reply to para 3.4 related to security deposit.

Additional Submissions:

15. The Complainant submits that the Respondents have not expressed anything against the orders of the CGRF, whereas the same order is basically against the Respondents, wherein it has been stated that the procedure as pre HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 has been vitiated. If the orders of the Forum are to be

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maintained, even then the Respondents are guilty of contravention of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, the balance of justice thus lies in his favour. He still holds to his contentions represented in this para of Complaint.

16. The Complainant further point out that even the Himachal Pradesh Electricity Regulatory Commission was deprived of the facts as far as the CAPEX expenditure was concerned. Certain references on the subject in the relevant tariff orders are reproduced below:

"Tariff for FY 2004-05:

9.4.3.1 The Commission in its interim order dated June 7, 2004 directed the Board to supply the details of capital works in progress as on date including the proportion of employee cost capitalized and also inform on further scope of capitalization of employee cost. The Board submitted an affidavit on June 9, 2004 and from this information, the Commission observes that the CWIP of Rs. 1654 crores is unbelievable high considering that gross fixed assets of the Board aggregated to Rs.1770 crores only. The Commission directs the Board to immediately transfer the completed works to the fixed assets but not later than October 31, 2004 so as to include the same in ARR filing for 2005-06.

9.4.4 Capital Projects

9.4.4.1 The Commission in its interim order dated June 7, 2004 directed the Board to submit information on all on-going capital projects exceeding Rs. 5 lacs and above including the T&D projects showing cost and time over-runs and the interest liability arising on account of these over-runs. The Board in its affidavit dated June 9, 2004 prayed for a period of 10 days for submission of this information. The information has still not been furnished at the time of issuing the tariff order.

9.4.4.2 The Commission directs the Board to prepare a comprehensive plan to curtail time and cost over-runs and submit the same by November 15, 2004. The interest liability on account of such over-runs shall not be allowed to be pass through to the Consumers.

3.17 Interest due

3.17.1 The HPSEB has projected the total interest liability as Rs. 295.21 crores of which Rs. 120.00 crores has been proposed to be capitalised. Thus the net interest liability works out to be Rs. 175.21 crores.

3.18 Depreciation

3.18.1 The Board has proposed a depreciation of Rs. 44.25 crores on ad hoc basis @ 2.5% in absence of data relating to function-wise fixed assets.

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Tariff Order FY 2005-06

2.6.10 Fixed Assets & Capital Works in Progress (DirectionNo.7.15 to 7.17) There is no change in the status. However, the Board has veered around to the action of carrying out the physical verification of assets based upon GIS/GPS technology through independent agencies. The statutory advice under sub section (2) of section 86 of the Act was tendered to GoHP on July 30, 2004. The Board has to award this work to the successful bidders in 2 months.

Similar references are available in the subsequent tariff orders wherein the distribution and transmission assets have been capitalized while determining ARR. He further stated that the investment plan has a direct relationship with CAPEX as both are almost synonymous. The regulations clearly provide for recovery of **balance cost** which is not permitted by the licensee's in investment plan (CAPEX Plan). The question raised by him is thus a valid one and is directly related to the investment plan, if any, for the scheme of the infrastructure catering to the electricity supply to the complainant. **The recovery of IDC if allowed from him will result in double recovery, once through tariff and secondly through individual notices.**

17. The Complainant submits that it appears that the Respondents do not have the information that is required to decide on this issue of the Complaint. In such an eventuality, the balance of justice lies in his favour. The Electricity Act, 2003 is a beneficial legislation and the preamble of the HPERC (CGRF and Ombudsman) Regulations 2013, casts a responsibility on the Hon'ble Ombudsman to decide in favour of the Consumer. The benefit of doubt lies in favour of the Consumer. The Respondents are required to justify each penny to be recovered from him as per HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and this aspect well explained in Regulation 6 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

18. The Complainant denied that the rate of recovery from Consumers @ Rs. 2,875/ kVA has been decided as per HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. It can only be agreed that this rate have been derived from the overall scheme cost, whereas certain costs had to be disallowed as per the regulations.

19. The Complainant submits that the Respondents have never refunded the IDC claimed from one Consumer, when he closes down, while the same capacity has been repetitively charged from the prospective Consumers. The Respondents were required to keep an ongoing record and which would contain the cost recovered. Once the total cost was recovered, the Respondents had not right to recover from the prospective Consumers.

20. The Complainant further submits that as the record is not available in public domain, he could not have accessed the records pertaining to the CAPEX plan and depreciation claimed thereafter by the Respondents. The Respondents have claimed and capitalized the cost of the said scheme in the fixed assets, thus making it eligible for depreciation. It is over fifteen years since the scheme was executed and by now the entire cost of the

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scheme has been claimed by the Respondents by way of depreciation in the ARR and tariff on year to year basis. The scheme was approved Chief Engineer (P & M) on 11/08/2005, by when the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 were very much in force. It is the business of the Respondents to strengthen the transmission and distribution system, as by such investment they earn revenue in terms of the sale of power. Over and above, the Respondents are also sanctioned profit on gross block of assets in terms of Rate of Return, which is fixed by the Commission. The investment in assets is generating revenue to the Respondents and also is getting a reasonable rate of return in the cost+ model of tariff fixation which is in force for the last two decades.

21. The Complainant thus prayed in the interest of justice that the representation may kindly be allowed and the findings of the Consumer Grievances Redressal Forum in the order dated 25/07/2019 passed in the Complaint number 1432/2/18/021 and 1432/4/18/063 titled as Zenith International Vs. HPSEBL and others, whereby the Ld. Forum has indirectly denied the relief sought in the Complaint as the order is vague, is bad in law and deserve to be set aside or modified suitably in the interest of justice or any further orders which this Hon'ble Electricity Ombudsman may deem fit and proper, in the facts and circumstances of the case may kindly be passed in his favour and against the Respondents/ Distribution Licensee.

E – The Respondents' additional submissions (Respondent No. 4):

1. The Respondents submitted details of expenditure vis-à-vis capitalization status vide letter dated 28/04/2021 to the Complainant.

F – The Complainant's additional submissions to details submitted by Respondent No. 4:

1. The Complainant submits that the Respondents have submitted the detail of expenditure against which IDC was claimed from him which is as under:

1) 66/11 kV, 2x20 MVA Transformer at Nalagarh	Rs. 2.55 Cr.
2) 66 kV line for 66/33 Baddi to Akkanwali portion ckt-1 (sharing 50% between Akkanwali and Nalagarh)	Rs. 1.97 Cr.
3) 66 kV line from Akkanwali to Nalagarh ckt-1	Rs. 3.11 Cr.
4) 66 kV line from Baddi to Nalagarh ckt-2	Rs. 3.15 Cr.
5) 66 kV line from Uperla Nangal to Nalagarh	Rs. 0.72 Cr.
Total	Rs.11.50 Cr

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Capacity	40000 kVA
Cost per kVA	Rs. 2,875/kVA

2. The Complainant submits that he is an HT Consumer and the Regulation 4 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, deals with his case and it defines the extent of the recovery that can be made from such Consumer on HT. HT has been defined in Regulation 2 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 as,

   "high tension (HT)" means supply voltages more than 650 volts and upto and inclusive of 33000 volts;

   The complainants supply sanctioned at 11000 Volts fall under HT.

3. The Complainant submits that none of the five components mentioned above are recoverable from him as per Regulation 4 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. That the Regulation 4 (as amended) of the said regulations is reproduced below:

   "4. Specific provisions for high tension supply.-

   (1) *The following provisions shall apply for the high tension supply,-*

   (a) in the case of the application for new connection, where such supply requires only extension of high tension line from the existing network to the Consumer's premises, the distribution licensee shall estimate and recover the cost of works, service line and the cost of terminal and metering arrangements at the premises of the Consumer, but not including the cost of meter and current transformers and/or potential transformer used for metering. The distribution licensee shall estimate and recover the cost of service line on per kilometre basis and the cost of metering arrangements based on the latest approved cost data as published by the distribution licensee;

   *(b) in the case of application where there is a need to erect a new power transformer or augment the capacity of existing power transformer with or without bay extension at a **33/11 kV sub-station** for extending supply to the applicant, the distribution licensee shall estimate and recover the cost of the works involved in the manner mentioned in clause (b) of sub-regulation (1) of regulation 3;*

   *(c) in the case of applications where there is a need to erect a new **33/11 kV sub-station** in order to extend supply to an individual applicant, the distributing licensee shall estimate and recover the cost of such substation.*

   *(d) in the case of application where there is need to erect, strengthen, augment or extend the HT line in order to establish a power transformer and/or **33/11 kV sub-station** for*

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*extending supply to the applicant, the distribution licensee shall estimate and recover the cost of such section of **HT line** on per kilometre basis.*

Provided that the distribution licensee shall estimate the cost of electrical plant and works based upon the approved latest cost data as published by the distribution licensee;

Provided further that in case there are subsequent applications for supply or additional supply and the existing electrical plant has –

(i) adequate spare capacity to meet with the additional demand, or

(ii) spare capacity but not sufficient to meet with the additional demand, and there is need to strengthen/augment the existing electrical plant for meeting the additional supply,

the licensee shall estimate and/or recover the cost in the like manner, including the actual cost already incurred, with compound interest at the rate of 8% per annum on prorata basis and the credit of the depreciated cost of old/existing electric plant rendered surplus on account of augmentation shall be afforded in the estimate.

(2) The distribution licensee shall provide the supply within the time frame as specified in Himachal Pradesh Electricity Regulatory Commission (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004.

(3) The applicant shall provide the required space within applicant's premises for transformer and associated equipments including metering arrangements, if so required by the licensee."

4. The Complainant further submits that regulation nowhere mentioned the recovery of 66 kV infrastructure from the HT Consumers. It only allows 33/11 kV substation and 33/ 11 kV lines that are required to be created for providing such supply. That the items mentioned at Sr. No. 1 to 5 in the detail of expenditure are all related to 66 kV infrastructure. In view, of this the entire claim of the Respondents is nullified in the present case.

5. He further submits that the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 had been notified by the HPERC under section 46 of the Electricity Act, 2003, which only allows the distribution licensee to recover the expenditure, meaning thereby that the distribution infrastructure required to be created for providing the supply to a Consumer. The account of expenditure provided by the Respondent only contains the transmission infrastructure, but no on account of distribution infrastructure.

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*"(cc) **"Transmission System"** means the system consisting mainly of extra high voltage electric lines having design voltage of above 33 kV, owned or controlled by the transmission licensee, and used for the purposes of the conveyance of electricity between the switchyards of two generating sets or from the switchyard of a generating set to a substation, or between substations, or to or from any external interconnection and includes all bays/equipment upto the interconnection with the distribution system, and any plant, apparatus and meters owned or used in connection with the transmission of electricity, but shall not include any part of a distribution system;"*

6. The Complainant submits that the items referred in the account of expenditure are purely part of the transmission system, which the Regulation 4 does, not allow to be recovered from the HT Consumer. The distribution licensee and the transmission licensee in the present case, being the same or being subsidiary companies of HPSEB Limited, the Respondents are mixing up the entire issue and are trying to recover what is not due to be recovered as per regulations.

7. The Complainant submits that the submissions made earlier in the matter by him must also be kept in consideration while deciding the matter in question.

8. The Complainant submits that he is entitled for interest as per Clause 5.7.3 applicable on excess recoveries through bills/ notices the entire amount of IDC paid by him so far is refundable along with interest.

9. He submits that In view of above submissions and the earlier submissions made by HIM in the case, it is prayed that the complaint be allowed and the relief be granted as prayed in the case.

G – Additional submissions made by Respondent No. 4:

1. The Respondents submits that in compliance to interim order issued vide No. HPEO/(case No. 05/2021)/2020-21-60-64 dt. 17/04/2021, for expenditure detail & calculation detail for IDC to be claimed from 11 kV voltage level Consumers at 66/33/11 kV Nalagarh, the expenditure detail of various work carried out at 66/33/11 kV S/Stn. Nalagarh against which per kVA cost is fixed to be recovered through the IDC from the prospective Consumers fed at 11 kV Voltage from 66/33/11 kV S/Stn. Nalagarh and the IDC claimed to be or yet to be claimed from the Complainant i.e M/s Zenith International, Village Brahaman Veli, Tehsil Nalagarh, District Solan, HP..

Particular	Name of Scheme	Scheme cost (in crores)	Expenditures (in crores)	Expenditure share (in crores	kVA Capacity	Per kVA Cost= total Exp/Total kVA Capacity

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66/11 kV, 2*20 MVA Transformer at Nalagarh	Short term plan A & A was accorded by Board vide CE (P&M) HPSEBL Shimla O/O No. HPSEBL/Sectt. 402-49(Nalagarh) 05-52131-42 dated 11/08/2005 attached Annexure-A, along with Scheme cost.	4.40	=5.29 Expenditure as per work register pages attached Annex-B	5.29	40000	3302
66 kV D/C Line from Nalagarh S/Stn. (50% cost to shared by 33kV & 11kV Consumer)	Short term plan A & A was accorded by Board vide CE (P&M) HPSEBL Shimla O/O No. HPSEBL/Sectt. 402-49(Nalagarh) 05-52131-42 dated 11/08/2005 attached Annexure-A, along with Scheme cost.	14.36	15.85 Expenditure as per work register pages attached Annex-C	7.92 Cost share detail at Annex.-C		
Total				**13.21**		**3302.00**

2. The Respondents, in view of foregoing submissions, prayed that representation filed by the Complainant may kindly be dismissed in the interest of justice.

H – Written Arguments by Complainant on various submissions by the Respondents:

1. The Complainant submits that the CGRF had observed in its orders that the Respondents have not complied with the regulations 3, 4, 5 and 6 in a transparent manner and the present representation has been made in respect of these orders in order to achieve clear modification of the orders passed by CGRF, while the cost recoverable from him is disclosed by the Respondents in a transparent manner and only the portion of cost that is entitled under the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, only be recovered/ refunded to him.

2. The Complainant submits that on detailed scrutiny of the documents produced by the Respondents during the proceedings and otherwise through information received under RTI and the circulars issued by the Respondents from time to time it is concludable that

the **"No amount of infrastructure Development Charges were recoverable under the said regulations from him**, because of the following reasons:

a) That he is an HT Consumer and the Regulation 4 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, deals with his case and it defines the extent of the recovery that can be made from such Consumer on HT. HT has been defined in Regulation 2 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 as,

"high tension (HT)" means supply voltages more than 650 volts and upto and inclusive of 33000 volts; The complainants supply sanctioned at 11000 Volts fall under HT.

b) That in his case, the spare capacity already existed at the time of providing connection and he was only liable to pay the portion of the common/ service line extended to his premises. That the Regulation 4(a) (as amended) of the said regulations is reproduced below:

*"**4. Specific provisions for high tension supply.-***

***(1)** The following provisions shall apply for the high tension supply,-*

a) in the case of the application for new connection, where such supply requires only extension of high tension line from the existing network to the Consumer's premises, the distribution licensee shall estimate and recover the cost of works, service line and the cost of terminal and metering arrangements at the premises of the Consumer, but not including the cost of meter and current transformers and/or potential transformer used for metering. The distribution licensee shall estimate and recover the cost of service line on per kilometre basis and the cost of metering arrangements based on the latest approved cost data as published by the distribution licensee;

*b) in the case of application where there is a need to erect a new power transformer or augment the capacity of existing power transformer with or without bay extension at a **33/11 kV sub-station** for extending supply to the applicant, the distribution licensee shall estimate and recover the cost of the works involved in the manner mentioned in clause (b) of sub-regulation (1) of regulation 3;*

*c) in the case of applications where there is a need to erect a new **33/11 kV sub-station** in order to extend supply to an individual applicant, the distributing licensee shall estimate and recover the cost of such substation.*

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*d) in the case of application where there is need to erect , strengthen, augment or extend the HT line in order to establish a power transformer and/or **33/11 kV sub-station** for extending supply to the applicant, the distribution licensee shall estimate and recover the cost of such section of **HT line** on per kilometre basis.*

Provided that the distribution licensee shall estimate the cost of electrical plant and works based upon the approved latest cost data as published by the distribution licensee;

Provided further that in case there are subsequent applications for supply or additional supply and the existing electrical plant has –

(i) adequate spare capacity to meet with the additional demand, or
(ii) spare capacity but not sufficient to meet with the additional demand, and there is need to strengthen/augment the existing electrical plant for meeting the additional supply,

the licensee shall estimate and/or recover the cost in the like manner, including the actual cost already incurred, with compound interest at the rate of 8% per annum on prorata basis and the credit of the depreciated cost of old/existing electric plant rendered surplus on account of augmentation shall be afforded in the estimate.

(2) The distribution licensee shall provide the supply within the time frame as specified in Himachal Pradesh Electricity Regulatory Commission (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004.

(3) The applicant shall provide the required space within applicant's premises for transformer and associated equipments including metering arrangements, if so required by the licensee."

3. The Complainant submits that regulation nowhere mentioned the recovery of 66 kV infrastructure from the HT Consumers. It only allows 33/11 kV substation and 33/ 11 kV lines that are required to be created for providing such supply. That the items mentioned in the detail of expenditure are all related to 66 kV infrastructure. In view, of this the entire claim of the Respondents is nullified in the present case.

4. The Complainant submits that the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 had been notified by the HPERC under section 46 of the Electricity Act, 2003, which only allows the distribution licensee to recover the expenditure, meaning thereby that the distribution infrastructure required to be created for providing the supply to a Consumer. The account of expenditure provided by the

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Respondent only contains the transmission infrastructure, but no on account of distribution infrastructure.

*"(cc) **"Transmission System"** means the system consisting mainly of extra high voltage electric lines having design voltage of above 33 kV, owned or controlled by the transmission licensee, and used for the purposes of the conveyance of electricity between the switchyards of two generating sets or from the switchyard of a generating set to a substation, or between substations, or to or from any external interconnection and includes all bays/equipment upto the interconnection with the distribution system, and any plant, apparatus and meters owned or used in connection with the transmission of electricity, but shall not include any part of a distribution system;"*

5. The Complainant submits that he is not liable to pay any amount of IDC as the assets against which the Respondent is recovering IDC have already been capitalized by the Respondents. As a result of this the cost of assets is already charged/ being charged in ARR while the determination of tariff by the Commission. The fact that the assets have been capitalized has been put on record by the Respondents reply dated 28/04/2021 received from the Sr. Executive Engineer, ES, Nalagarh. The date of capitalization is mentioned as 31/08/2006, 31/01/2007, 31/03/2009 and so on. This is ample evidence that the Respondents are already recovering the same cost through CAPEX in the ARR every year in the form of depreciation. The regulation 6, disallows the recovery of expenditure that forms the part of the investment plan of the licensee.

6. The Complainant submits that the Respondents have submitted the detail of expenditure against which IDC was claimed from him i.e M/s Zenith International which is as under:

1) 66/11 kV, 2x20 MVA Transformer at Nalagarh	Rs. 2.55 Cr.
2) 66 kV line for 66/33 Baddi to Akkanwali portion ckt-1 (sharing 50% between Akkanwali and Nalagarh)	Rs. 1.97 Cr.
3) 66 kV line from Akkanwali to Nalagarh ckt-1	Rs. 3.11 Cr.
4) 66 kV line from Baddi to Nalagarh ckt-2	Rs. 3.15 Cr.
5) 66 kV line from Uperla Nangal to Nalagarh	Rs. 0.72 Cr.
Total	Rs.11.50 Cr
Capacity	40000 kVA
Cost per kVA	Rs. 2,875/kVA

7. He further submits that the amount of Rs. 11.50 Crores in their submission exactly tallying with the figure at Sr. No. 31 of the Circular related to scheme cost on 07/12/2012. The following irregularities are observed w.r.t. scheme cost as different values have been reported time and again in respect of this scheme by the Respondents.

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a) In reply dated 28/04/2021 it is visible that the Respondent has included the cost of both lines i.e. 66 kV line from Uperla Nangal to Nalagarh and also the double circuit line from Baddi via Akkanwali to Nalagarh.

b) He further mentions that almost 87.5 % of the cost of the line from Baddi to Nalagarh has been charged to Nalagarh Sub-station.

c) One full circuit (ckt 2) of the double circuit line from Baddi to Nalagarh has been charged to the Nalagarh 66 kV charging, the cost of which has been stated as Rs. 3.15 Cr.

d) Ckt 1 has been divided into two parts. The 50% of cost of the first part i.e. Baddi to Akkanwali has been shared with Akkanwali sub-station on equal basis and 50% share is allocated to Nalagarh which is stated at Rs. 1.97 Cr.

e) The second portion of ckt 1 from Akkanwali to Nalagarh has been fully charged to Nalagarh for Rs. 3.11 Cr.

f) This cost was to be further sub-divided between 66/11 kV and 66/33 kV both of 40 MVA each.

8. The Complainant further observed that the cost of Baddi-Akkanwali- Nalagarh double circuit line is also fully charged to Item No. 33 of the circular dated 07/12/2012 issued by the Respondents, which is for the scheme of Akkanwali Sub-station. The description of this scheme clearly read as follows:

"C/O 66kV D/C Line from Baddi to Nalagarh via Akkanwali alongwith 66/33 kV, 20 MVA and 66/11 kV, 20 MVA transformers at proposed Akkanwali 66 kV S/ Stn.- Estimated cost 16.03 Crores and Actual Cost 22.38 Crores"

9. The Complainant submits that it is also stated in the same circular in Item No. 34(c) that the line in question also supplies to Davni Sub- station and 34(c) reads *as "66 kV Line from Baddi- Akkanwali Nalagarh line (50% of one Ckt.) = Rs. 4.78 Cr."*

It is very clear that the sharing mechanism of a common line is absurd and the cost of same line has been taken into various schemes on disproportionate basis and is overlapping.

10. The Complainant submits that in the information given under RTI to BBN Industries Association the figure is entirely different, which is also annexed to these written arguments. The values mentioned in the reply dated 05/08/2021, are also different from all the values mentioned above.

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11. He further submits that the submissions made earlier in the matter by him must also be kept in consideration while deciding the matter in question.

12. Further, he is entitled for interest as per Clause 5.7.3 applicable on excess recoveries through bills/ notices the entire amount of IDC paid by him so far is refundable along with interest.

13. The Complainant submits that he is entitled for refund of security in proportion to the reduction of contract demand and also interest thereupon as per HPERC (Security Deposit) Regulations, 2005.

14. The Complainant submits that in view of above submissions and the earlier submissions made by him in the case, which are part and parcel of the overall submissions it is prayed that the Complaint be allowed and the relief be granted as prayed in the case

I - Written statement made by Chief Engineer (Commercial) on Interim Order dated 26/08/2021:

1. That Electricity Ombudsman has issued Interim Orders on dated 26/08/2021 wherein, under Para-3 of said Interim Orders following has been ordered.

   "Further, under the powers conferred vide Regulation 35(2) of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, the chief Engineer (comm.) is hereby again directed to place on record the following information on the next date of hearing.

   a) Detailed calculation done for finalizing the IDC rates on the direction of the Board conveyed through chief Engineer (P & M) vide office order No. HPSEB(SECTT) 402-49(Nalagarh)/ 05-52131-42, dated 11/08/2005.

   b) To clarify whether the IDC rates have been finalized after taking in to consideration of consumer contributions/Grants in the provision under Regulation 6(3) of HPERC (Recovery of Expenditure for Supply of Electricity Regulation, 2005."

2. That with regard to observations at sr. No. B pf para -3, it has already been clarified vide Sr. No. 2 of written submission through Authorized Representative on 25/06/2021 (Annx.A) and therefore needs no further clarification/ comments.

3. That with regard to observations/ Interim order dated 26/08/2021 at Sr. No. (a) of para-3, following is submitted: -

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a) That the office order No. 52131-42 dated 11/08/2005 issued by CE(P & M) wherein, the finalization of recovery of cost is required to be worked out, has been referred in the Interim Order.

b) That HPSEB Ltd. Vide letter No. HPSEBL/CE(Comm.)/LS- Cost Sharing/ 2005/ 13945-14245 dated 3/10/2005 (Annx. B) has circulated the substation- wise per- kVA cost to be recovered from the consumer(s).

c) That Hon'ble Commission ordered in case No. 268/2005, 334/2005 & 4/2006 dated 17/06/2006 & 17/01/2007 (Annx. C) had held the circular issued on 3/10/2005 as void-abinito and struck down but ordered the recovery from the Consumer is to be done in accordance with the regulations.

d) That after issuance of the order by Hon'ble Commission, a circular has been issued by HPSEBL vide letter dated 11/12/2007 (Annx. D) to the field units to comply the orders and do the recovery as per Recovery of Expenditure Regulations from all the Consumers after enforcement of the Regulations i.e with effect from 01/04/2005. Further, it was decided to release the connection on undertaking from Consumer to pay the cost share according to Regulation of Recovery of Expenditure as decided by HPERC vide letter dated 03/03/2006 (Annx. E).

J - Additional submissions by Respondent No. 4:

1. The Respondents submits that in compliance to interim order issued vide No. HPEO/(Case No. 05/2021)/2020-2021-434-38 **dt. 26/08/2021,** the point wise reply is appended below:-

a) (1) The original capacity of 66/33/11 kV Sub Station Nalagarh at 11 kV voltage level was 2*10MVA, 66/11 kV.

Sr. No.	Capacity of Transformer	Date of commissioning	Date of Capitalization
1	10 MVA 66/11 kV Transformer No. I	12/12/2002	-
2	10 MVA 66/11 kV Transformer No. II	31/05/2004	-

(2) The 66/ 33/ 11 kV Sub Station Nalagarh was augmented to 2*20 MVA 66/11 kV from 2*10 MVA 66/11 kV voltage level Consumers

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Sr. No.	Capacity of Transformer	Date of commissioning	Date of Capitalization
1	20 MVA 66/11 kV Transformer No. I	26/12/2005	31/12/2012
2	20 MVA 66/11 kV Transformer No. II	27/12/2006	31/12/2012

b)

Sr. No.	Name of Consumer (Detail as intimated by Sr. XEN Electrical Division Nalagarh) Annex A	Original Load	Date of release of load	Extended load	Date of Release of Load
	M/S Zenith International	98 kW	01/09/2007	98 + 127 = 225 kW	19/11/2008

The load of the Consumer in Original has been released from added capacity of 66/33/11 kV Sub Station Nalagarh 2*20 MVA 66/11 kV.

c) The PAC of Complainant was issued on 18/10/2005 and extended load PAC Dt 13/08/2008 with conditions at, point No. 11 & 12 of PAC that load shall be released after:-

i) Commissioning of 66 kV double Circuit line from Baddi to Nalagarh.
ii) Augmentation of 66/11 kV, 2*10 MVA S/Stn. Nalagarh to 2*20 MVA.
iii) Commissioning of 66/11 kV S/Stn. Malpur.

The power shall be available after augmentation/ upgradation and re-organization of system at Nalagarh & Akanwali, detail as intimated by Sr. Executive Engineer Electrical Division HPSEBL Nalagarh.

Further, they submitted that the Complainant has reduced his Contract Demand permanently to 70 kVA and connected load to 70.085 kW w.e.f. 22/07/2019.

d) The scheme of (1) Replacement of 66 kV, 2*10 MVA transformer with 66/11 kV, 2*20 MVA Transformer at Nalagarh Sub Station & (2) Construction of 66 kV Double Circuit line with panther conductor from Baddi to Nalagarh was funded by HPSEBL under Short Term Plan with condition of recovery of cost from the Consumer immediately. Vide A & A No. HPSEBL(SECTT)-19(Nalagarh)/05-52131-42 dated 11/08/2005.

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e) Single Line diagram of asset from which the connection was released to the Complainant is attached.

f) The rates of equipment / material are as per prevailing (May2005) market rates/ supply orders rates placed by the HPSEBL of similar nature was taken in the schemes mentioned in point (d). However, this does not include interest for the construction period.

2. The Respondents, in view of foregoing submission, prayed that representation filed by the Complainant may kindly be dismissed in the interest of justice.

K - Additional submissions by Respondent No. 3:

1. The Respondents submits that in compliance to interim order of Hon'ble Electricity Ombudsman dated 26/07/2021, as per the record placed by the Sr. Executive Engineer, Electrical System Division, Nalagarh, the total expenditure of various work carried out at 66/33/11 kV S/Stn. Nalagarh was Rs. 13.21 crore against 40 MVA capacity, which comes out to Rs. 3,302/- per kVA. Therefore, the exact liability of the Complainant is Rs. 7,42,950/- @ Rs. 3,302/- per kVA for 225 kVA of Contract Demand against which Rs. 1,90,400/- has already been deposited by the Consumer.

L – Additional submissions made by the Complainant on reply of Respondent No. 4 and reply of Chief Engineer (Commercial) dated 24/09/2021:

1. The Complainant submits that in continuation the arguments and records already advanced by him, he hereby makes the following observations and submission in respect of the new documents put on record by the Respondents. The submissions made earlier must be considered as part and parcel of the arguments submitted by him.

As per reply submitted by SE (ES)

Synopsis of events

S. No.	Date/ Period	Description
1	18/10/2005	PAC issued for 98 kW of load
2	26/12/2005	20 MVA 66/11 Transformer No 1 commissioned
3	27/12/2006	20 MVA 66/11 Transformer No 2 commissioned
4	13/08/2008	PAC issued for additional 127 KW of load
4	31/12/2012	Both transformer scheme cost capitalized
5	2017	Demand Notice issued to the complainant

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Analysis:

The facts stated by the Respondents in their submissions dated 24/09/2021 establish the following points:

1) That his first PAC for 98 KW was issued before augmentation of any of the two transformers.

2) That the extension of load was sanctioned after the augmentation of the transformers.

3) That the cost of transformers and other equipment in the scheme stood capitalized on 31/12/2012, after the release of any connection tohim.

4) That there is no justification of recovering the expenditure form the Consumers, if the expenditure has been capitalized by the Respondents, because after the capitalization of the assets, the impact of such expenditure automatically gets included in the Annual Revenue Requirement (ARR) of the subsequent years. The Respondents cannot be allowed to recover the amount doubly. The Respondents lost their right to recover the cost from Consumers directly once these assets were capitalized.

5) That the conditions of PAC are meaningless as the 66 kV double circuit line and the augmentation of Nalagarh Sub-station were already carried out much earlier. So, these conditions are void.

As per reply submitted by CE (Comm.) HPSEB Limited

1) That the reply submitted by the CE (Comm) does not refers to letter intimating the cost of Baddi 66/11 augmentation @ Rs. 4445 per kVA.

2) That the cost to be recovered from the Consumers as per letter dated 03/10/2005 has no relevance as the Hon'ble Commission had observed in Case No 268 of 2005 in Para 6 of the order that the Respondents have contravened the Recovery of Expenditure for Supply of Electricity Regulations framed by the Commission in its supplementary orders dated 17/06/2006. The methodology of arriving at the cost was rejected by the Commission.

3) That the Hon'ble Commission had issued directions in its orders dated 17/06/2006, where in the letter dated 3rd October, 2005 was held void initio and ordered to refund amount already recovered.

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M – Orders passed by Consumer Grievance Redressal Forum in both Complaints:

Complaint No. 1432/2/18/021

1. Since, the initial estimate and later on, the account of the expenditure was not conveyed to the Complainant by the Respondent Board, therefore, we feel that the procedure laid down has been vitiated. Accordingly, we hold that the Respondent Board has erred on this account and we, therefore, order the Respondent Board to provide the initial estimate and subsequent account of expenditure to the Complainant which was mandatory under the Regulations, and decide within the next six months, whether the estimated cost had increased or decreased and take action in finalizing the exact liability of the Complainant, as provided in the Regulations in question. The demand as raised by the Respondent Board, in question, does not hold good, in view of the above discussions and requires to be visited again. In view of the peculiarity of the dispute, we further order that, in the eventuality of any amount, that is found payable to the Complainant, out of the funds already deposited by him with the Respondent Board, the same may be adjusted in the future energy bills of the Complainant/Consumer and in case of deficit amount, if any, the same may be recovered from the Consumer as per the laid down procedure. The instruction conveyed by Chief Engineer (Comm.) HPSELB, Shimla vide letter No. HPSEBL/CE(Comm.)/APTEL/Vol I-1/2016—10021-10135 dated 01.11.2016 may also be kept in mind wherever applicable.

Complaint No. 1432/4/18/063

2. Since, the initial estimate and later on, the account of the expenditure was not conveyed to the Complainant by the Respondent Board, therefore, we feel that the procedure laid down has been vitiated. Accordingly, we hold that the Respondent Board has erred on this account and we, therefore, order the Respondent Board to provide the initial estimate and subsequent account of expenditure to the Complainant which was mandatory under the Regulations, and decide within the next six months, whether the estimated cost had increased or decreased and take action in finalizing the exact liability of the Complainant, as provided in the Regulations in question. The demand as raised by the Respondent Board, in question, does not hold good, in view of the above discussions and requires to be visited again. In view of the peculiarity of the dispute, we further order that, in the eventuality of any amount, that is found payable to the Complainant, out of the funds already deposited by him with the Respondent Board, the same may be adjusted in the future energy bills of the Complainant/Consumer and in case of deficit amount, if any, the same may be recovered from the Consumer as per the laid down procedure. The instruction conveyed by Chief Engineer (Comm.) HPSELB, Shimla vide letter No. HPSEBL/CE(Comm.)/APTEL/Vol-1/2016—10021-10135 dated 01.11.2016 may also be kept in mind wherever applicable.

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N – Analysis of the Complainant:

1. The case files in both the Complaints bearing Nos. 1431/2/18/021, dated 03/05/2018 and 1431/4/18/063, dated 05/10/2018 passed on 25/07/2019 have been requisitioned and gone through.

2. The Complainant have filed application under the provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 to quash or suitably modify the orders passed by the Forum. He has also sought directions to Respondents not to charge IDC for 100 kW load and refund excess amount of IDC and pay interest @ 15% or as applicable for period for which excess amount claimed in excess was kept by the Respondents.

3. The Complainant have also prayed for directing the Respondents to refund excess security deposit alongwith interest for the period of delay. He has further prayed to quash the disconnection notice dated 03/03/2021.

4. The Complainant was committed a load of 100 kW with 80 kVA Contract Demand vide PAC dated 19/10/2005 out of which 98 kW of Connected Load and 80 kVA of Contract Demand was finally sanctioned to him. There was a condition for release of load that the load shall be released after commissioning of 66 kV double circuit line from Baddi ti Nalagarh, capacity to be augmented from 2x10 MVA Transformer to 2x20 MVA Transformer at 66/11 kV sub-station at Nalagarh, augmentation/ upgradation and commissioning of 66/11 kV sub-station Malpur.

5. One of the conditions was also to deposit Rs 90,000/- as balance Advance Consumption Deposit (ACD). The Complainant also paid Rs 20,000/- at the time of PAC @ Rs 200/- per kW. As per Service Connection Order (SCO) dated 25/08/2007, his connection for original load was released on 01/09/2007 for 98 kW Connected Load and 80 kVA of Contract Demand at 11 kV.

6. PAC for extension in load from 98 kW to 225 kW with extension in Contract Demand from 80 kVA to 225 kVA was issued on 01/09/2008 with similar conditions as for original PAC with additional condition that load shall be released after reorganization of system at Nalagarh, Akanwali, Manjholi and Upperla Nangal. Sanction for extension in load was issued on 20/09/2008 by Superintending Engineer Solan. As per Sundry Job Order dated 19/11/2008, extension in load was release on 19/11/2008.

7. First Transformer of 20 MVA capacity was commissioned on 26/12/2005 and the second Transformer was commissioned on 27/12/2006. The assets were capitalized on 31/12/2012.

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8. The Complainant was covered under the provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 for the purpose of IDC for original as well as extension in load in 2008.

9. The Complainant reduced his Contract Demand from 225 kVA to 90 kVA sanction for which was issued by Superintending Engineer Solan on 19/01/2013. He has also submitted the A&A Form which was received on 19/12/2012. The Contract Demand was further reduced to 40 kVA and currently the Contract Demand of the Complainant is at 40 kVA. However, no supportive documents in respect of reduction of Contract Demand to 40 kVA are on record.

10. The Complainant also paid Rs 20,000/- at the time of PAC @ Rs 200/- per kW. He further paid Rs 2,25,000/- for 225 kVA of Contract Demand after extension from 80 kVA to 225 kVA @ Rs 1,000/- per kVA.

11. The Respondents issued demand notice on 18/07/2014 for Rs 4,56,475/- towards additional IDC @ Rs 2,875/- per kVA in addition to Rs 1,90,400/- recovered earlier (Rs 20,000/- at first PAC, Rs 25,400/- on 21/08/2008 and Rs 1,45,000/- on 18/11/2008) and thus total IDC liability was calculated at Rs 6,46,875/- for 225 kVA of load at Rs 2,875/- per kVA. Reminder was also issued by Respondent No. 2 on 17/12/2014. The amount was shown as Sundry in energy bill issued on 10/04/2018.

12. The Complainant approached Forum vide Complaint No. 1432/2/18/021 dated 03/05/2018 after the demand was shown as sundry in April 2018 for original notice issued on dated 18/07/2014. Another Complaint was also filed by the Complainant at Forum vide Complaint No. 1432/4/18/063, dated 05/10/2018 raising the Issue of ARR/ Capex with intention that IDC is not recoverable from him.

13. The Complainant also paid an amount of Rs 25,600/- on 05/05/2018 on directions of the Forum to maintain 30% of disputed amount with the Respondent Board as per provisions of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. Since the Forum had not assessed any amount, the Complainant didn't further deposit any amount with the Respondent Board on filing the current application.

14. Final orders in both the Complaints were issued on 25/07/2019 and the orders were identical. The Forum didn't touch the issues raised by the Complainant in his both Complaints. The Forum ordered that the Respondent Board has erred in providing account of expenditure to the Complainant as per provisions of the Regulations and further ordered that the same be provided to the Complainant within a period of six months.

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15. A disconnection notice dated 03/03/2021 was issued by the Respondent Board for recovery of balance IDC. Aggrieved by the notice, the Complainant approached this court. The contention of the Complainant is also that after the dispute was raised at the Forum, the Respondent Board didn't transfer the amount to disputed amount column in the energy bills and continued levying 2% surcharge per month and the same was shown in payables whereas the same should have been shown as disputed with surcharge per month but not under payables. Further, the Respondents never revisited the account of expenditure/ IDC rates as ordered by the Forum.

16. The Complainant has also contended that the demand raised by the Respondents is time barred since they didn't raise the matter of any such pending till 2012 and issued demand notice in 2017 for the first time and as per Section 56 (2) of Electricity Act, 2003, the demand is time barred since the dues were more than two years old and were not shown as arrears continuously after that. His case was neither under litigation nor there were any stay orders for recovery.

17. He has further contended that the Respondents have taken coercive action by issuing the disconnection notice dated 03/03/2021 which is against the provisions under Section 56 (2) of Electricity Act, 2003 against the demand which was more than two years old.

18. The Complainant has also raised ARR and Capex issue and claims that as per provisions of Regulation 6 (1) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 since the Respondent Board have claimed depreciation and capex in ARR and have made investment approved by the Commission, IDC is not applicable to him. Further, as per provisions under Regulation 4 (1), no IDC is payable by him since only service line was required to be extended to him.

19. Further, the Complainant has contended that the Respondents have also included residential complexes while working out the rates of Rs 2,875/- per kVA. Further, the Respondent Board have calculated the rates for IDC @ Rs 2,875 per kVA based on the actual expenditure at Rs 11.50 Cr which is at 17.58% of the original scheme cost of Rs 9.78 Cr, much higher than the 3% escalation allowed.

20. The Complainant has also contended that the Respondent Board have charged for multiple lines such as 220 kV line from Rehru to Uperala Nangal and 66 kV line from Uperla Nangal. In written arguments he has stated that the Respondent Board have included 66 kV line from Baddi to Akanwali and then 66 kV line from Akanwali to Nalagarh circuit-1, 66 kV line from Baddi to Nalagarh, circuit-2 and 66 kV line from uperala Nangal to Nalagarh in the total expenditure of Rs 11.50 Cr for total 40,000 kVA capacity created for working out the rates of Rs 2,875/- per kVA.

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21. Further that almost 87.5% of the line cost from Baddi to Nalagarh have been charged to Nalagarh sub-station. Further, the Respondent Board have also charged Baddi- Akanwali-Nalagarh line cost separately also to Akanwali sub-station and even for Davni sub-station, 50% of the cost of Baddi-Akanwali-Nalagarh line have been charged. The Respondent Board have charged the same cost to many sub-stations.

22. The Respondent Board have stated that in line with the orders of the Forum dated 25/07/2019, they had supplied the expenditure details to the Complainant on 27/01/2020. They have further stated that the IDC charges of Rs 2,875/- have been rationalized for the sanctioned Connected Load of 225 kW with 225 kVA Contract Demand. And since the Complainant didn't deposited the balance IDC of Rs 4,30,875/- (Out of Rs 6,46,875/- after adjusting Rs 2,16,000/- already deposited), they issued a disconnection notice dated 03/03/2021 which is perfectly legal. They have cited certain judgements in this regard that their demand as well as disconnection notice is perfectly legal.

23. The Complainant further contended that the account of expenditure provided on 27/01/2020 is just cost of scheme and no revised demand was raised by the Respondents. Further, the Respondents have never revisited the IDC claimable from the Complainant as ordered by the Forum on dated 25/07/2019. He has again raised the issue that as per judgment of the Apex court, no coercive action can be taken by the Respondent Board after a lapse of two years.

24. He has further contended that the Respondent Board have not expressed anything against the orders of the Forum which was against them.

25. Their one contention was also that the Respondent Board have been repeatedly selling the surrendered capacity and recovering IDC time and again from Consumers and they should stop recovery of IDC after the scheme cost is fully recovered as per regulations.

26. Another issue raised by the Complainant is that after reduction of his Contract Demand to first 90 kVA and then to 40 kVA, his excess security deposit charged for a load of 225 kVA have not been refunded back to him. He has prayed for refund of same alongwith interest as per provisions of the Security Deposit Regulations.

27. The Respondent Board have not addressed the issue that the amount has not been reflected in the disputed amount column and same have been charged through sundry and is increasing due to surcharge being levied. They have also not addressed the issue of excess security kept with them after reduction of Contract Demand finally to 40 kVA.

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28. The Respondents stated that they have worked out the rates of Rs 2,875/- per kVA strictly in line with provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

29. Now let us examine the issues/ facts. The Consumers load was first sanctioned by the Superintending Engineer Solan for 98 kW of Connected Load with 80 kVA of Contract Demand on 19/10/2005 (Not 19/01/2005, as contended by the Complainant) which was released on 01/09/2007 for same load. The Complainant extended his load to 225 kVA which was released on 19/11/2008. He reduced his Contract Demand from 225 kVA to 90 kVA in 2013 and further to 40 kVA.

30. The Respondents have raised demand for 225 kVA of Contract Demand @ Rs 2,875/- per kVA initially which has now been enhanced to Rs 3,302/- per kVA as per submissions of Respondent No. 4.

31. The IDC claimed initially from the Complainant was @ Rs 2,875/- per kVA, rates notified by the Chief Engineer (Commercial) on 07/12/2012. The Chief Engineer (Commercial) vide its written statement dated 25/09/2021 have stated that as per provisions under Regulation 6 (3) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, the IDC rates have been worked out after taking in to consideration of Consumer Contributions/ Grants.

32. The Chief Engineer (Commercial) in its written statement dated 25/06/2021 (Received on 26/06/2021) had intimated in a different case registered as Case No. 41/2020 titled M/S Krishna Plastic Industries Vs HPSEB Ltd, award for which have been issued on 10/12/2021, had stated that Consumer Contributions have not been considered for calculation of IDC rates which is different stand taken by them now in this case whereas the feeding sub-station and rates worked out by them are similar for both cases.

33. Now let us look at the provisions of Regulation 4(1) and 6(1) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 applicable in this case. Since the Complainant is HT Consumer and falls under the provisions of Regulation 4(1) of said Regulations, 2005. Regulation 4 (1) states:

4. Specific provisions for high tension supply.- (1) The following provisions shall apply for the high tension supply,-

(a) in the case of the application for new connection, where such supply requires only extension of high tension line from the existing network to the consumer's premises, the distribution licensee shall estimate and recover the cost of works, service line and the cost of terminal and metering arrangements at the premises of the consumer, but not including the cost of meter and current transformers and/or potential transformer used for

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metering. The distribution licensee shall estimate and recover the cost of service line on per kilometre basis and the cost of metering arrangements based on the latest approved cost data as published by the distribution licensee;

34. The provision says that where the supply requires only extension of HT supply from existing network to the Consumer's premises, the Distribution Licensee shall recover the cost of such service line alongwith cost of terminal and metering arrangements. Now let us examine the provisions of Regulation 6 (1) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 which states:

6. Recovery of cost.- (1) Subject to the provisions of sub-regulation (2), the balance cost of electrical plant and or electric line after deducing the amount payable by the applicant under sub-regulation (1) of regulation 3, regulation 4 and regulation 5 shall be either invested by the licensee or paid for by the applicant and where licensee's investment approval does not permit this cost, the licensee shall recover the total balance cost from the applicant:

Provided that the balance cost shall be refunded to the applicant as and when new connections are installed or given from the electrical plant and/or electrical line on pro-rata basis with the interest rate of 8% compounded annually.

Provided further that notwithstanding anything contained in any other law for the time being in force, balance cost due shall be recoverable from subsequent applicant(s) and the bills of the consumer who had paid the balance cost shall be invariably flagged continuously until paid fully.

35. The provisions say that after deducing the amount payable by the applicant under sub-regulation (1) of Regulation 4, the balance cost of the electric plant or electrical line shall be either invested by the Licensee or paid by the applicant and where the Licensee's investment does not permit this cost, the total balance cost shall be recovered from the applicant.

36. Now let us examine the investment issue. The Capex is approved by the Commission and all major schemes are part of the Capex. As confirmed from the sanction issued by the Chief Engineer (P&M) dated 11/08/2005, a scheme for Rs 9,567 Lakh was approved by the Board for AA & ES which includes the scheme of addition of 2x 20 MVA 66/11 kV Power Transformers amounting to Rs 440.07 Lakh. The scheme must have been approved by the Commission (No record provided by the Respondent Board however) and the Commission only approves the Capex funding and make provisions for the Interest part of the funding in the ARR. When the scheme is closed, the asset so created through funding is taken in Fixed Asset Register (FAR) and capitalized which is then eligible for

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depreciation on year to year basis as per approved principal of the Commission in the ARR.

37. Now the funding is mostly up to 90% only and rest is met through either equity or through Consumer Contributions. In some cases, the funding is for 80% depending upon the lending institutions. Since the Respondent Board is not in profit, the equity contribution, which is otherwise eligible for Return on Equity (RoE) in ARR, the funding through equity contribution can be ruled out. However, the Equity provided by the Government on year to year basis are normally allotted to balance funding of 10% but since the Respondent Board have not provided any document in support, this option is hard to accept. Secondly, the 10% funding is mostly done through either grants or Consumer Contributions. Assets created through either equity or Grant or Consumer Contributions are not considered by the Commission for depreciation or RoE, whichever is the case. The depreciation is provided for by the Commission accordingly on the capitalized cost minus equity/ Grant/ Consumer Contributions.

38. Now let us examine the Consumer Contributions which is IDC in this case, the Commission treats the same for depreciation after subtracting the same. That means the IDC collected from the Consumers is subtracted from the capitalized cost and benefits is passed on to the Consumer to that extent.

39. Detailed scrutiny of the provisions of Regulations 4 (1) and 6 (1) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, as reproduced above shows that the besides the service line cost, the Respondent Board has been authorized to recover the balance cost of the Infrastructure developed by the Respondent Board for providing electricity connections to the Consumers.

40. In this instant case, the Respondent Board might have recovered the cost of providing service line to the Consumer in line with provisions of Regulation 4 (1) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. Now the Respondent Board has demanded IDC from the Consumer in line with the provisions of Regulation 6 (1) of the said Regulations.

41. Now let us examine the Orders/ clarifications given by the Commission in various cases related to IDC. Review petition No. 221/2006 in Case No. 04/2006 (Tariff Order review) titled M/S Rupana Paper Mills (P) Ltd Vs HPSEB. The review was dismissed by the Commission on the grounds that the refund of entire amount taken in to reconsideration, specially keeping in view the admitted fact that the Respondent Board is entitled to recover the IDC in terms of Regulations 2005.

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42. Suo Moto Case No. 268/2005 titled Parwanoo Industrial Association & CII Northern Region Vs HPSEB. The Commission ordered that the Respondent Board shall estimate again the justifiable cost of electrical plants and works involved strictly in accordance with the provisions of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 based on cost data published for the relevant years by the REC/ PFC authorized to be used under Regulation 13 of Regulations (ibid).

43. Case No. 334/2005. In this case also, the Commission directed the Respondent Board to estimate again the justifiable cost of electrical plants and works involved strictly in accordance with the provisions of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 based on cost data published for the relevant years by the REC/ PFC authorized to be used under Regulation 13 of Regulations (ibid). These orders were supplemental to orders in Review petition No. 268/2005.

44. Case No. 315/2005. The Commission has provided clarification on petition on Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. The Commission has clarified that the cost already incurred by the Distribution Licensee before commencement of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 shall not be recovered in respect of spare capacity existing in the transformer. Only the cost for meeting balance additional load shall be estimated and recovered.

45. Now let us examine the rates at which the initial demand was made by the Respondent Board. The initial demand was @ Rs 2,875/- per kVA for 2x20 MVA 66/11 kV sub-station at Nalagarh alongwith cost of augmentation/ strengthening the existing transmission lines/ upgradation/ re-organisation which were notified by the Chief Engineer (Commercial) vide notification dated 07/12/2012. The Chief Engineer (Commercial) have already confirmed in another case for similar sub-station that Consumer Contributions were not considered for calculations of the IDC rates although stand taken now in this case is different.

46. Now the rates calculated by the Respondent No. 4 as per his submissions on 05/08/2021 are Rs 3,302/- per kVA for 66/11 kV 2x20 MVA transformer at Nalagarh. The expenditure has been taken as Rs 13.21 Cr (50% cost share {Rs 7.92 Cr} of 66 kV D/C Line from Baddi to Nalagarh out of Rs 15.85 Cr expenditure) against the scheme provisions of Rs 11.58 Cr considering 50% cost share of line. There is a variation of Rs 1.63 Cr which is around 14.08 % of the original cost. The provision in the Regulation 6 (2) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 restricts the escalation maximum by 3% only whereas the IDC claimed is for

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escalation of Rs 14.08 %. The capacity for which the IDC have been worked out is 40,000 kVA.

47. Even the earlier rates for Rs 2,875/- was calculated for an expenditure of Rs 11.50 Cr instead of scheme cost of Rs 9.78 Cr which is excess by Rs 1.72 Cr which is almost 17.59% escalation. The capacity for which the rates were worked out was 40,000 kVA.

48. The Respondent Board had started publishing the cost data somewhere in 2013-14 onwards only and prior to that, as per the Commission's orders, the cost data published by either REC or PFC would be applicable to work out the cost estimates in case they have not published their own rates.

49. The rates calculated earlier and even now are not in line with provisions of Regulation 6 (2) and (3) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 which states:

(2) The licensee shall render to the applicant/consumer the account of expenditure showing the excess or deficit in relation to initial estimated amount within three months after release of connection giving details of itemwise estimation and actual expenditure along with the item wise figures of variance to the extent possible and, if applicant requires any additional information, the distribution licensee shall furnish the same within ten days of receipt of such requisition;

Provided that where the actual expenditure;

(a) (a) is less than the initial estimated cost by more than 3% the licensee shall refund the excess amount, within 30 days from the date of submission of the account, or

(b) (b) exceeds the initial estimated cost by more than 3%, the applicant shall pay the difference between the initial estimated cost and the actual expenditure to the extent of 3% only and any amount in excess of 3% shall be borne by the licensee.

(3) Notwithstanding anything to the contrary contained in these regulations the expenditure on the electrical plant and/or electric lines incurred from any grant or subvention from the Central or State Government or any other agency shall not be recoverable.

50. It is also not clear from the record made available, on repeated directions, by the Respondent Board whether the rates notified by the Chief Engineer (Commercial) is based on the rates published by them or by REC/ PFC? However, in one of the later submissions, the Respondents have stated that the rates are market rates prevalent at that time which is against the provisions of the Regulations.

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51. The stand taken by the Respondent Board in this court have also changed from time to time. They had provided some data only on specific directions to do so otherwise they were reluctant to provide any data which was required to decide the case. Even the most of the information supplied by them was just either not complete or was not relevant for what have been sought.

52. Now let us again examine the submissions/ Prayers made by the Complainant at this court. They had prayed to set aside or modify the orders of the Forum since the Forum had not provided any relief what had been sought by them and the orders are not speaking orders. They even prayed that they are not liable to pay the IDC even from the 66/11 kV sub-station at Nalagarh. They have again raised the same issues which were raised by them before the Forum.

53. Now from the above discussions/ facts it is clear that the Respondent Board is entitled to recover the justifiable cost as per Regulations in line with provisions of Regulation 6 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

54. Further, the contention of the Complainant regarding recovery of expenditure through ARR/ Capex approved by the Commission have also been addressed in sub-paras 33 to 40 above and also by the clarifications/ orders given by the Commission discussed in sub-paras 41 to 44 above.

55. The rates demanded by the Respondent Board from the Complainant for original as well as additional load either @ Rs 2,875/- per kVA as notified by the Chief Engineer (Commercial) on 07/12/2012 or revised provided by the Respondent No. 4 on 05/08/2021 @ Rs 3,302/- kVA require justification in respect of the treatment given or to be given for Consumer Contributions/ Grants and limited to 3% escalation of original scheme cost in line with the provisions under Regulation 6 of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

56. The Complainant has contended that the Respondents have included the cost of multiple lines for working out the rates. Now let us examine the PAC condition on which the load was committed. The condition was that the load shall be released after commissioning of 66 kV D/C line from Baddi to Nalagarh, augmentation of 66/11 kV sub-station Nalagarh to 2x20 MVA, commissioning of 66/11 kV sub-station upperla Nangal and after augmentation/ upgradation and reorganization of 66/11 kV sub-station at Malpur. The load was committed on same conditions and the same have been included for working out the rates of IDC by the Respondent Board. Extension in load was also with similar conditions with addition of reorganization of system at Nalagarh, Akanwali, Manjholi and Upperla Nangal.

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57. However, as per clarification provided by the Commission in Case No. 315/05, Sr. No. 5, in case of HT and EHT Consumers, the recovery of cost shall be for upgradation of feeding sub-station and the line only and not the upgradation of upstream sub-station/ line. Hence the Components taken by the Respondent Board to work out the scheme cost and expenditure requires revisit in view of the clarification.

58. However, for including the same cost to many sub-stations as per the Complainant's submissions on dated 26/08/2021, the same require to be justified by the Respondents while justifying the rates to be worked out for IDC per kVA.

59. Regarding contention of the Complainant that when the case was filed at the Forum, the IDC demand became disputed but instead of considering the same under disputed amount column in energy bill, the Respondents have included the same in Sundry as recovery and surcharge is being levied per month. This fact has not been acknowledged by the Respondents in their submissions. Even the Complainant was served disconnection notice.

60. As per provisions under Clause 5.7 of Himachal Pradesh Electricity Supply Code 2009, the disputed amount qualifies for the surcharge till paid but as per practice the same is shown in disputed amount column and surcharge is also levied per month till paid but the same is not added under payable amount. Whereas in this case the amount has been shown as sundry and arrears and shown under payable in energy bills issued which is not as per practice being followed. The Respondent Board should have refrained from adding the remaining IDC in Sundry and in payables without revisiting the IDC charges as ordered by the Forum on dated 25/07/2019.

61. Another contention of the Complainant is that the demand for IDC is time barred since the Respondents have not raised any matter pending till 2012 and issued demand on 18/04/2017. The Respondents stated that they had issued the notice in 2014 initially but the Consumers approached various courts and after orders in suo moto case 25/2016 by the Commission, they issued the demand notice on 18/04/2017. Further, the case is under litigation since and hence the demand is not hit by limitation. The plea made by the Respondents make sense and it is considered opinion that the demand is not hit by limitation and the Respondent Board is entitled to recover his dues but the Respondent Board can't disconnect the electricity supply to the Consumer. This is also as per the judgment passed by the Apex Court in Civil Appeal No. 1672 of 2020 titled AE (D1), Ajmer Vidyut Vitran Nigam Limited & Anr Vs Rahamatullah Khan alias Rahamjulla.

62. However, the action by the Respondent Board to disconnect the electricity connection vide notice dated 03/03/2021 is against the provisions under Section 56 (2) of the Electricity Act, 2003 and also against the Apex Court judgement cited above. The

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Respondent Board should have refrained from issuing the disconnection notice in contravention to the provisions under Section 56 (2) of Electricity Act, 2003 as well as the Apex court judgement cited above.

63. The Respondent Board has stated that they have provided the statement of expenditure as ordered by the Forum on 27/01/2020. The statement provided to the Consumer is just expenditure details based on which the per kVA rates have been worked out by the Respondent Board. Further, the revised rates communicated to the Complainant is also based on the statement of expenditure. The statement/ per kVA rates are not in line with the provisions of Regulation 6 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and the Respondent Board require to justify the rates keeping in view the 3% escalation allowed.

64. The Contention of the Complainant that the Respondent Board is selling the capacity again and again since many Consumers have closed their units and the Respondent Board have charged again for the same capacity time and again from new Consumers. The Respondents are silent on this issue but stated that they have charged IDC strictly as per provisions of the Regulations. But the exact nature of repetitive selling of capacity can't be ascertained since no such proof of repetitive selling have been provided by the Complainant and hence the matter requires no further discussions.

65. The Complainant has also contended that he has been issued disconnection notice on 03/03/2021 which is the cause of the present Complaint. Although the Complainant had filed an application for directing Respondent Board not to disconnect his electricity connection, but during hearing the matter never came up for discussions that his premises was under disconnection.

66. Since the original load was committed vide PAC dated 19/10/2005, after issue of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, the contention of the Complainant that he may be charged @ Rs 200/- per kW for initial load of 100 kW is not correct since he has misquoted the PAC date as 19/01/2005 instead of actual 19/10/2005 as per record available in the case. The Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 were notified in April 2005 and the same are applicable in this case.

67. Further his prayer for refund of excess security after reduction of load from 225 kVA to 90 kVA and then to 40 kVA have also not been addressed by the Respondents in their submissions. The excess security kept by the Respondent Board is required to be refunded back to the Complainant in line with provisions under Regulation 8 of Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2005, as amended up to date at simple interest @ 12% per annum after a period of 30 days of such refund due.

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68. The orders passed on 25/07/2019 by the Forum in Complaint No. 1431/2/18/021, dated 03/05/2018 and 1431/4/18/063, dated 05/10/2018 are also not in line with the provisions of the relevant regulations and the issues raised by the Complainant have also not been addressed through speaking orders in line with provisions of Regulation 26 (4) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.

69. The Forum has also not touched the issue of refund of excess security kept by the Respondents in contravention of the provisions of the Regulations after reduction of the Complainant's Contract Demand from 225 kVA to 90 kVA and then 40 kVA.

O – Issues at Hand:

1. **Issue No. 1:** Whether the orders passed by the Consumer Grievance Redressal Forum on 25/07/2019 in Complaint No. 1431/2/18/021, dated 03/05/2018 and 1431/4/18/063, dated 05/10/2018 are in line with the provisions of the relevant provisions of the Regulations?

2. **Issue No. 2:** Whether the IDC is applicable to the Complainant in line with the provisions under Regulation 4 (1) & 6 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 after considering the issues of ARR and Capex raised by the Complainant in its submissions?

3. **Issue No. 3:** If yes to Issue No. 2 above then whether the rates of IDC demanded by the Respondent Board is justifiable in line with the various provisions of the Relevant Regulations?

4. **Issue No. 4:** Whether the excess security deposit retained by the Respondents after reduction of Contract Demand from 225 kVA to 90 kVA then to 40 kVA require to be refunded with interest?

5. **Issue No. 5:** Whether the disputed amount should have been charged as Sundry or not?

P – Findings on the Issues:

Issue No. 1:

1. As is evident from the analysis done above and the facts & evidence on record, the orders passed by the Consumer Grievance Redressal Forum on 25/07/2019 in Complaint No. 1431/2/18/021, dated 03/05/2018 and 1431/4/18/063, dated 05/10/2018 are not in line with the provisions of the relevant provisions of the Regulations.

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2. The Forum has neither addressed the issue raised by the Complainant nor have given speaking orders in line with provisions of the Regulations.

Issue No. 2:

1. As is evident from the analysis done above and facts & evidence on record, the IDC is applicable and required to be paid for by the Complainant in line with provisions 6 (1) of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

Issue No. 3:

1. As is evident from the analysis done above and facts & evidence on record, The IDC rates demanded initially @ Rs 2,875/- per kVA and revised @ Rs 3,302/- per kVA require justification in respect of the treatment given or to be given for Consumer Contributions/ Grants and further to be limited to 3% escalation of original scheme cost in line with the provisions under Regulation 6 of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

2. Further, the scheme cost must be either on the standard cost data published by the Respondent Board in line with provisions of Regulations 13 of the said Regulations or published by the REC/ PFC as directed by the Commission.

3. The rates worked out also require further justification keeping in view the clarification provided by the Commission in Case No. 315/05 at Sr. No. 5 that the Respondent Board can't charge upgradation of upstream sub-station and lines.

Issue No. 4:

1. As is evident from the analysis done above and facts of the case, the excess security retained by the Respondents after reduction of Contract Demand from 225 kVA to 90 kVA in January 2013 onwards and then to 40 kVA is required to be refunded alongwith simple interest @ 12% per annum after a period of 30 days of sanction in line with provisions under Regulation 8 of Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2005 as amended up to date.

2. The Respondents have neither confirmed nor denied regarding excess security deposit retained by them nor have submitted any response in any of their submissions. Apparently, the excess security deposit has been retained by the Respondent Board in contravention to the provisions of the Regulations.

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Issue No. 5:

1. As is evident from the energy bill issued on 13/02/2021, the disputed amount has been shown as arrears and also added in payables, the action by the Respondent Board is not in line with provisions and practice. The same should have been shown in disputed column with surcharge applicable per month and was not to be added in the payables till the revised account of expenditure as ordered by the Forum was not provided to the Complainant.

2. The account of expenditure was never revisited by the Respondent Board after orders of the Forum on dated 25/07/2019.

Q - Order:

1. **The orders passed by the Consumer Grievance Redressal Forum on 25/07/2019 in Complaint No. 1431/2/18/021, dated 03/05/2018 and 1431/4/18/063, dated 05/10/2018 are quashed and set aside.**

2. **The demand notice issued on dated 18/07/2014 and subsequent reminders/ notices for IDC are hereby quashed and set aside.**

3. **The disconnection notice issued by the Respondent Board on 03/03/2021 in contravention to provisions under Section 56 (2) of Electricity Act, 2003 is also quashed and set aside.**

4. **The Respondent Board is entitled to recover the justifiable IDC from the Complainant strictly in line with provisions of Regulation 6 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 for which they can raise the fresh demand after justification of rates as directed below.**

5. **The Respondent Board is directed to justify the rates of IDC to be recovered from the Complainant strictly in line with the provisions of Regulation 6 of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 after taking in to consideration the treatment to be given to Consumer Contributions/ Grants, after verification that the same infrastructure is not charged to other schemes also in line with clarifications provided by the Commission in Case No. 315/05 and further limiting the expenditure to 3% of the original scheme cost. The scheme cost must be either on the standard cost data published by the Respondent Board in line with provisions of Regulations 13 of the said Regulations or published by the REC/ PFC as directed by the Commission.**

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6. The Respondent Board is directed to further justify the rates of IDC worked out in view of clarifications provided by the Commission in Case No. 315/05 at Sr No. 5 that they can charge for upgradation of feeding sub-station and the line only and not the upgradation of upstream sub-station/ line.

7. The Respondent Board is further directed to provide complete account of expenditure to the Complainant strictly in line with the provisions of Regulation 6 (2) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

8. In case, there is refund due to the Complainant after working out the justifiable rates, the Respondent Board is directed to refund the same alongwith applicable interest as per provisions of relevant regulations to be adjusted in the future energy bills in single instalment.

9. The Respondent Board is further directed to treat the disputed amount after submission of the Complainant's case at the Forum including surcharge and not show the same under payable till it is clear that the amount is actually payable or not by the Complainant.

10. The Respondent Board is also directed to refund the excess security deposit retained by them alongwith simple interest @ 12% per annum in line with provisions under Regulation 8 of Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2005 as amended up to date.

11. The Respondent Board is further directed to report compliance of the directions as stated above within a period of 30 days from the date of issue of this order or latest by 24/01/2022 positively failing which the matter shall be reported to the Hon'ble Commission for violation of directions under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for appropriate action by the Commission under the provisions of the Electricity Act, 2003.

12. The Complaint filed by M/S Zenith International, Village Brahman Beli, Tehsil Nalagarh, District Solan, HP-174101 is hereby disposed off.

13. No cost to litigation.

Given under my hand and seal of this office.

23/12/2021

Electricity Ombudsman

H.P. Electricity Ombudsman Khalini, Shimla-2