



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 Him Technoforge Ltd., Village Kishanpura, PO Manpura, Tehsil Nalagarh, District Solan, HP-174102
- Complainant

Vs

- 1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
 - 2. The Assistant Engineer (E), Electrical Sub-Division, HPSEBL, Manpura, Tehsil Nalagarh, District Solan, HP-174102**
 - 3. The Sr Executive Engineer, Electrical Division, HPSEB Ltd, Baddi, District Solan, HP-173205**
 - 4. The Sr Executive Engineer, ES Division, HPSEB Ltd, Nalagarh, District Solan, HP-174101**
- Respondents**

Complaint No. 25/2022 (Registered on 23/12/2022)

(Orders reserved on 27/05/2023, Orders issued on 29/05/2023)

Counsel for:

The Complainant: Sh. Rakesh Bansal, Authorized representative

The Respondents: Sh. Anil K God Advocate, Sh. Kamlesh Saklani Law Officer

CORAM

Er. K. L. Gupta

HP Electricity Ombudsman

Order

The case was received and registered on 23/12/2022. The Respondents were to file their reply by 07/01/2023 and the Complainant was to file his rejoinder by 13/01/2023 and the case was listed for 21/01/2023. The Respondents failed to file their reply and the case was listed for 25/02/2023. The Respondents were to file their reply by 10/02/2023 and the Complainant was to file his rejoinder by 17/02/2023.

The Respondents filed their reply on maintainability issue on 25/02/2023 and the Complainant was to file his rejoinder by 17/03/2023. The case was listed for 25/03/2023. The Complainant filed their rejoinder on 15/03/2023 alongwith written arguments on 25/03/2023. The maintainability issue was decided vide Interim Order dated 25/03/2023. The Respondents were to file their reply on merits of the case by 10/04/2023 and the Complainant was to file his rejoinder by 12/04/2023. The case was listed for 13/04/2023.



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The Respondents failed to file their reply on merits of the case by 10/04/2023. They were given time to file their reply by 27/04/2023 as last opportunity. The Complainant was to file his rejoinder by 04/05/2023 and the case was listed for 06/05/2023. The Respondents again failed to file their reply by 27/04/2023 as last opportunity and the case was listed for 27/05/2023. The Complainant was to file his rejoinder by 25/05/2023. The case was listed for 27/05/2023. The Respondents were to file their reply as final and last opportunity by 20/05/2023 and the Complainant was to file his rejoinder by 25/05/2023.

The Respondents again failed to file their reply even by last date of hearing on 27/05/2023 despite many opportunities given and further prayer to give time to file their reply was declined. Orders were reserved. Hence the delay.

A – Brief facts of the case:

1. M/S Him Technoforge Ltd., Village Kishanpura, PO Manpura, Tehsil Nalagarh, District Solan, HP-174102 have filed a case through Sh. Rajiv Aggarwal (hereinafter referred to as 'The Complainant') under the provisions of Regulation 28 (1) (a) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.
2. Earlier, the Complainant had filed a case at Consumer Grievance Redressal Forum at Kasumpti bearing Complaint No. 1451/2/22/13, dated 22/04/2022. The Complainant had approached this Appellate Forum against the Interim Order passed by the Forum below on dated 22/04/2022 and the case was registered on 27/05/2022 as Complaint No. 09/2022. In the meantime, the Forum below hold a hearing despite directions not to do so on 04/06/2022 and dismissed the Complaint.
3. The orders in Complaint No. 09/2022 were passed on 26/10/2022 wherein the orders passed by the Forum below on 04/06/2022 were quashed and set aside being without jurisdiction besides Interim Order dated 22/04/2022. The case was remitted back to Forum below to decided the case on merits of the case after considering the amount already deposited which was already around 74% of the disputed amount.
4. The case was revived by the Forum below on 29/10/2022 and listed for 14/11/2022. The Respondents didn't file their reply despite opportunities given to them by 30/11/2022 and 20/12/2022. The Complainant then approached this Appellate Forum under the provisions of Regulation 28 (1) (a) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 since the Forum below failed to decide the case within a period of 45 days and the Respondent Board was not even keen to file their reply.



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5. Even at this Appellate Forum, the Respondents first raised the issue of maintainability on 25/02/2023 which was decided on 25/03/2023 and they were given further opportunities to file their reply on merits of the case. Even after hearings on 13/04/2023, 06/05/2023 and lastly on 27/05/2023, they have failed to file their reply on merits of the case. It was announced in the court that since the Respondent Board have failed to file their reply even after ample opportunities, the case shall be decided based on merits of the case and documents on record. Orders were reserved.

B – The Complainant’s submissions:

PROLOGUE/BACKGROUND

1. The Complainant submits that he is a limited Company duly incorporated under the Companies Act and has a factory located under Manpura sub-division for manufacture of forged steel products.
2. The Complainant submits that Complaint No. 1451/02/22/13 was filed on 19/04/2022 before the Consumer Grievances Redressal Forum of HPSEPL challenging the demand towards Infrastructure Development Charges levied by the Respondents. The Respondents vide demand notice dated 12/06/2017 for Infrastructure Development Charges calculated the total leviable amount of IDC to Rs. 1,67,85,000/- as mentioned in Sub-Total (A) of the demand notice on various grounds submitted in the Complaint out of which an amount of Rs. 1,24,38,800/- already stands recovered.
3. The Complainant submits that the Forum issued interim orders dated 22/04/2022, vide which an interim stay was granted subject to a further additional deposit of Rs. 16,15,400/- by 04/05/2022. He being aggrieved by the interim orders dated 22/04/2022 approached the Hon’ble Ombudsman through representation No. 09 of 2022.
4. The Complainant further submits that the Ld. Ombudsman vide his orders dated 26/10/2022 in Case No. 09 of 2022 quashed and set aside the interim orders dated 22/04/2022 and reverted the matter back to CGRF to decide on merits. He also filed an application dated 04/11/2022 and prayed for listing of the reverted case and settlement of his original grievance on merits in Complaint No. 1451/02/22/13.
5. Further, that thereafter, the matter was listed twice i.e. on 30/11/2022 and on 20/12/2022, up to which the Respondents failed to even file the reply to the grievance in question. A period of 56 days have passed since the matter was reverted to the CGRF, but during this period the CGRF has failed to pass orders within the time line of 45 days notified in Regulation 26 (5) of the HPERC (CGRF and Ombudsman) Regulations, 2013 due to non-filing of reply by the Respondents.



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6. The Complainant submits that being aggrieved by delay in disposal of the grievance by the CGRF, he is now approaching the Hon'ble Ombudsman under Regulation 28 (1) (a) vide the present representation.

FACTS OF THE CASE

7. The Complainant submits that a demand notice was issued for Power Availability Certificate (PAC) dated 24/10/2009 for 3000 kW of load at 33 kV supply voltage from 66/33 kV 20 MVA, Akkanwali S/Stn. for manufacture of forged components vide which a sum of Rs. 33,00,000/- was demanded from him. The demand included Rs. 30 lakhs on account of advance cost share towards IDC and Rs. 3.00 lakhs as advance security.
8. The Complainant submits that against the PAC, a load of 3000 kW with 1800 kVA of Contract Demand was sanctioned vide sanction letter dated 26/02/2010 and the load was released subsequently in parts. On 30/03/2010 only 500 kVA was allowed to be used during day time and 1000 kVA was allowed during night. Thereafter the demand was allowed up to 1500 kVA. Further, that a notice was issued demanding IDC @ Rs. 3,445 per kVA on 1800 kVA and a sum of Rs. 32,01,000/- was demanded as Rs 30 lakhs were already deposited as advance cost share. The amount of Rs. 32,01,000/- was deposited vide Rect. No. 0115719 dated 08/08/2011 after which the sanctioned demand of 1800 kVA was fully released. On 17/02/2012 another demand letter was received asking him to deposit additional Rs. 65.13 lakhs for increase of Contract Demand from 1800 kVA to 3000 kVA, this time taking the rate of Rs. 7,063 per kVA. He deposited a further sum of Rs. 42,37,800/- towards IDC as per demands raised by the Respondents.
9. The Complainant submits that he applied for PAC for additional 1500 kW on 21/04/2012 and a demand of Rs. 15 lakhs was again made by the Respondents as advance cost share towards IDC. On 02/07/2012 PAC was issued for additional demand.
10. The Complainant has in all deposited the following amounts at various stages:

Date	R. No.	Amount
14/12/09	0232439	30,00,000/-
08/08/11	0115719	32,01,000/-
01/03/12	0087436	42,37,800/-
23/05/12	0263998	15,00,000/-
05/12/17	-----	5,00,000/-
Total		1,24,38,800/-

11. The Complainant submits that a circular HPSEB/ CE (Comm.)/Misc-IDC/2012- 16509-574 was issued by the Chief Engineer (Comm.) on 07/12/2012 directing the field offices of the Respondents to recover the Infrastructure Development Charges in respect of 34



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substations annexed with the circular as per rates specified in Annexure 1 to the Circular. While it was also mentioned in the circular that the per kVA rates were worked out and submitted to the Himachal Pradesh Electricity Regulatory Commission and that the Commission has also concurred to the per kVA rates in Annexure 1 of the circular.

12. Further, that during the course of hearings in a petition filed by the industries association in the year 2015, the Commission denied any concurrence on the per kVA rates notified by the Respondents and as a result, an amendment to the circular was notified by the Chief Engineer (Comm.) on 16/10/2015 retrospectively. The circular was amended and the Respondents assured the Commission that the said demands towards IDC shall be made in conformity with the statutory provisions i.e. the provisions of the Act and regulations framed thereunder.
13. The Complainant submits that in suo-moto petition No. 25 of 2016, the Himachal Pradesh Electricity Regulatory Commission issued a clarificatory order, clarifying the mechanism for adjustment of advance cost share recovered paras 3.2.2 to 3.2.5 of the Supply Code, 2009. The Commission vide this order nowhere ordered any change/ amendment in the HPERC (Recovery of expenditure for Supply of Electricity) Regulations, 2005, but only clarified that the advance cost share as per paras 3.2.2 to 3.2.5 will have to be adjusted against the liability of the Consumer under the HPERC (Recovery of expenditure for Supply of Electricity) Regulations, 2005. In the nut shell, the HPERC (Recovery of expenditure for Supply of Electricity) Regulations, 2005 prevailed in its original form and the position was not altered as such by the orders in suo moto petition 25 of 2016.
14. The Complainant submits that the Respondent No. 3, after the clarificatory order passed by the Commission, issued a demand notice dated 12/06/2017 calculating the IDC liability of the Complainant to Rs. 1,67,85,000/- calculated at the rate of Rs. 5,595.00 per kVA on 3,000 kVA. The Respondent No. 3 demanded a sum of Rs. 48,46,200/- after adjusting the advance cost share of Rs. 1,19,38,800/- lakhs already paid by him in parts earlier up to the date of issuance of notice.
15. The Complainant submits that he challenged the recovery of IDC and also the demand notice dated 12/06/2017 for Rs. 1,67,85,000/- before the Hon'ble High Court of Himachal Pradesh vide CWP No. 2530 of 2017. The Hon'ble High Court disposed the petition on the issue of maintainability as alternate appropriate remedy was available under the Electricity Act, 2003. The said petition was dismissed as withdrawn with liberty to avail the appropriate remedy before the competent Forum while waiving the period of litigation before the High Court for the purpose of limitation. As the CGRF is the competent Forum to redress the electricity disputes under the Electricity Act, 2003, the Complainant is preferring this Complaint before the Hon'ble Forum.



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16. The Complainant submits that after the issuance of the impugned demand notice dated 12/06/2017, he also paid amount of Rs. 5.00 lakhs on the directions issued by Hon'ble High Court of Himachal Pradesh while passing interim orders in the petition. Further, that he then approached the CGRF and the Ld Ombudsman in the chronology already described in Prologue of the representation.

CONTENTION OF THE APPELLANT/ COMPLAINANT

17. **The impugned demand notice is in contravention of Regulation 4 of the HPERC (Recovery of expenditure for Supply of Electricity) Regulations, 2005:** The Complainant submits that he is an HT Consumer with a supply voltage of 33 kV. Regulation 4 of the HPERC (Recovery of expenditure for Supply of Electricity) Regulations, 2005 deals with recovery of expenditure and defines what costs are to be recovered from the Consumers/ applicants. The text of the Regulation 4 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 extending supply to the applicant, the distribution licensee shall estimate and recover the cost of such section of HT line on per kilometre basis.***



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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,;

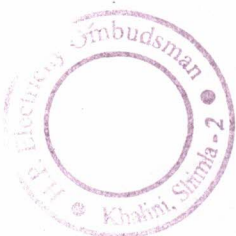
the licensee shall estimate and/or recover the cost in the like manner, including the actual cost already incurred, with compound interest at the rate of 8% per annum on pro rata basis and the credit of the depreciated cost of old/existing electric plant rendered surplus on account of augmentation shall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

18. The Complainant submits that in his case, the system at the sub-station was already existing when the PAC was issued to him. There was in fact, no need to augment or install a new transformer at the Akkanwali Sub-station. The 66/33 kV transformers at Nalagarh Sub-station were commissioned in October and November 2007, whereas the first step towards application for load of 3000 kW was taken in the year 2009. No new transformers were thereafter added in order to supply to him. In order to provide supply to the him, only the 33 kV line was to be extended from the existing system in the vicinity of the his premises. As per Regulation 4 (1) (a), he was responsible to bear the cost of such extended 33 kV line for providing the supply to him. Further, that he separately paid the cost of the 33 kV dedicated line as per estimate raised by the Respondents, which does not form the part of the impugned demand notice and is not a matter under the present dispute.

19. The Complainant submits that the demand raised vide the impugned demand notice deserves to be quashed and set aside as it includes the costs to be recovered from the Consumers on which the Regulation 4 (1) (b) and 4 (1) (c) are applicable. Since, these regulations are not applicable in his case, the impugned demand notice is incorrect and deserves to be quashed and set aside.

20. **The Respondents have acted in contravention of the Regulation 6 of the HPERC (Recovery of expenditure for Supply of Electricity) Regulations, 2005.** The text of the regulation 6 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 deducting the amount payable by the applicant under



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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 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) 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

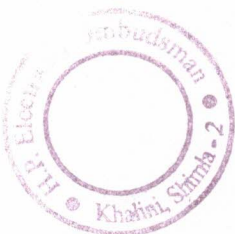
(b) exceeds the initial estimated cost by more than 3%, the applicant shall pay the difference between the initial estimated cost and the actual expenditure to the extent of 3% only and any amount in excess of 3% shall be borne by the licensee.

(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



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declines to take the supply, total amount of estimate shall be refunded by the licensee to the applicant within thirty days."

21. Further, that Regulation 6 in the nut shell allows for expenditure on infrastructure development to carried out in two ways:

- i) either through the investment plan (CAPEX) or alternatively,
- ii) or through recovery from the applicants

22. TTC submits that the capital investments for general growth of the business of the Respondents is generally allowed through capital expenditure, which forms the part of Capital Expenditure Plan or Investment Plan, and the same is approved by the Himachal Pradesh Electricity Regulatory Commission. The assets created under the investment plan form the part of Fixed Assets Register (FAR) of the utility once they are capitalized and the utility recovers the capital expenditure gradually by claiming depreciation which is spread over a period of time. This depreciation is included in the Annual Revenue Requirement (ARR) approved by the Commission on yearly basis. In case, loans are raised to fund the scheme, the interest on these loans as well as operation and maintenance cost also is included in the ARR and passed through to the Consumers through tariff. Based on the ARR, the tariff is calculated and approved by the Commission. The tariff and the per unit cost approved by the Commission includes the component of depreciation, interest, operation and maintenance costs. The **balance cost** of such infrastructure is carried forward from year to year in continuity till the book value of the asset is reduced to NIL or negligible. Thus, the licensee stands compensated for the investment through tariff route for the investment carried out through the route of investment plan. Ultimately, the cost incurred on infrastructure involving generation, transmission and distribution gets passed on to the Consumers through tariff. It is because of this that the words '*balance cost*' and '*investment plan*' have been used in the Regulation 6 above. While the Regulations, 3,4, and 5 only illustrates the specific circumstances and they define what is to be recovered in different scenarios.

23. Further, that the question of recovery of infrastructure cost from a Consumer arises only in specific circumstances and only if any infrastructure is to be created for his needs and when the licensee has no plans for such investment, maybe because the application for load might be for and isolated area, where the system is not existing. On the applicant's specific demand and such cost is allowed by the regulations 3, 4, 5, and 6, meaning thereby that the recovery is allowed for the dedicated infrastructure only. Had the regulation intended to recover as IDC the entire cost, whether existing or what was to be created, there would have been no need to sub-classify regulations 3 (1), 4 (1) and 5 (1).



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24. Further, that the Respondents have grossly mis-interpreted the provisions of these regulations and have simply tried to recover the actual cost on infrastructure schemes from the Consumers, which already stand covered as a part of the investment plans and irrespective of the fact whether the infrastructure was existing at the time of application or not. The Respondents are not entitled to recover the cost of the infrastructure both through the tariff route as well as from the individual Consumers on the actual cost basis.
25. The Complainant submits that therefore, the demand notice for IDC deserves to be quashed as the same is amounting to recovery of infrastructure cost twice and is resulting in undue enrichment of the utility at the cost of the Consumers, which is not permitted by the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.
26. **The demand notice issued by the Respondents is not in conformity with the orders of the Commission in Petition No. 315/05, which is relevant in the present case.** The Complainant submits that a clarification petition was filed by the Respondent Board before the Hon'ble Commission in the form of petition No. 315/05. Specific regulation wise queries were put up to the Commission with respect to extent and up to what level the IDC can be recovered. The Hon'ble Commission vide its orders dated 31/10/2005, clarified the issues to a large extent. But the rate of Rs. 5,595/ kVA has not been calculated keeping in mind the clarification issued in the said order. The clarification was never challenged and stands accepted and has obtained finality even before the issuance of the circular HPSEB/ CE (Comm.)/Misc-IDC/2012- 16509-574 dated 07/12/2012. **The Respondents have included the cost of several 66 kV lines which are upstream of the Akkanwali sub-station, the cost of which was to be excluded as per the clarification issued by the HPERC.**
27. The Complainant submits that his case falls under the regulation 4 (1) (a) as already explained in foregoing paras. On perusal of Sr. No. 6 of the table in the orders in 315/05 it is written that the interpretation of the licensee is correct. The interpretation of the licensee is described as *"To be dealt with as per interpretation of 3(1)(a) above."*
- 3(1)(a) is dealt at Sr. No.1 of the order where the licensee's own interpretation is
- "In case capacity is available at the existing transformer and only laying of service line is required, only the cost of service line as well as terminal equipment is to be charged from the Consumers excluding the cost of metering arrangements."***
28. The response of the Commission to this interpretation is stated as

"The interpretation of the licensee is correct except that the cost of meter including CT, PT and not the metering arrangement shall be excluded."

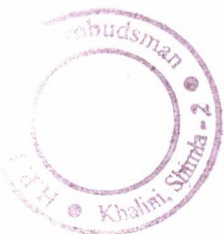


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29. On one hand the Respondents have submitted their interpretation to the Commission, which is in line with his contention, whereas on the other hand the Respondent has erred and issued the impugned demand notice which is opposite of the interpretation given to the Commission and which is quoted in the said order. **The mere perusal of this order clearly establishes that the Respondents were only entitled to recover the cost of service line, which they have already recovered separately.** When he approached the Respondents for the power supply in the year 2009, there was already sufficient **spare capacity** available in the existing transformers, which were commissioned in the years 2007. Therefore, the demand notice issued by the Respondents lacks merit and deserves to be struck off and quashed in totality.
30. **Gross irregularities in the calculation of cost recoverable from the Complainant:** The Complainant submits that even if, for the sake of argument it is believed and opined that the recovery of expenditure on infrastructure is allowed to be recovered separately and individually from the Consumers, and if the Hon'ble Forum holds the contentions in Para 8.3.1 to 8.3.3 are not maintainable, **there are numerous blatant irregularities in the calculation of the rate of Rs. 5,595/ kVA.** The Respondents have issued a demand notice which is not in conformity with the various provisions of the regulations and a sum of Rs. 1,67,85,000/- has been calculated as recoverable from him. The demand of Rs. 1,67,85,000/- has been calculated on 3,000 kVA @ Rs. 5,595/- per kVA, the rate of which has been derived from the Annexure to the Circular HPSEB/ CE (Comm.)/Misc-IDC/2012-16509-574 dated 07/12/2012 at Serial No. 33 of the Table. Further, that as already submitted in the foregoing paras that the said circular has been amended to the effect that the rates notified vide this circular were never approved/ concurred by the Commission, it is evident the rates have been worked out by the Respondents themselves. Hence, it is also important to examine whether the components included in the cost of Rs. 22.38 Crores taken as basis to calculate a rate of Rs. 5,595/- per kVA are permissible under the regulations and to what extent. Even the scheme cost of Rs. 16.03 Cr was grossly exceeded by the Respondents.
31. The Complainant submits that his supply was given from the 66/33 kV transformer at Akkanwali Substation, which receives supplies from various 66 kV lines connected to the transmission system to the grid. 66 kV bus is used to transfer power in both directions from one point to the other. Akkanwali Sub-station gets is connected to various 66 kV lines, which form input supply to the Sub-stations, some of which known to the Complainant are as below:
- 1) 66 kV line for 66/33 baddi to Akkanwali portion Ckt-1 and then Akkanwali to Nalagarh Ckt-1;
 - 2) 66 kV line from Baddi to Nalagarh Ckt -2



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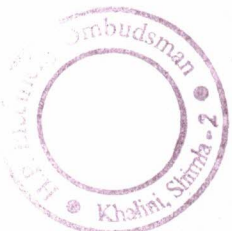


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32. The Complainant submits that the 66 kV lines from Baddi to Nalagarh can be used in two ways, either to Supply to Baddi from Nalagarh or to Supply Nalagarh from Baddi. These are general purpose lines which cannot be specifically earmarked to the supply of the Complainant. The cost of these upstream lines is not payable by the Complainant in any case.
33. Further, that everywhere in the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, the word "*distribution licensee*" is mentioned. Even in the 3, 4, 5 and 6 the words, "*distribution licensee*" has been used again and again. This clearly establishes that the said regulation is applicable to the distribution business of the licensee. In the state of H.P. the Respondents have licenses for generation, transmission and distribution and the all these functions together. This does not entitle them to recover the cost of transmission assets from the Consumers in general.
34. The Complainant 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. Further, that the account of expenditure provided by the Respondent only contains the transmission infrastructure, but none on account of distribution infrastructure. The distribution system in the present case starts from the sub-station at Akkanwali.

*"(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 up to 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;"*

35. The rate of Rs. 5,595/- per kVA includes the component which are not the parts of transmission system and hence not recoverable from him. The impugned demand notice, therefore deserves to be quashed.
36. Further, that the Respondents have not complied with provisions of regulation 6 (2), which mandates that the account of expenditure giving item-wise details has to be provided to the Applicant/ Consumer within three months after the release of connection. The Respondents have failed to give the account of expenditure to him and have straight away issued the demand notice which only mentions the name and cost of the scheme and is devoid of the item-wise detail as is required. The Respondents have also failed to provide



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the detail of account within the period of three months, whereas the impugned demand notice has been issued after a lapse of 7-8 years.

37. The Complainant submits that it has been laid down in Para (b) of the Provision to the regulation 6 (2) that an upward variation of only up to 3% is allowed on the estimated cost and the balance has to be borne by the licensee. On perusal of Sr. No 32 of the Circular HPSEB/ CE (Comm.)/Misc-IDC/2012- 16509-574 dated 07/12/2012, it is observed that the against the estimated cost of the scheme which was Rs. 16.03 Crores, the Respondents have incurred Rs. 22.38 Crores, which has exceeded by much more than 3% that is allowed. Therefore, the rate should have been calculated considering the cost as Rs. 16.03 Crores + 3%. Merely on this count the cost works out to Rs. 4,127 per kVA. However, further deduction on account of cost of upstream lines as stated in 3.4.1 has to be taken into account and the rate will fall further.
38. Further, that Regulation 6 (3) also provides to exclude such expenditure from the recovery, which has been met by grant or subvention from the Central/ State Government or any other agency. This provision has been ignored while notifying the rates in the dated 07/12/2012 issued by the Respondents.
39. Further, that Regulation 13 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 reads as follows:
- "13. Standard cost data.- (1) The distribution licensee shall, after previous publication, submit on an annual basis submit to the Commission by 15th March of each year a cost data (including departmental charges) book for approval and publish the approved cost data book by 15th April of the next financial year, which shall be the basis of making the initial estimate for erection of electric line and/or any other works and/or electrical plant in order to provide supply to the applicant:"***
40. The Complainant submits that the Respondents have failed to mention as to which cost data has been taken while preparing the estimate. Also, the regulation 4 (1) (a) states that the recovery has to be made as per approved and published standard cost data. In the absence of the standard cost data the Regulation 13 was to be applied.
41. Further, that the demand notice raised by the Respondents is time barred and is hit by limitation under as below:
- i) the demand notice, if any, should have been raised within a period of three months from the release of connection as per Regulation 6(3) of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005;



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ii) the impugned demand notice is hit by the limitation period of three years provided under the Limitations Act, 1963. Hence the demand notice deserves to be quashed.

iii) the impugned demand notice is hit by the Limitation period of two years under section 56(2) of the Electricity Act, 2003.

42. Prayer: The Complainant thus prays **a)** to quash the orders demand notice dated 12/06/2017 for IDC for an amount of 1,67,85,000/- issued by the Respondents in view of the contentions submitted above; **b)** to direct the Respondents to refund the amount of Rs. 1,24,38,800/- recovered by the Respondents which are contrary to the provisions of the regulations. **c)** to order payment of simple interest @ 15% per annum as per Regulation 26 (6) of the HPERC (CGRF and Ombudsman) Regulations, 2013 or as per Clause 5.7.3 of the Supply Code, 2009 on the amounts recovered in excess or interest as per relevant clause in the regulations; **d)** cost of the Complaint amounting to ₹ 2,00,000/-; **e)** call for the record of the case; **f)** any other or further orders which this Hon'ble Forum 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.

C – The Respondents' submissions:

1. The short reply was filed by the Respondents on 25/02/2023 on maintainability of the issue which stands decided already vide Interim Order dated 25/03/2023 in the Complainant's favour.
2. The Respondents have not filed any reply on merits of the case despite opportunities given to them vide Interim Order dated 25/03/2023, 13/04/2023 and 06/05/2023. They even didn't file their reply on merits of the case on last date of hearing on 27/05/2023.
3. The Representative for the Complainant also informed that internally they have decided not to file any reply in the case and challenge the earlier orders passed in this case and 09/2022 at HP High Court. Since, the Respondents are not keen to file their reply and were only delaying the adjudication by seeking another extension in time to file the reply, the prayer was declined and orders were reserved.

D – The Complainant's additional submission through rejoinder:

1. The rejoinder filed by the Complainant on short reply on maintainability issue have since been addressed to vide Interim Order dated 25/03/2023, there is no need to go through the same again.



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E – The written arguments by the Complainant:

1. The written arguments filed by the Complainant on the short reply on maintainability issue was submitted on 25/03/2023. Since the decisions on maintainability have been conveyed vide Interim Order dated 25/03/2023, there is no need to reproduce the same again.

F – CGRF Order:

1. Since in Complaint No. 1451/2/22/13, the Consumer Grievance Redressal Forum at Kasumpti failed to decide the matter within a period of 45 days as per provisions of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, the Complainant filed the present application under the provisions of Regulation 28 (1) (a) of the said Regulations, no such orders have been passed by the Forum below within the specified period.
2. Further, since the case was remitted back to the Forum below on 26/10/2022 in Complaint No. 09/2022 for decision on merits of the case, the final orders passed by the Forum below on 04/06/2022 earlier were quashed and set aside being without jurisdiction, there is no need to reproduce the same here again.

G – Analysis of the Complaint:

1. The case file bearing Complaint No. 1451/2/22/13 dated 22/04/2022 have been requisitioned and gone through. Earlier case file 09/2022 at this Appellate Forum have also been gone through.
2. The documents on record and arguments made by both the parties have also been gone through.
3. The submissions made by both the parties have also been reproduced to the extent required above for the sake of bird eye view of the case.
4. PAC was issued to the Complainant for 3000 kW Connected Load at 33 kV Supply Voltage from 66/33 kV Akkanwali sub-station for which a sum of Rs 30,00,000/- @ Rs 1,000/- per kVA were demanded and also deposited by the Complainant on 14/12/2009. Further, load was sanctioned on 26/02/2010 for 3000 kW Connected Load and 1800 kVA Contract Demand. Load was released in parts to the Complainant.
5. Initially only 500 kVA during day time and 1000 kVA during night time was allowed and subsequently up to 1500 kVA was allowed. First demand towards IDC was raised @ Rs 3,445/- per kVA on 1800 kVA for additional amount of Rs 32,01,000/- which was deposited on 08/08/2011.

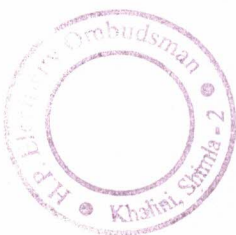


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6. On increase in demand from 1800 kVA to 3000 kVA, Rs 65,13,000/- were again demanded @ Rs 7,063/- per kVA for same sub-station against which the Complainant deposited Rs 42,37,800/- towards IDC on 01/03/2012. On request to increase in Connected Load of 1500 kW on 21/04/2012, Rs 15,00,000/- was again demanded as IDC on 02/07/2012 which were deposited by the Complainant on 23/05/2012.
7. The Respondent No. 3, against total demand of Rs 1,67,85,000/- as total IDC @ Rs 5,595/- per kVA on 3000 kVA, demanded Rs 48,46,200/- after adjusting Rs 1,19,38,800/- deposited by the Complainant earlier through demand notice dated 12/06/2017. The demand was raised after clarificatory orders by the Hon'ble Commission in suo moto petition 25/2016.
8. The Complainant challenged the demand notice dated 12/06/2017 in the HP High Court vide CWP 2530/2017 which was dismissed as withdrawn with liberty to avail appropriate remedy before competent Forum. Additionally, on direction of the Hon'ble HP High Court, the Complainant deposited Rs 5,00,000/- on 05/12/2017 making total deposit against IDC as Rs 1,24,38,800/-.
9. The Complainant then approached the Consumer Grievance Redressal Forum at Kasumpti vide Complaint No. 1451/02/22/13, dated 22/04/2022 against the demand notice dated 12/06/2017 for balance Rs 48,46,200/- and disputed the entire amount on various grounds. But the Forum below directed to deposit 1/3rd of the balance amount demanded by the Respondents ignoring the amount already deposited which was equivalent to 74% of the total disputed amount.
10. The Complainant then approached this Appellate Forum to get relief of unjust demand made by the Forum below vide Interim Order dated 22/04/2022 and the case was registered as Complaint No. 09/2022. The Complaint was remitted back on 26/10/2022 after hearing both parties wherein the Forum below was directed to consider 74% amount already deposited by the Complainant towards IDC and to decide the matter on merits of the case.
11. The Consumer Grievance Redressal Forum at Kasumpti listed the matter for hearing on dated 29/10/2022 for 14/11/2022 and then for 30/11/2022, 20/12/2022 and finally on 09/01/2023. The Respondent Board didn't file their reply till 20/12/2022 and feeling aggrieved of non-submission of reply by the Respondents and non-disposal of the case within a period of 45 days as per provisions of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, the Complainant filed present appeal under the provisions of Regulation 28 (1) (a) of the said Regulations.



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12. The Respondents only filed reply on maintainability of the case on 25/02/2023 on second hearing of the case and the Complainant also filed his rejoinder for same alongwith written arguments. The maintainability issue was decided vide Interim Order dated 25/03/2023 and the Respondents were directed to file their reply on merits of the case. They failed to file their reply despite directions/ various opportunities even on the last date of hearing i.e. on 27/05/2023. They were given last opportunity to file their reply on merits of the case vide Interim Orders dated 13/04/2023 and again on 06/05/2023. Orders were reserved on 27/05/2023.
13. Now let us examine the contention of the Complainant. The contention of the Complainant is that the Respondent Board, while calculating the per kVA rates notified vide circular dated 07/12/2012 have not followed the norms specified in Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 which is applicable in the present case. The said Regulations restricts the escalation to 3% of the original scheme cost. His further contention is that the rates notified by circular dated 07/12/2012 were never approved/ concurred by the Hon'ble Commission. Further, it is not clear whether the scheme cost of 22.38 Cr based on which the rates have been worked out is permissible under the Regulations and to what extent.
14. The Complainant have further contended that the Respondent Board have not adhered to the clarification provided by the Hon'ble Commission in petition No. 315/05 wherein it was clarified that the Respondent Board can charge for upgradation of the feeding sub-station and the line only and not the upgradation of the upstream line/ sub-station. Further, that the Respondent Board have included various lines which is not permissible as per clarification provided in petition No. 315/05 by the Commission.
15. 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.
16. The Complainant's contention is that the additional capacity at the sub-station was commissioned long back in 2007 and the Respondent Board have already capitalized the same and taken in FARs claiming depreciation in ARR also. Further, that the Distribution Licensee stands compensated for the investment through tariff.
17. His further contention is that as per provisions of Regulation 6 (2) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, the Respondent Board was to provide account of expenditure within a



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period of three months after release of connection and the Respondent Board have not provided the same till date.

18. Further, that the original scheme cost was Rs 16.03 Cr and the Respondents have incurred Rs 22.38 Cr based on which the rates have been worked out. Further, that only 3% escalation is allowed as per provisions of the Regulation 6 (2) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 wherein the rates could be much lower per kVA and further reduction will be there if the upstream lines are restricted as per clarification provided by the Commission.
19. His further contention is that the Respondent Board have not followed the standard cost data which is required to be published and also to be submitted to the Commission on 15th of March each year.
20. 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 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.
21. This case is similar to the Case No. 05/2021 titled M/S Zenith International Vs HPSEB Ltd & others, Case No. 41/2020 titled M/S Krishna Plastic Industries Vs HPSEB Ltd & others and Case No. 13/2022 titled M/S Timco Steel Company Vs HPSEB Ltd & others orders on which have already been passed by this Appellate Forum and apparently, all the orders have not been assailed by the Respondent Board in any court of law and have taken finality.
22. The 66/33 kV Transformers were commissioned in October and November 2007. 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.
23. Now let us examine other issues/ facts. The rates were notified by the Chief Engineer (Commercial) on 07/12/2012. The Chief Engineer (Commercial) in its written statement dated 25/06/2021 (Received on 26/06/2021) had stated 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, that Consumer Contributions have not been considered for calculation of IDC rates.
24. 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,



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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 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;

25. 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 deducting 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.

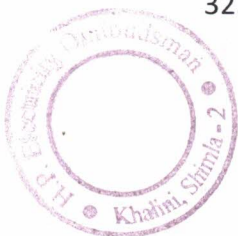
26. The provisions say that after deducting the amount payable by the applicant under sub-regulation (1) of Regulation 4, the balance cost of the electric plant or electrical line shall be either invested by the Licensee or paid by the applicant and where the Licensee's investment does not permit this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



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27. The capex/ Investment issue has already been deliberated in the orders passed in Case No. 05/21 as well as in Case No. 41/2020 during analysis of the Complaints and there is no need to repeat the same. However, in nutshell 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 depreciation on year to year basis as per approved principal of the Commission in the ARR.
28. 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. 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.
29. 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.
30. 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.
31. 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.
32. Now let us examine the Orders/ clarifications issued 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,



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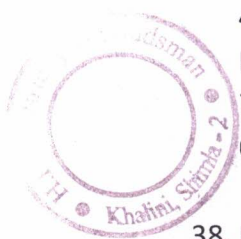


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specially keeping in view the admitted fact that the Respondent Board is entitled to recover the IDC in terms of Regulations 2005.

33. 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).
34. 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.
35. 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.
36. Now let us examine the rates at which the initial demand was made by the Respondent Board. The initial demand was @ Rs 3,445/- per kVA for 20 MVA 66/33 kV sub-station at Akkanwali for 1800 kVA demand amounting to Rs 32,01,000/- after initially taking Rs 33,00,000/- @ notional Rs 1,000/- per kVA.
37. Thereafter, for additional demand from 1800 kVA to 3000 kVA, the demand raised was raised @ Rs 7,063/- per kVA for Rs 65,13,000/- for which the Complainant deposited Rs 42,37,800/-. Final demand was made @ Rs 5,595/- per kVA as per rates notified by the Chief Engineer (Commercial) on 07/12/2012. The rates earlier demanded for Rs 3,445/- and Rs 7,063/- per kVA are not as per rates notified by Chief Engineer (Commercial) on 07/12/2012.
38. Now the rates calculated by the Chief Engineer (Commercial) vide circular dated 07/12/2012 have been worked out at Rs 5,595 per kVA for 66/33/11 kV 2x20 MVA Akkanwali sub-station. The expenditure has been taken as Rs 22.38 Cr whereas the original



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scheme cost has been mentioned as Rs 16.03 Cr. There is a variation of Rs 6.27 Cr which is around 39.11 % of the original cost. The Respondents could have charged only for max 3% escalation up to 16.51 Cr wherein they have calculated the rates for Rs 22.38 Cr. 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 escalation of 39.11 %. The capacity for which the IDC have been worked out is 40,000 kVA.

39. 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.

40. 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;

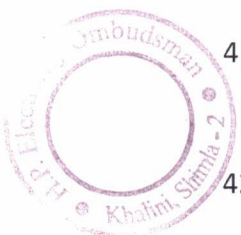
(a) (a) is less than the initial estimated cost by more than 3% the licensee shall refund the excess amount, within 30 days from the date of submission of the account, or

(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.

41. It is also not clear that whether the rates notified by the Chief Engineer (Commercial) is based on the rates published by them or by REC/ PFC?

42. The stand taken by the Respondent Board in this Appellate Forum have also changed from time to time in different cases of IDC matter.

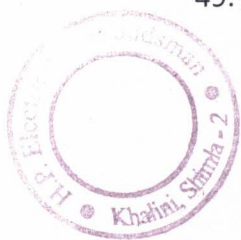


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43. Now let us again examine the submissions/ Prayers made by the Complainant at this court. They had prayed to quash the demand dated 12/06/2017 for Rs 1,67,85,000/- and even prayed that they are not liable to pay the IDC even from the 66/33/11 kV sub-station at Akkanwali and sought to quash the demand note dated 12/06/2017 and refund the amount of Rs 1,24,38,800/- already deposited by them. They have again raised the same issues which were raised by them before the Forum.
44. 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.
45. Further, the contention of the Complainant regarding recovery of expenditure through ARR/ Capex approved by the Commission have also been addressed in sub-paras and also the clarifications/ orders given by the Commission have been discussed in sub-paras in this section above.
46. The rates demanded by the Respondent Board from the Complainant for original load @ Rs 5,595/- per kVA as notified by the Chief Engineer (Commercial) on 07/12/2012 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.
47. The Complainant has contended that the Respondents have included the cost of multiple lines for working out the rates. 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.
48. However, the Respondent Board is also required to clarify that the same cost has not been included in many adjoining sub-stations while justifying the rates to be worked out for IDC per kVA.
49. Another contention of the Complainant is that the demand for IDC is time barred since the Respondents have not raised any matter pending and issued demand on 12/06/2017. It is understood that after the rates were notified by the Chief Engineer (Commercial), most of the Consumers approached various courts and after orders in suo moto case 25/2016 by the Commission, Respondent Board issued the final demand notice on 12/06/2017. Further, the case is under litigation since and hence the demand is not hit by limitation.



Accepted
24/05/2013



50. Since the Respondent Board have not filed any reply, it is not clear whether they have provided the statement of expenditure to the Complainant or not. The Complainant had denied of having received any such statement. The Respondent Board was required to provide state of expenditure to the Complainant 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 is also required to justify the rates keeping in view the 3% escalation allowed.
51. Since the Forum below had not decided the case within a period of 45 days as per provisions of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, the Complainant had approached under the provisions of Regulation 28 (1) (a) of said Regulations to decide the case on merits of the case.
52. As is evident from the proceedings of the case as well as at the Forum below, it is quite apparent that the Respondent Board was not keen to file any reply and deliberately delayed the adjudication process both at this Appellate Forum and also at Forum below. The Respondents after seeking time initially to file the reply, filed short reply on maintainability which was also decided vide Interim Order dated 25/03/2023 and the was as was announced in the open court that the Complaint is maintainable.

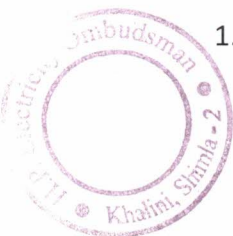
H – Issues at Hand

1. **Issue No. 1:** 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?
2. **Issue No. 2:** If yes to Issue No. 2 above then whether the rates of IDC demanded by the Respondent Board through final demand dated 12/06/2017 for Rs 1,67,85,000/- @ Rs 5,595/- per kVA, rates notified by the Chief Engineer (Commercial) on dated 07/12/2012, is justifiable in line with the various provisions of the Relevant Regulations?

P – Findings on the Issues:

Issue No. 1:

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



Leapt
24/05/2023



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the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

Issue No. 2:

1. As is evident from the analysis done above and facts & evidence on record, The IDC rates demanded @ Rs 5,595/- per kVA as per rates notified by the Chief Engineer (Commercial) on dated 07/12/2012 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.

Q - Order:

1. The demand notice issued on dated 12/06/2017 for balance Rs 48,46,200/- @ Rs 5,595/- per kVA for entire load 3000 kVA (Rs 1,67,85,000/- (-) Rs 1,19,38,800/- deposited by the Complainant before petition at HP High Court) and subsequent reminders/ notices, if any for IDC are hereby quashed and set aside.
2. 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.
3. 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



Accepted
22/05/2013

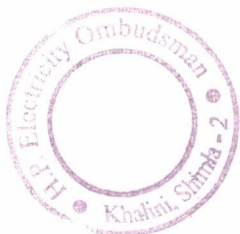


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in line with provisions of Regulations 13 of the said Regulations or published by the REC/ PFC as directed by the Commission.

4. 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.
5. 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.
6. 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 after considering the already deposited amount of Rs 1,24,38,800/- (Rs 1,19,38,800/- (+) Rs 5,00,000/- deposited on direction of the HP High Court).
7. 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 28/06/2023 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.
8. The Complaint filed by M/S Him Technoforge Ltd., Village Kishanpura, PO Manpura, Tehsil Nalagarh, District Solan, HP-174102 is hereby disposed off.
9. No cost to litigation.

Given under my hand and seal of this office.



[Signature]
Electricity Ombudsman