HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

Suo-Moto Case No.: 25 /2016

In the matter of:
Mechanism for the Adjustment of Advance Cost Share towards Infrastructural Development Charges (IDC), paid under paragraphs 3.2.2 and 3.2.5 of the Himachal Pradesh Electricity Supply Code, 2009.

CORAM
S.K.B.S NEGI
CHAIRMAN

Order

The Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as "the Commission") notified the Himachal Pradesh Electricity Supply Code, 2009, published in the Rajpatra, Himachal Pradesh, dated 29th May, 2009 (hereinafter referred "the Supply Code, 2009");

2. Para-3.2.2 of the Supply Code, 2009 provides that the consumer shall apply for the grant of Power Availability Certificate (PAC), on payment of Advance Cost Share towards Infrastructural Development Charges (IDC), calculated @ Rs. 1,000 per kVA of the Contract Demand applied for.

3. The Himachal Pradesh State Electricity Board Limited (HPSEBL), vide their letter dated 08.04.2011 sought clarification regarding mechanism for the adjustment of Advance Cost Share towards Infrastructural Development Charges (IDC), paid by consumer(s) as per para-3.2.2, read with para-3.2.5, of the Supply Code, 2009, stating that there is no specific provision for adjustment/recovery of the Infrastructural Development Charges (IDC) under the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 (hereinafter referred as "the Recovery of Expenditure Regulations, 2005"), then in force.

4. The Commission issued detailed clarification on the subject matter vide its Order dated 02.05.2011.

5. Subsequent to the issuance of the said clarificatory Order, the Recovery of Expenditure Regulations, 2005 were replaced by the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 (hereinafter referred as "the Recovery of Expenditure Regulations, 2012").

6. The Commission's clarificatory order dated 02.05.2011 has been set aside by the Hon'ble APTEL, vide its judgment dated 18th December, 2015, rendered in Appeal Nos. 188 of 2014, 189 of 2014, 190 of 2014, 191 of 2014, 192 of 2014, 194 of 2014 and 195 of 2014 with the direction to the Commission to issue notices to the Appellants and other industrial consumers in the State of Himachal Pradesh and also to issue public notice, seeking their objections or comments and, thereafter, giving reasonable opportunity of being heard to such consumers, including the Appellants and to pass the Order afresh.

7. In compliance to the Order dated 18.12.2015, passed by the Hon'ble APTEL, the Commission vide letter dated 05.04.2016 asked the HPSEBL to submit a formal self contained reference, clearly indicating the background and the point(s) on which clarification is sought alongwith their views thereon.

8. As sequel to this Commission letter dated 05.04.2016, the HPSEBL has submitted as under:-

"HPSEBL had sought clarification from Commission for mechanism for adjustment of the amount of Advance Cost Share towards Infrastructural Development Charges (IDC) @ Rs. 1000/- per kW/kVA of load applied at the time of issuance of PAC so that the application of Supply Code is done on uniform basis by all the field units of HPSEBL.

The HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 contain provisions for recovery for following components, for release of connections:-

(a) Cost of Service Line and Metering equipment.

(b) Cost of Feeding Sub-station and Line on per kVA basis.

HPSEBL is of the view that the Advance Cost Share for Infrastructural Development Charges (IDC) @ Rs. 1000/- per kW/kVA will obviously be adjusted against the cost of Feeding Sub-station & Line, being a part of infrastructure development activities. In absence of the clarification whether to adjust against Item No. (b), this amount would have been additional third component of recovery of expenditure cost for which the clarification was sought. There is no such provision in the HPERC Regulations-419/2015, hence this needs to be clarified. The recovery of expenditure in respect of the connections released after notification of the regulations could not be done due to various petitions filed by the consumers in HPERC, High Court.

HPSEBL has issued directions to all the field units not to pursue cases related to recovery of expenditure for supply of electricity under Regulations 419/2005.

In view of this, it is requested to issue clarification as per Order of APTEL Tribunal so that recovery of expenditure for supply of electricity in respect of old Regulations 419/2005 (i.e. connections released w.e.f 04.04.2005 to 22.05.2012) is done accordingly".

9. In the light of the position set out in the preceding paragraphs and submissions made by the HPSEBL, the Commission by invoking the provisions, contained in paras 9.5 and 9.6 of the Supply Code, 2009, proposed that the amount received, per para 3.2.2 of the Supply Code, 2009, from the prospective consumer(s), for grant of Power Availability Certificate(s) @ of Rs. 1000/ per kVA in respect of the Contract Demand applied by them, may be adjusted as under:-

" **<u>Category-I</u>**

Such amount in respect of the Contract Demand for which the application for supply of electricity is not, or is not to be, submitted within the validity period may be adjusted or refunded, as the case may be, in accordance with paras 3.2.6 and 3.2.7 of the Supply Code, 2009.

<u>Category-II</u>

Such amount in respect of the Contract Demand for which the application(s) for supply of electricity is submitted within the validity period may be adjusted as under:-

A. in case of the Application for supply of electricity, covered under the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005,-

(i) such amount, in respect of the Contract Demand for which Application is made, shall be adjusted against the various lump sum amounts, except for the cost of service line, recoverable from the Applicant for supply of electricity under the aforesaid Recovery of Expenditure Regulations of 2005;

(ii) if there remains a surplus amount after the adjustment under item (i) above, such surplus amount shall be adjusted towards the cost of service line, recoverable under the said Recovery of Expenditure Regulations of 2005;

(iii) if there is still some surplus amount left even after adjustments under items (i) and (ii) above, the balance amount shall be refundable to the Applicant by way of adjustment in monthly bills after release of connection;

B. in case of application falling under the Recovery of Expenditure Regulations, 2012, such amount in respect of the Contract Demand for which application for supply of electricity is made, shall be adjusted against the amount, recoverable under Regulation 5 of the Recovery of Expenditure Regulations, 2012 and the balance, if any, shall be adjusted towards the cost of service line. The balance surplus amount, if any, shall be refundable to the consumer in accordance with item (iii) of sub-para-A above;

C. in case there are more than one application for supply of electricity under this category-II, the adjustment shall be made separately in respect of the Contract Demand, applied for under each such application under sub-para (A) or (B), as the case may be, by apportioning the amount deposited under para 3.2.2 of the Supply Code, 2009, on pro-rata basis."

10. The Commission issued a public notice dated 25.05.2016 in the newspapers, namely "The Times of India" and "Danik Bhaskar", inviting objections/ suggestions, on the aforesaid proposal from the stakeholders. The complete text of the proposal was also made available to the stakeholders on the HPERC's website. The last date for submission of objections/suggestions was 24.06.2016.

11. Comments and suggestions, in relation to the proposed mechanism were invited vide letter dated 27.05.2016 from major stakeholders i.e. State Government, Industries Associations of the State and in particular from the Appellants in Appeal Nos. 188 of 2014, 189 of 2014, 190 of 2014, 191 of 2014, 192 of 2014, 194 of 2014 and 195 of 2014 before Hon'ble APTEL i.e. M/s Hi-Tech Industries, M/s Asian Concretes and Cement (P) Ltd., M/s Parvati Steel & Alloy, M/s Akorn India Pvt. Ltd., M/s S.P.S Steel Rolling Mills Ltd., M/s Suraj Fabrics Industries Ltd. and M/s Him Chem Ltd.

12. The written submissions, as filed by the following stakeholders have been depicted in Annexure **–"A"** of this Order:-

a) B.B.N. Industries Association, EPIP-Jharmajri Road, EPIP Phase 1, Jharmajri, Baddi, Distt. Solan-174103 (HP).

b) Nalagarh Industries Association, C/o O/O Member Secretary, S.W.C.A., Nalagarh, Distt Solan-174101 (HP).

c) Parwanoo Industries Association, HPCED Building, Department of Industries Complex, Sector-1, Parwanoo- 173220 (HP).

d) The Kala Amb Chamber of Commerce and Industry (KACCI), Trilokpur Road, Kala Amb, Distt. Sirmour-173030(HP).

e) The Chief Engineer (Comm.), HPSEBL, Vidyut Bhawan, Shimla-171004 (HP).

f) M/s Karan Synthetics (I) Pvt. Ltd. & M/s Karan Polypack Pvt. Ltd., Village Goel Jmala, P.O. Nangal, Teh. Nalagarh, Distt Solan- 174001 (HP).

g) M/s Ruchira Papers Limited, Trilokpur Road, Kala Amb, Distt. Sirmour-173030(HP).
h) M/s Ambuja Cement Ltd., Village Navagraon, P.O Jajhra, Teh. *Nalagarh*, Distt Solan-174001 (HP).
i) M/s Hi-Tech Industries, Trilokpur Road, Village Johron, Kala Amb, Distt. Sirmour-173030(HP).
j) M/s S.P.S Steel Rolling Mills Ltd., Elegant Towers, 224-A, J.C. Bose Road, Kolkata -700017.
k) M/s Akorn India Pvt. Ltd., VPO Nihalgarh, Paonta Sahib, Distt. Sirmour-173025 (HP).
l) M/s Asian Concretes and Cement (P) Ltd., SCF 270, Motor Market, Mansa Devi Road, Manimajra, Chandigarh-160017.
m) M/s Parvati Steel & Alloy, 192, Deepali Enclave, Pitam Pura, Delhi-110034.
n) M/s Suraj Fabrics Industries Ltd., Elegant Towers, 224-A, J.C. Bose Road, Kolkata -700017.

13. The copy of Commission's letter dated 05.04.2016, as asked for by some of the stakeholders, stands provided with the notices issued to the above stakeholders, informing the date of public hearing, and simultaneously the said letter has been made available on the HPERC's website as per the Public Notice dated 25.05.2016.

14. (a) Subsequently, a public hearing was held on 3rd September, 2016 to elicit views of the stakeholders and others interested persons, which was attended by the following. Shri Rakesh Bansal (Representing Industries Associations), Shri Ajay Vaidya (Representing the Appellants those were before the Hon'ble APTEL) and the Chief Engineer (Commercial), HPSEBL, have made the oral submissions and representative of M/s Ambuja Cement Ltd. has made the written submissions in the public hearing. No other stakeholder made any submission during the public hearing.

Sr. No.	**Name & address of stakeholders from whom comments were received**	**Name of persons representing the stakeholders in the hearing on 03.09.2016**
1	The HP State Electricity Board Ltd., Vidyut Bhawan, Shimla-171004 (HP).	(i) Shri Mahesh Sirkek, CE (Comm.). (ii) Shri K.L. Gupta, Dy. CE (SERC).
2	M/s Ambuja Cement Ltd., Village Navagraon, PO Jajhra, Nalagarh- 174101 (HP).	(i) Shri Alok Sharma. (ii) Shri Abhihek Sharma.
3	M/s Ruchira Papers Limited, Trilokpur Road, Kala Amb, Distt. Sirmour-173030(HP).	(i) Shri Deepan Garg. (ii) Shri Vishav Seth.
4.	B.B.N. Industries Association, EPIP-Jharmajri Road, EPIP Phase 1, Jharmajri, Baddi, Distt. Solan-174103 (HP).	(i) Shri Rakeh Bansal (Jointly); (ii) Shri Ashok Kumar (KACCI); (iii) Shri Sudhir Guleria (PIA).
5.	Nalagarh Industries Association, C/o O/O Member Secretary, S.W.C.A., Nalagarh, Distt Solan-174101 (HP).	
6.	Parwanoo Industries Association, HPCED Building, Department of Industries Complex, Sector-1, Parwanoo- 173220 (HP).	
7.	The Kala Amb Chamber of Commerce and Industry (KACCI), Trilokpur Road, Kala Amb, Distt. Sirmour-173030(HP).	
8.	M/s Hi-Tech Industries, Vill. Johron, KalaAmb, Distt. Sirmour- 173030 (HP).	Shri Ajay Vaidya (Advocate).
9.	M/s S.P.S. Steel Rolling Mills Ltd., Elegant Towers, 224-A, J.C. Bose Road, Kolkata -700017.	
10.	M/s Akorn India Pvt. Ltd., VPO Nihalgarh, Paonta Sahib, Distt. Sirmour-173025 (HP).	
11.	M/s Asian Concretes and Cement (P) Ltd., SCF 270, Motor Market, Mansadevi Road, Manimajra, Chandigarh-160017.	

12.	M/s Parvati Steel & Alloy, 192, Deepali Enclave, Pitam Pura, Delhi-110034.	Shri Ajay Vaidya (Advocate).
13.	M/s Suraj Fabrics Industries Ltd., Elegant Towers, 224-A, J.C. Bose Road, Kolkata -700017.	
14.	M/s Him Chem Ltd., Village Khera, Nalagarh, Distt. Solan-173212 (HP).	

(b) During the public hearing, Shri Ajay Vaidya (Advocate) informed the Commission that he is representing the Industries (Appellants before the Hon'ble APTEL) and he under took to file their authorization in the Commission within 4/5 days, but he has not furnished authorization on behalf of the Industrial Consumers mentioned at Serial No.-11 and 13 of the table in the preceding sub para-(a). The copy of the Commission's letter dated 05.04.2016 (refer para-13) was again provided to Shri Ajay Vaidya, Advocate.

15. **Oral submissions made by the stakeholders during public hearing**:

15.1 Shri Rakesh Bansal, representative of Industries Associations, reiterated the contents of the written submissions already made by him and urges that there were practical problems in proper implementation of the provisions of the Recovery of Expenditure Regulations of 2005. He stated that so far as recovery of infrastructural cost from the industrial consumers is concerned, the distribution licensee has failed to implement the provisions of the said regulations. He further stated that the Industries Associations have already approached the Commission through various petitions, seeking directions to the distribution licensee for proper implementation of the provisions of the Recovery of Expenditure Regulations of 2005. He also stated that the Commission has restricted the proposal only to the mechanism of adjustment of Advance Cost Share, and that this limited scope of the proposal is not going to address/solve the major issues which have already been explained.

15.2 Shri Ajay Vaidya (Advocate), the representative of Appellants before the Hon'ble APTEL in Appeal Nos. 188 of 2014, 189 of 2014, 190 of 2014, 191 of 2014, 192 of 2014, 194 of 2014 and 195 of 2014 before Hon'ble APTEL i.e. M/s Hi-Tech Industries, M/s Asian Concretes and Cement (P) Ltd., M/s Parvati Steel & Alloy, M/s Akorn India Pvt. Ltd., M/s S.P.S Steel Rolling Mills Ltd. and M/s Suraj Fabrics Industries Ltd., has raised the issue of demand notices issued by the distribution licensee, for the recoveries from various Industrial Units since 2005 by taking the shelter of the clarificatory order 02.05.2011, issued by the Commission, on account of adjustment of Advance Cost Share, received by the distribution licensee for issuance of Power Availability Certificate (PAC) as per provisions of Supply Code, 2009. He further submitted that there is lack of transparency in the preparation of estimates/demand notices or determination of per kVA rates for different schemes/works, where Infrastructure Charges are recoverable from the said Industries, as per the provisions of the Recovery of Expenditure Regulations of 2005. He further raised the issue of applicability of this mechanism as elaborated in para-9 of this Order and suggested that the mechanism should be applicable from the date of commencement of the Supply Code, 2009.

15.3 M/s Ambuja Cement Limited have submitted the following written submissions during public hearing:-

a) that the period of IDC is bifurcated into 01.04.2005 to 22.05.2012 and afterwards (New Regulations);
b) that the Regulations, 2005 provided for account of amount, collected against PAC, to be given in three months after the grant of connection which was not done;
c) that the Regulations provide for recovery of IDC charge before grant of connection which was not done;
d) that the Electricity Act, 2003 does not provide for IDC, PAC, Share–cost etc. hence Regulations, 2005 were never followed;
e) that the Electricity Connection cannot be refused whether PAC or no PAC, so the amount collected for grant of PAC is not mandatory or necessary;
f) that the devising accounting procedure for an amount collected against the provisions of the Act is not in order;
g) that in the Appeal No. 22/2007, Hon'ble APTEL has rejected the proposal of Maharashtra State Power Distribution Company for collection of IDC by naming it service line charges;
h) that historically, demand charge is being taken in lieu of investment on power system by the company which is clear from Section 22 of 1910 Act and the order of Hon'ble Apex Court in NIISCO V/s HSEB;
i) that the working out per kVA charge is a highly subjective matter because number of bays, chunk of land, quantity of switch-gear, civil works are not standardized for any sub-station and the amount can be increased or decreased by the licensee as per his requirement. The expenditure is not, " reasonable" & not for "that" connection & so it violates the provisions of Section 46 of the Act;
j) that normally, all the infrastructures were made by the distibution licensee as per the dictate of system study and cost thereof has already been passed through in the ARR as per Regulation No. 8 of Tariff Regulations, 2004 and the cost stands fully recovered by now. There is no breakup submitted by the distibution licensee to prove that any part of the cost system was not passed through the tariff;
k) that as a matter of fact, the cost of system is being recovered from the consumers more than once, namely (i) in the shape of IDC; (ii) in the shape of demand charge; (iii) through the ARR; (iv) in the shape of wheeling charges (from OA consumer).

15.4 The Chief Engineer (Commercial), representing distribution licensee i.e. HPSEBL, stated that the present regulatory process is limited only to the adjustment of Advance Cost Share, taken at the time of issuance of PAC after notification of the Supply Code, 2009 and the proposal made by the Commission in this regard is in order. With reference to the submissions made, in relation to the lack of the transprancy adopted by the distribution licensee in the matter under discussion in this public hearing, by Shri Ajay Vaidya, Advocate, he stated that the HPSEBL is a State Public Sector Undertaking (State PSU) and also regulated entity, any revenue expenditure/collections are subjected to auditing. The licensee has no intention to hide any process related to recovery of due Infrastructure Charges from some of the consumers. If there are any grievances on account of recovery of due Infrastructure

Charges, the mechanism to redress the grievances as per Section 42 of the Electricity Act, 2003 is in place in the State.

16. **Commission's Views:**

After taking into consideration the written submissions made/referred in para-12 and oral submissions made, by the stakeholders in the public hearing, the observations/findings of the Commission thereon are as under:-

(i) The present regulatory process is initiated for limited purpose i.e. to clarify the mechanism of adjustment of Advance Cost Share, received by the distribution licensee as per the provisions of the Supply Code, 2009. The submissions made by the stakeholders are not relevant in this case and are not in conformity with the main purpose of the proposed mechanism under consideration. It does not tend to impose any new charges, but only made the provisions for the adjustment of the amount received for grant of Power Availability Certificates (PAC). The rationalization of the PAC rates/charges are beyond the scope of the present proposal. If any consumer is aggrieved by the wrong implementation of the provisions of the Recovery of Expenditure Regulations of 2005, the consumer can invoke the mechanism, set-up for redressal of his grievances under the Electricity Act, 2003 in the form of the Consumers Grievances Redressal Forum, established under Section 42 of the Act. The Ombudsman is yet another Forum which can be approached, in case of the Consumers Grievances Redressal Forum (CGRF) does not satisfy the consumers. In this regard, the Commission, in its earlier Orders, disposing the petitions filed before it, has also already held that a complete mechanism has been provided in sub-sections (5) and (6) of Section 42 of the Electricity Act, 2003, for Redressal of Grievances of the individual consumers in the form of Consumer Grievances Redressal Forum (CGRF), set-up and Ombudsman appointed under Section 42 of the Electricity Act, 2003.

(ii) As regard the submissions that this mechanism be applicable after the enforcement of the Supply Code, 2009, the Commission points out that the proposed mechanism relates to adjustment of the amount received per para 3.2.2 of the Supply Code, 2009 and shall obviously be applicable only from the commencement of the said Code.

(iii) On the issue of demand notices, issued by the distribution licensee for the recoveries of Infrastructural Development Charges on the strength of the Commission's clarificatory Order dated 02.05.2011, it is pointed out that the Hon'ble APTEL in their order dated 18.12.2015 have set-aside the said order, alongwith findings recorded therein that all the consequential actions or the subsequent orders or the consequential demand notices or bills raised by the Respondent Board on the strength of aforementioned impugned clarificatory order, dated 02.05.2011, have also been quashed or set-aside. This adequately settles the points raised by some of the stakeholders. However, this shall in no way debar the distribution licensee to make recoveries in accordance with the provisions of the Recovery of Expenditure Regulations, 2005 or the Recovery of Expenditure Regulations, 2012 as may be relevant.

(iv) With regard to suggestion of distribution licensee i.e. HPSEBL to elaborate the term "various lump-sum amounts" used in the proposal (refer item A (i) under

Category –II in para-9 of this Order), the Commission likes to clarify that this term would include all the amounts recoverable by the distribution licensee, except for the cost of service line or payment of monthly installments under the Recovery of Expenditure Regulations, 2005.

In light of the foregoing discussions, the Commission, by invoking the provisions contained in paras 9.5 and 9.6 of the Supply Code, 2009, hereby orders that the amount received or to be received as per para 3.2.2 of the Supply Code, 2009 for grant of the Power Availability Certificate (PAC) in respect of the Contract Demand applied by consumers/applicants be adjusted in accordance with the mechanism proposed in para-9, read with item (iv) under para-16 of this Order.

It is so ordered.

Sd/-
(S.K.B.S Negi)
Chairman

Place: Shimla.
Date: 5th October , 2016

Annexure-"A"

Written Submissions of Stakeholders

A. Submissions by the Industries Associations:

BBN Industries Association, Nalagarh Industries Association, Kala Amb Chamber of Commerce & Industries and Parwanoo Industries Association have submitted the following written submissions:

1.0. General Objections/Suggestions:

1.1 The matter as such has been reverted by the APTEL vide its orders in Appeal Nos 188, 189, 190, 191, 192, 194 and 195 of 2014. The APTEL has reverted primarily on the issue that the principles of natural justice have not been followed while issuing clarifications and thus clarifications/ consequential orders have been set aside by the APTEL in its orders in the aforesaid appeals and HPERC has been directed to re-examine the issue.

1.2 The HPERC has issued public notice and has initiated a suo-moto petition in the matter, restricting the scope of this petition only to the mechanism of adjustment of Advance Cost Share towards IDC.

1.3 The consumers are aggrieved by the recovery of cost towards infrastructures from them under the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. The main issues/ contentions of the consumers/ appellants who filed appeal before the APTEL are still not being adjudicated by the Hon'ble Commission, primarily on the issue of natural justice.

1.4 After the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 were notified in the month of April, 2005, the licensee has failed to implement these regulations in letter and spirit. The various provisions of these Regulations have been flouted for the entire period of seven years for which these regulations remained in force until the time these regulations were repealed and were replaced by super-ceding regulations. The Commission failed to ensure the proper implementation of the Regulations, which was further aggravated by the provisions 3.2 of the Himachal Pradesh Electricity Supply Code, 2009, which was notified in the Year 2009. The relevant provisions of the Regulations, which were not adhered to are listed in following para- 2.0 of these objections.

1.5 The Commission, on the petition No. 3 of 2012, moved by the B.B.N. Industries Association (B.B.N.I.A), who are also the objectors in the present petition, observed vide its Order dated 3.3.2012 that the matter relating to the implementation of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and the rationalisation of the demands, revised for recovery of infrastructure development charges need to be addressed through the intra-parties discussions in the first instance. In that case, both parties expressed their intention to take recourse to intra party discussions and were, therefore, asked to sort out the issues involved through their internal discussions and if the matter still remained unresolved, the petitioners were given liberty to approach the Commission and to seek the appropriate remedy as might be available to them under the law.

1.6 The licensee submitted during proceedings in Petition Nos. 82,88 and 112 of 2012 that it has, after due deliberations in the High Power Committee, constituted for the purpose, examined all the relevant infrastructures created, from time to time, and has reworked the charges on the basis of the information collated and has verified and reconciled the details of costs of various works executed and it has now finalised the voltage wise per kVA charges in conformity with the applicable regulations.

1.7 Keeping in view the fact that the Respondent Board was reviewing its demands and that it has assured to make the said demands in conformity with the statutory provisions i.e.

the provisions of the Act and regulations framed thereunder, the Commission vacated the interim order, deferring the impugned recoveries, passed during the proceedings before it.

1.8 The Chief Engineer (Comm.), HPSEBL, Shimla-171004 issued directions to its field offices vide letter No. HPSEB/CE (Comm.)/Misc-IDC/2012- 16509-574 dated 07.12.2012, directing them to recover IDC at the rates contained in Annexure 1, approved by High Power Committee, which was also intimated to HPERC. Annexure -1, which contained the list of 34 sub-stations, detailing the cost of the schemes, including capacities, proposed cost, actual cost, date of Commissioning and per kVA cost of the respective substation.

1.9 BBNIA filed another petition No. 94/2015 under section 142 of the Electricity Act, 2003 for contraventions of the Regulations. Even though the matter was regarding safeguarding the implementation of the Commission's notified Regulations, HPERC viewed the dispute as an individual dispute and that the adjudication of the same lies before the Forum for Redressal of Grievances of HPSEBL Consumers. The Commission ignored the glaring gaps in the amounts to be recovered from the consumers and the amounts calculated by the licensee, even though information obtained under the Right to Information Act from the licensee was submitted to HPERC.

2.0. Contraventions/Non-implementation of Provisions of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005:

2.1 Regulation 6(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 amount,

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."

The consumers who have paid the charges under these regulations, have not been given any such account of expenditure even after so many years. The licensee was required to raise demand if any within three months of the release of the power connection. The variation allowed was also capped by the Regulations to +/- 3%. The demands were raised years later and beyond the norm of +/- 3%, fixed under the Regulations.

2.2 Regulation 13:

"*13. Standard cost data.- (1) The distribution licensee shall, after previous publication, submit on an annual basis 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:*

(2) The distribution licensee shall make available the copies of the cost data book to any interested person on demand at a reasonable charge.

In spite of the fact that, Regulations were notified in the month of April 2005, the licensee could not submit and seek approval of the Commission for four years. This led to further delay and confusion in the matter. The consumers were granted connections meanwhile on ad hoc payments of Rs. 200 per kW for many years. The consumers could not even imagine

that an amount as high as Rs. 5500/ kVA in certain areas would be demanded from them in future.

2.3. Regulation 15:

"*15. Transitional Provision.-Cost data published for the year by the Rural Electrification Corporation in respect of works of 33 kV and below and used by Power Finance Corporation in respect of works above 33 kV in latest sanctioned schemes of the licensee shall be used until the cost data book is published in accordance with the regulation 13 or a period of two years from the date of these regulations coming into force, whichever is earlier."*

During the transitional period, the cost data as provided under the Regulations was not charged. For the initial period which was covered under the transitional provisions, the licensee is recovering on the basis of the cost data that was notified much later, retrospectively.

3.0. Prayer:

In view of aforesaid submissions, we pray to the Hon'ble Commission as under:-

3.1 In view of the powers conferred by Regulation 16 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and Regulation 9.6 of the Himachal Pradesh Electricity Supply Code, 2009, we pray to the Hon'ble Commission to address the difficulties being faced by the consumers in the matter of implementation of these regulations.

3.2 The objections/suggestions have been limited by this Commission to the mechanism of adjustment of Advance Cost Share, the objectors are of the view, that this limited scope of the petition is not going to address/solve the major issues which have been pointed out by the objectors in these objections and have earlier been filed vide various petitions. We pray before this Commission to view the matter in larger perspective, in view of the inherent powers of this Commission under the Act, and the Regulations to remove the difficulties being faced by the consumers.

3.3 The major reason that the APTEL has considered for reverting the matter before this Hon'ble Commission is the concern that the principles of natural justice have to be followed in letter and spirit. We pray to this Hon'ble Commission to deliver natural justice on the subject as a whole, but not limit the scope to only on the mechanism of adjustment of Advance Cost Share. Otherwise, the objectors feel that the matter will continue to be raked, challenged and the same will keep cropping up in different shapes.

3.4 We pray before this Commission to direct the respondent not to recover the charges retrospectively, which is contravention of the period, provided in the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and also the variation limits, allowed in these Regulations.

3.5 To pass any other orders as deemed necessary and relevant to the circumstances of the case.

3.6 To grant the objectors an opportunity to be heard in person.

B. Submission made by the distribution licensee i.e. HPSEBL:

Point No. 9 (A) (i) The term "various lump sum amounts" under aforesaid Regulations, 2005 needs to be elaborated so that it is implemented uniformly by all the field units under HPSEBL, without individual interpretations.

C. Submissions by Individual Industries:

(a) M/s Karan Synthetics (I) Pvt. Ltd.& M/s Karan Polypack Pvt. Ltd., Nalagarh have submitted the following written submissions:

1.1 The petitioner had collected a huge sum of money in the name of PAC while issuing Power Availability Certificate when connection was applied by the objector. In fact, it is

the duty of the petitioner to supply Electricity and grant of electricity Connection to any applicant within a fixed time frame as per the Electricity Act, 2003 or the time extended by the HPERC. It cannot be refused so there is little need of PAC and collection of any amount on that pretext.

1.2 It is the duty of petitioner to build, operate and maintain as per Section 42 of the Electricity Act, 2003, the Distribution system which is defined in the Electricity Act, 2003 and therefore the petitioner cannot charge any amount towards that. If cost of power system is also paid by the consumers then the annual revenue requirement of the petitioner should contain only the elements of power purchase, employees cost and working capital cost.

1.3 Cost of capital expenses is provided only to take care of the capital works funding and that was the practice since the formation of SEB. HPSEBL was no exception. The objector strongly objects not only to devising the accounting mechanism as proposed or any other mechanism for that end because the PAC itself is a unauthorized document outside the provisions or the Electricity Act, 2003. The Electricity Act, 2003 does not contain any term as PAC or Infrastructure Development Charges or Advance Cost Share. The wrong being done over the years has to be corrected.

1.4 Before the enforcement of the Electricity Act, 2003, Electricity Sector was not regulated and the HPSEBL (Petitioner) was fixing the charges and collecting the same at will. With the Regulator in position, it is naturally expected that interest of the consumers would also be protected. Therefore best mechanism would be to refund alongwith interest the amount collected unauthorized by the petitioner from the consumers in the name of grant of PAC, terming it as Advance Cost Share. Both these terms are alien to the Act.

In the Electricity Act, 1910 which was in force before 2003, Section 22 governed the recovery of expenditure for grant of connection. The provision in Section 22 of the said act is reproduced below:-

" Obligation on Licensee to supply energy:-

Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the licensee, be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply:

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration."

(i) Thus, the distribution licensee was not authorized to collect cost of power system or any amount on account of PAC from the applicant-consumers. The only condition for grant of connection was remunerative investment and adequate return thereupon. The expenditure on power system was totally accounted for in the tariff.

(ii) The provisions of Section 46 of the Electricity Act, 2003 are reproduced below:-

"The State Commission may by regulations, authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Section 43, any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply".

The above clearly brings out the following:-

a) The State Commission may authorize; therefore it is not necessary and mandatory for the Commission to authorize the distribution licensee to recover the cost of connection.

b) And even if authorized, such expenses could not go beyond expenses reasonably incurred in providing any electric line or electrical plant for the purpose of giving THAT supply. Word "that" is significant, meaning that only expenditure on the dedicated line and switch-gear connected thereto may be authorized for recovery of cost at the most.

It also does not authorize recovery for the cost of adhoc creation of sub-stations by making certain assumptions and determination of load centers by load flow studies etc. Rather, recovery of cost of sub-station on per kVA basis from the consumers has already been quashed by the HPERC in petition Nos. 268/05 and 334/05.

1.5 The per kVA cost of sub-station is a highly subjective matter. This depends upon capacity of the transformers, in-coming bays, outgoing bays, bus couplers, tract of land, necessity of civil works, provision for future and assumptions on the location of two sub-stations. By varying any or all the above assumptions, the cost per kVA can be varied at will of the petitioner. The variation of per kVA rate from INR 993.55 to INR 5595, appearing for electricity connection at different places is only because of the variations of such assumptions.

1.6 In the normal course of performance of their duties, the petitioner has been creating substations and lines as depicted by the load flow studies at the load centers and the investment was passed through the tariff under the remunerative return principles before the Electricity Act, 2003 and under Section 8(4) of the Tariff Regulations, 2004. Under the guise of accounting mechanism, the petitioner succeeded in getting an amendment issued from the HPERC on 02.05.2011 to recover from the consumers, cost of power system created or to be created without hearing the stakeholders and ultimately, the same was quashed on 18.12.2015 by the Hon'ble APTEL. Thus the order has become non-est and therefore the amount collected needs to be refunded.

1.7 The present petition is another attempt to seek justified status for the amount collected while issuing PAC and retain the huge amount, lying unaccounted over the years with the petitioner although the whole capital plan has already been recovered through the tariff. It is therefore vehementally objected to.

1.8 Since recovery of cost of power from already created power system was not possible under the Regulations, 2005, even after the amendment of 02.05.2011 (quashed by the Hon'ble APTEL on 18.12.2015) and to lend justification to the PAC, Regulation No. 419 of 2005 was amended in 2012 by especially adding a para No. 18 to say that the amount of capital expenditure balance after deduction the recovery from consumers shall be passed through tariff. There was no such provision in Regulations, 2005. Undoubtedly before 2012, the cost of power system was passed in full through ARR and there can be no question of recovering the same again by devising terms like IDC or share cost etc.

1.9 Therefore, there is absolutely no justification in retaining the amount collected from the consumers under the guise of PAC or IDC, especially from the consumers who got electricity connection, prior to 2012 as the total expenditure was passed through Tariff. Hon'ble APTEL has already made observation in Appeal No. 22 of 2007 in the case of Maharashtra. That allowing recovery of system cost (named as service line cost) will amount to double recovery as the same has recovered through the tariff.

1.10 The tariff in the State of Himachal Pradesh is two parts and has a large provision of demand charges. Hon'ble Supreme Court has already observed in the case of NIISCO Vs HSEB in 1976 AIR 1100, 1976 SCR (3) 677, "There are two well-known systems of tariffs-one is the flat rate system and the other is known as the two-parts tariff system. Under the former, a flat rate is charged on units of energy consumed. The later system is meant for big consumers of electricity and it is comprised of (1) demand charges to cover investment,

installation and the standing charges to some extent and (2) energy charges for the actual amount of energy consumed. Thus the investment is also being recovered through Demand Charges.

1.11 There is little justification in recovering the cost of power system by naming it as IDC again from the consumers when the same is being recovered in the form of demand charges as well as the rate of energy as a part of energy charges. Logically too, if a consumer does not consume even a unit of electricity, he has to pay demand charges in full, thus demand charges cannot be anything other than the cost of power system.

1.12 It is further submitted that any clarification procedures finalized even after the above submissions, the same has to take effect prospectively and the amount already collected by the petitioner under the guise of IDC, PAC, Advance Share Cost etc. needs to be refunded to the existing consumers. There is no justification of holding back crores of Rupees of consumers without authority and valid accounting procedure.

(b) <u>M/s Ruchira Papers Limited have submitted the following written submissions:</u>

1.1 Preliminary:

That Kala Amb Chamber of Commerce and Industries has filed CWP 2357 of 2014 before the Hon'ble High Court of Himachal Pradesh at Shimla in the matter of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 as amended by clarificatory Order dated 02.05.2011 and HPERC (Recovery of Expenditure) Regulations, 2012, notified by the Commission on 18.05.2012, being ultravires to the provisions of the Act, 2003. Therefore the humble submission of the objector is that the said writ petition is pending adjudication before the Hon'ble High Court of Himachal Pradesh and till the same is decided, the Commission may adjourn the further hearing. The objector further submits that though the notices issued by the HPSEBL on the basis of the clarification dated 02.05.2011, are also challenged by the objector in the said petition, however in view of the fact that the notices issued by the HPSEBL on the basis of the clarification dated 02.05.2011, issued by the HPERC have been already set aside by the APTEL, therefore the issue raised in the writ petition has become infructuous now, speak little of Mechanism for the adjustment of Advance Cost Share towards Infrastructure Development Charges (IDC), paid under paragraphs 3.2.2 and 3.2.5 of the Himachal Pradesh Electricity Supply Code, 2009. The very concept and invention of word IDC is repugnant to and inconsistent with the provisions of the Electricity Act, 2003. There is absolutely no provision for levying IDC, apart from recovering any expenses reasonably incurred in providing any electric line or electric plant used for the purpose of giving that supply. The very idea of charging anything other than the expenses reasonably incurred as above is fundamentally pugnacious.

1.2 The Infrastructure in the physical world has to be physical and susceptible of quantification, costing, estimation and measurement. It cannot be intangible, hidden or subtle and something that is not visible. The expenditure on infrastructure must, therefore, be susceptible of quantification, costing, estimation and measurement. It cannot be vague, intangible, hidden or subtle and something that is not visible. It has absolutely no place for arbitrariness, opacity, invisibility, unreasonableness and caprice. "IDC", as defined and incorporated in the vires of HPERC (Recovery of Expenditure) Regulations, 2012 unfortunately falls within such ambit of lawlessness and deserves to be struck down void ab initio.

It is no secret that the Electricity Board is a State government undertaking in a very heavy negative balance sheet. Year-on-year adverse findings of the Commission together with record of non-compliance with the directions of the Commission are a matter of record in the successive tariff orders, issued by the Commission.

The applicant has reasons to believe that the IDC issue and the charges related thereto were raised and levied without any basis and with some motive. There was no occasion for amending and incorporating altogether new concept of IDC in the Regulations, 2005 with retrospective effect. The doubt of the applicant gets substantiated from the following facts:

(a) In this respect, the objector submits that IDC charges were never mentioned in Regulations, 2005 as such the applicability of the same with effect from the year 2005 is absolutely illegal and cannot be done, more so for the reason that the objector has already paid the advance estimated cost as demanded by the HPSEBL at the time of issuance of Power Availability Certificate.

(b) The objector further submits that the clarification which has been sought from the Commission by the HPSEBL vide their letter dated 05.04.2016 with regard to the adjustment of the amount of Advance Cost Share towards Infrastructure Development Charges (IDC) at the rate of Rs. 1000 per kVA/kW of the load applied at the time of issuance of PAC, cannot be sought even otherwise by the HPSEBL since the amount towards the Power Availability Certificate has already been deposited by the objector as advance estimated cost and therefore now applying the same or claiming the same retrospectively cannot be allowed. Moreover, when the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 nowhere state about the Infrastructure Development Charges (IDC) as such the same cannot be applied retrospectively and the clarification being sought by the HPSEBL. It is not understandable as to what is the source from which the HPSEBL is drawing that they are entitled for IDC charges from 2005 onwards. Even if the IDC charges are to be charged from the objector, the same can be at the most from the year 2012 when the rates of the same have been specified in the Regulations of 2012. However as submitted earlier in this regard also, the submission of the objector would be that since the vires of 2012 Regulations are under challenge by way of writ petition, therefore at this stage also, the same cannot be taken from 2012 onwards. The objector further submits that there is no requirement for any clarification for developing a mechanism for adjustment of amount of advance cost share since the IDC charges if are to be levied, the same can be levied only after coming into force of Regulations, 2012. As far as the regulations of 2005 which contain provisions with regard to the recovery of cost of service line and metering equipment and cost of feeding sub-station and line on per kVA basis are concerned, the submission of the objector is that the said amount has also been paid by the objector while depositing advance estimated cost at the time of grant of PAC. Therefore also, it cannot be said that no amount has been paid by the objector as per the Regulations, 2005 with regard to cost of service line and metering equipment and cost of feeding sub-station and line on per kVA basis.

(c) The submission of the objector is that there is no requirement for issuance of any clarification with regard to the mechanism for adjustment of advance estimated cost since Infrastructure Development Charges can only be levied after coming into force of the HPERC Regulations, 2012 which mentioned about the same. Since there was nothing in the HPERC Regulations, 2005 which talked about Infrastructure Development Charges as such the clarification being sought in this regard for implementing these charges from 2005 onwards cannot be for the reason that these charges cannot be applied retrospectively.

(d) The objector further submits that as per regulation 6(2) of Regulations, 2005, " The licensee shall render to the applicant/ consumer the amount 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 amount, 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, whereas the HPSEBL has not demanded the same within 3 months from the date of release of connection.

(e) there is no requirement for issuance of any clarification with regard to the mechanism for adjustment of advance estimated cost since Infrastructure Development Charges can only be levied after coming into force of the HPERC Regulations, 2012 which mentioned about the same. Since there was nothing in the HPERC Regulations, 2005 which talked about Infrastructure Development Charges as such the clarification being sought in this regard of implementing these charges from 2005 onwards cannot be for the reason that these charges cannot be applied retrospectively.

(f) The observations of the Commission in para-9 on the basis of the letter issued by the HPSEL whereby it has been proposed that amount received as per para 3.2.2 of Supply Code, 2009 from prospective consumers for grant of Power Availability Certificate @ Rs. 1000 per kVA in respect of contract demand applied by them is also not acceptable to the objector for the reason that the reading of para 9 of the Suo-Moto Petition No. 25/2016 demonstrates that the Commission is trying to apply the mechanism from 2005 onwards which otherwise is not acceptable to the objector since as submitted above, Regulations, 2005 never spoke of IDC charges, therefore these cannot be charged from the objector from 2005 onwards. In case these are to be charged then the IDC charges may be charged from 2012 onwards. Further, the calculation of the above advance cost towards the Infrastructure Development Charges has never been disclosed by the HPSEBL. In this view of the matter, the proposal was made by the Commission in para 9 of the Suo-Moto Petition is not acceptable to the objector. The objector further submits at the cost of repetition that since the matter is subjudice before the Hon'ble High Court of Himachal Pradesh therefore this petition at this stage may be adjourned sine-die till the disposal of the writ petition pending before the Hon'ble High Court.

(g) The objector further submits that it is required to have the complete copy of Petition filed by HPSEBL vide No. 25/2016 with the HPERC in order to file the objections in a deep manner. Hence the HPSEBL may be directed to provide the complete copy of petition.

1.3 We are deadly opposed to the very concept of IDC and therefore opposing it tooth and nail. Otherwise also the subject matter of IDC being sub-judice by way of CWP 2357 of 2014 before the Hon'ble High Court, should restrain the Commission from proceedings any further with the petition No. 25/2016.

(c) **M/s Ambuja Cement Limited have submitted the following written submissions:**

1.1 The petitioner has proposed three steps adjustment of the amount collected for issuing PAC to the applicant-consumers before grant of connection by naming it as advance cost share towards the Infrastructure Development Charges, which is solely the duty of petitioner to build, operate and maintain as per Section 42 of the Electricity Act, 2003. The objector strongly objects not only to devising the accounting proposal but also collection of the charges for issuance of the PAC because the PAC itself is a unauthorized document, outside the provisions of the Electricity Act, 2003. The

Electricity Act, 2003 does not contain any term as PAC or Infrastructure Development Charges or advance cost share. Although the collection of PAC is going on from many years but a wrong cannot be allowed to be perpetuated and has to be corrected at some stage.

1.2 Before the enforcement of the Electricity Act, 2003, Electricity Sector was not regulated and the HPSEBL (Petitioner) was fixing the charges and collecting the same at will. With the regulator in position, it is naturally expected that interest of the consumers would also be protected.

1.3 Section 43 casts a duty on the petitioner to supply electricity to any applicant who submits completed application and deposits security as determined by relevant regulations, issued by the HPERC. The Connection has to be granted and cannot be refused. It is only the time frame which can be varied and that too with the approval of the HPERC. The PAC has no role as per the Electricity Act, 2003. The wrong being done over the years has to be corrected.

1.4 Once the existence/issuance of PAC is held not to be mandatory, there is no legal footing to collect any amount from the applicants for issuance of PAC. Thus, PAC not being necessary, the Amount collected for issuance of PAC is not permitted by law and hence the question of accounting thereof does not arise. The best course would be to refund alongwith interest, the amount collected unauthorized by the petitioner from the consumers in the name of grant of PAC, terming it as advance cost share. Both these terms are alien to the Act.

1.5 A look at the situation, prevailing in the Electricity Act, 1910 which was inforce before 2003, would reveal that Section 22 governed the recovery of expenditure for grant for connection. The provision in Section 22 of the said act is reproduced below:-

" Obligation on Licensee to supply energy:-

Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the licensee, be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply:

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration."

Thus, the distribution licensee was not authorized to collect cost of grant of connection or any amount on account of PAC from the applicant-consumers. The only condition for grant of connection was remunerative investment and adequate return thereupon. The expenditure was totally passed through the tariff.

1.6 The provisions of Section 46 of the Electricity Act, 2003 are reproduced below:-

"The State Commission may by regulations, authorize a distribution licensee to charge from a person, requiring a supply of electricity in pursuance of Section 43, any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. "

The above clearly brings out the following:-

a) The State Commission may authorize; therefore it is not necessary and mandatory for the Commission to authorize the distribution licensee to recover the cost of connection.

b) And even if authorized such expenses could not go beyond expenses reasonably incurred in providing any electric line or electrical plant for the purpose of giving THAT supply. Word "that" clearly means that only expenditure on the dedicated line and switch-gear connected thereto may be authorized for recovery of cost and it is not the prorate cost of sub-station, land, switch-gear, staff quarters, number of outgoing and incoming bays, bus couplers and other equipments which are considered by the petitioner for calculating per kVA or per Km. cost in the case of sub-station and line respectively.

c) Further, it does not contain any provision for the feeding sub-station or up-stream sub-station or generation etc. It also does not authorize recovery for the cost of adhoc creation of sub-stations by making certain assumptions and determination of load centers by load flow studies etc. Rather recovery of cost of sub-station on per kVA basis from the consumers has already been quashed by the HPERC in petition Nos. 268/05 and 334/05.

d) Further, the matter of IDC is subjudice by way of CWP No. 2357/2014 before the Hon'ble High Court, Shimla.

1.7 The per kVA cost of sub-station is a highly subjective matter, this depends upon capacity of the transformers, in-coming bays, outgoing bays, bus couplers, tract of land, necessity of civil works, provision for future and assumptions on the location of two sub-stations. By varying any or all the above assumptions, the cost per kVA can be varied at will of the petitioner because there is no standardization of these factors. Similar, are the observations regarding the per KM cost of line which is also proposed to be included in the calculations, supplied by the petitioner in 2012 when 30% redundancy of the transmission lines in petition No. 172/2012 was proposed. Redundancy is nothing but keeping the investment as unproductive and can be ill-afforded in a developing country like ours. The variation of per kVA rate from INR 993.55 to INR 5595, appearing for electricity connection at different places is only because of the variations of such assumptions.

1.8 In the normal course of performance of their duties, the petitioner has been creating substations and lines as dictated by the load flow studies at the load centers and the investment was passed through the tariff under the remunerative return principles before the Electricity Act, 2003 and under Section 8(4) of the Tariff Regulations, 2004 but petitioner appears to have subsequently thought of making recovery of such investment again from the consumers in addition by seeking some amendment in the Recovery of Expenditure Regulations so an amendment was sought under the guise of accounting mechanism. The petitioner succeeded in getting an amendment issued from the HPERC on 02.05.2011 to recover from the consumers the cost of power system created or to be created without hearing the stakeholders and ultimately the same was quashed on 18.12.2015 by the Hon'ble APTEL. Thus the order has become non-est and therefore the amount collected needs to be refunded.

1.9 The present petition is another attempt to seek justified status for the amount collected while issuing PAC and retain the huge amount lying unaccounted over the years with the petitioner although the whole capital plan has already been recovered through the tariff. It is therefore vehemently objected to.

1.10 Coming to the regulations, governing determination of tariffs issued by the HPERC in 2004, section 8(4) thereof provides for inclusion of the capital investments, financial cost and rate base, working capital, power purchase, profit sharing, regulatory asset etc., incurred by the petitioner in system expansion while finalizing the annual revenue requirement on which tariff is based. Thus, the cost of power system created by the

petitioner is taken care of in the tariff and there is no justification of recovering the same amount again from the applicants/consumers.

1.11 Since recovery of cost of power from already created power system was not possible under the Regulations 2005, even after the amendment of 02.05.2011 (quashed by the Hon'ble APTEL on 18.12.2015) and to lend justification to the PAC, Regulation No. 419 of 2005 was amended in 2012 by especially adding a para No. 18 to say that the amount of capital expenditure balance after deduction of the recovery from consumers shall be passed through tariff. There was no such provision in Regulations, 2005. Undoubtedly before 2012, the cost of power system was passed in full through ARR and there can be no question of recovering the same again by devising terms like IDC or share cost etc.

1.12 The tariff in the State of Himachal Pradesh is two parts and has a large provision of demand charges. Hon'ble Supreme Court has already observed in the case of NIISCO V/s HSEB in 1976 AIR 1100, 1976 SCR (3) 677, "There are two well-known systems of tariffs-one is the flat rate system and the other is known as the two-parts tariff system. Under the former, a flat rate is charged on units of energy consumed. The later system is meant for big consumers of electricity and it is comprised of (1) demand charges to cover investment, installation and the standing charges to some extent and (2) energy charges for the actual amount of energy consumed.

1.13 There is little justification in recovering the cost of power system by naming it as IDC again from the consumers when the same is being recovered in the form of demand charges as well as the rate of energy as a part of energy charges. Logically too, if a consumer does not consume even a unit of electricity, he has to pay demand charges in full thus demand charges cannot be other than the cost of power system.

1.14 If an extended meaning to the term "expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply", appearing in Section 46 is assigned to include the cost of transformers, land, sub-stations, upstream lines etc. then the cost of land required for offices, cost of tools, cost of employees etc. also need to be recovered as most of these items are also created to facilitate grant of connection being the business of the licensee. Clearly cost of these facilities is recovered through tariff and hence the cost of capital works has also to be recovered through tariff as per the provision of regulation 8(4) of the tariff regulations of 2004 and the same is being done.

1.15 The terms like PAC, IDC, prorate cost of power system, power availability certificate, commitment letter etc. were also known to the framers of the Law/Act and hence, if the intents were to load these charges on the consumers, it could have been provided lucidly in the Act itself.

1.16 It is further submitted that any clarification procedures finalized even after the above submissions, the same has to take effect prospectively and the amount already collected by the petitioner under the guise of IDC, PAC, Advance Cost Share etc. needs to be refunded to the existing consumers. There is no justification of holding back crores of Rupees of consumers without authority and valid accounting procedure.

1.17 Any businessman shall study the market for his product, open his office/shop, install fittings/fixtures by investing capital but does not recover the capital cost on prorate basis from the buyers/customers/clients. The recovery is made through the cost of goods and services provided. Petitioner is no exception and all the capital/ revenue expenses are being passed through the tariff on the cost of electricity supplied.

(d) **M/s Hi-Tech Industries, M/s S.P.S. Steel Rolling Mills Ltd., M/s Akorn India Pvt. Ltd., M/s Asian Concretes and Cement (P) Ltd., M/s Parvati Steel & Alloy and M/s Suraj Fabrics Industries Ltd. have submitted the following written submissions:**

1.1 (Para 1to 6.) That the contents of these paras so far pertain to matter of record are not denied, rest of contents contrary to the matter of record are not admitted.

1.2 (Para 7.) That as per the Suo-Moto petition, in this para, the Commission observed that " in compliance to the Order dated 18.10.2015, passed by the Hon'ble APTEL , the Commission vide letter dated 05.04.2016, asked the HPSEBL to submit a formal self contained reference, clearly indicating the background and the point(s) on which clarification is sought alongwith their views thereon". In response to the above para, the Board has submitted as under in Para No.-8.

1.3 (Para 8.) As sequel to this Commission letter dated 05.04.2016, the HPSEBL now submits as under:-

"HPSEBL had sought clarification from the Commission for mechanism for adjustment of the amount of Advance Cost Share towards Infrastructural Development Charges @ Rs. 1000/- per kW/kVA of load applied at the time of issuance of PAC so that the application of Supply Code is done on uniform basis by all field units of HPSEBL.

The HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 contain provisions for recovery for following components, for release of connections:-

(a) Cost of Service Line and Metering.

(b) Cost of Feeding sub-station and Line on per kVA basis.

HPSEBL is of the view that Advance Cost Share of Infrastructural Development Charges (IDC) @ Rs. 1000/- per kW/kVA will obviously be adjusted against the cost of

Feeding sub-station & Line, being a part of infrastructure development activities. In absence of the clarification whether to adjust against Item No. (b), this amount would have been additional third component of recovery of expenditure cost for which the clarification was sought. There is no such provision in the HPERC Regulations-419/2005, hence this needs to be clarified. The recovery of expenditure in respect of the connections released after notification of the regulations could not be done due to various petitions filed by the consumers in the HPERC, the High Court. HPSEBL has issued directions to all the field units not to pursue cases related to recovery of expenditure for supply of electricity under Regulations 419/2005.

In view of Order, it is requested to issue clarification as per Order of APTEL Tribunal so that recovery of expenditure for supply of electricity in respect of old Regulations 419/2005 (i.e. connections released w.e.f 04.04.2005 to 22.05.2012) is done accordingly."

It is submitted that the averments as spell out in para No. 8 by the HPSEBL are vague, ambiguous without any foundation and are neither supported by the provisions of the Electricity Act, 2003 nor are in any way in consonance with the regulations framed by this Commission. It is submitted that letter dated 05.04.2016 as has been communicated by this Commission to the Board, which lays foundation of this Suo-Moto petition has not been made available to the replying respondent.

It is submitted that the contents of this letter are vital for putting forward its response by the replying respondent and it is requested that copy of letter be provided, prior to finalization and hearing of this petition to the replying respondent

and replying respondent reserves its right to advance further submission after receiving the copy of the letter dated 05.04.2016.

1.4 (Para 9.0.) That the contents of this para so far they relate to invoking the provisions, contained in paras 9.5 and 9.6 of the supply Code, 2009, propose that the amount received, per para 3.2.2 of the Supply Code, 2009, from the prospective consumer(s), for grant of Power Availability Certificate(s) @ of Rs. 1000/- per kVA in respect of the Contract Demand applied by them, may be adjusted by Category-I and Category-II, wrong, incorrect hence denied. It is submitted that the averments of this para are not in accordance with the spirit of the Electricity Act, 2003 nor they are in consonance with the Regulations as framed by this Commission and National Policy, rather the methodology as to be adopted is contrary to the provisions of the Electricity Act, 2003 and particularly Regulations 419/2005.

1.5 (Para 9.1.) The replying respondent submits that the Electricity Act, 2003 hereinafter referred to as the 'Act' is an Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures, conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies, regarding subsidies, promotion of efficient and environmentally benign policies constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal.

1.6 (Para 9.2.) It is submitted that Sub-section 15 of Section 2 of the Act defines "consumer", meaning any person who is supplied with electricity for his own use by a licensee or the Government or by any other person, engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be . It is submitted that the charges are to be recovered from the applicants and not from the consumers.

1.7 (Para 9.3.) Further, Section 43(1) provides that every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply;

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission. Section 46 of the Electricity Act, 2003 provides that the State Commission may by, regulations, authorize a distribution licensee to charge from a person, requiring a supply of electricity in pursuance of Section 43, any expenses, reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. Section 47(1) states that 'Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of Section 43, to give him reasonable security, as determined by regulations, for the payment to him of all monies which may become due to him:

(a) in respect of the electricity supplied to such persons; or
(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provisions of such line or plant or meter.

1.8 (Para 9.4.) That the State Commission made regulations HPERC (Recovery of Expenditure) Regulations, 2005 on 01.04.2005 in pursuance of Section 46, read with Section 181 of the Act to take effect from the date of their publication in the official gazette. It is respectfully submitted that as per the definition given in Regulation of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 which came into force with effect from 04.04.2005, the Appellant was an applicant for supply of electricity only upto the year when the connection was not released to him. Once connected to the electrical system of HPSEBL in the year, he ceased to be an applicant within the meaning of Regulation 2 'Definitions' of HPERC (Recovery of Expenditure) Regulations, 2005 (hereinafter referred to as Regulations, 2005) and henceforth became the consumer. The processes, motions and the payments having already been completed for the supply of electricity to this replying respondent, he no longer is the 'applicant' as at present within the meaning of Regulation 2. It is submitted that the Power to recover under Section 46 permits the licensee to charge from a person, requiring a supply of electricity in pursuance of Section 43, any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. Thus only the recovery of expenditure reasonably incurred by the licensee in providing supply of electricity is permitted and not the expenditure unreasonably incurred or not incurred at all. The words 'reasonably incurred' are unambiguous and absolute. It is submitted that the Section 46 of the Act provides for recovery of expenditure reasonably incurred by the licensee for providing supply of electricity under Section 43 of the Act. Regulations 2005 accordingly set out the manner, mode, process and the motions for recovery of expenditure reasonably incurred and refund of the difference between the amount deposited and the actual expenditure within 3 months. It is submitted that the contents of paras 8 and 9 are wholly inconsistent with the aims and objects of the Act, provisions of Sections 46 and 86 of the Act in so far as it is too general, too vague, totally non-speaking, utterly opaque, utterly unreasonable and totally inconsistent with the basic spirit of protection of consumer interest, enshrined in the Act.

1.9 (Para 9.5.) It is submitted that the accounting system of the electricity utilities follow General Accepted Accounting Principles and Audit where every item of expenditure is duly accounted for and classified under different assets heads. To make the system foolproof and transparent, 'Material at Site' (MAS) Accounts are invariably prepared, entered in the Measurement Books (MBs) and transferred to Fixed Asset Register 'FAR'. The assets so formed are allowed depreciation, operation and maintenance expenses on normative basis and percentage return on the capital employed/investment by the State Electricity Regulatory Commission through tariffs as per the provisions of the Act. This seems inconceivable that Board should not have followed these codal requirements of expenditure, accounting and audit and what are the bases for Rs. 1000 per kVA, has not been explained by the Board nor any detail of expenditure has been provided to the replying respondent. To the best knowledge and belief of the replying respondent, HPSEBL does follow these codal requirements. If so, it should not be difficult for the HPSEBL to show and prove to the satisfaction of this Hon'ble Court that it has indeed created the 'Infrastructure' *"the basic structural part of the electrical system regarded as the utility's basic facilities,"* shown it in the FAR, submitted the details thereof to this Commission at the time of filing the Annual Revenue Requirement (ARR) and allowed the O&M thereupon through tariffs and not the depreciation, interest on capital and the return being subvention from the consumers.

1.10 (Para 9.6.) It is submitted that Board has collected burgeoning amounts running into hundreds of crores @ different rates at different times, ranging from Rs. 200 to 1000 to 7165 per kW of connected load in the name of mysterious IDC from the gullible and

hapless consumers of Himachal Pradesh without as much as a demur from them and total absence of accountability on the part of the HPSEBL, hence the Board must be called upon to render an account duly audited by some reputed and independent Survey and Audit Agency to show where that massive sum of money has gone. It is submitted that Normative rates are normally assumed for the purposes of rough estimations where a prima facie pre-feasibility of projects is to be examined. They are never used for estimation where the prices of material, labour and transport are already known. Regulation 4 of Regulations, 2005 provides that 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 under for metering. The distribution licensee shall estimate and recover the cost of service line on per kilometer basis and the cost of metering arrangements, based on the latest approved cost data as published by the distribution licensee. It is clear from the foregoing that the HPSEBL is adopting the arbitrary normative rates otherwise they could easily have indentified and estimated the infrastructural part, if any, attributable to the replying respondent on the basis of the approved cost data as provided in the Regulations, 2005. Again, the expenditure can never be on normative basis. There is no place for normative rates in engineering practices, estimates and expenditure.

1.11 (Para 9.7.) That the replying respondent further like to bring to the notice of the Commission the Regulation (6) of Regulations 419/2005 which is reproduced as under for ready reference:-

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.

(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 alongwith 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.

(c) 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.

From the above, it is clear that the Replying Respondent is not liable to pay any amount on account of IDC or otherwise as demanded by the HPSEBL in the present proceedings. It is submitted that any adjustment of any expenditure has to be done strictly as per Regulations 419/2005 which clearly stipulate that only after rendering the full account of expenditure that too in stipulated time period and by margin of 3%. It is submitted that the contention of the HPSEBL cannot take effect retrospectively in any case.