

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,  
SHIMLA

In the matter of:-

Contravention of the HPERC (Distribution Licensee's Standards of Performance) Regulations, 2005, issued on 3<sup>rd</sup> Nov., 2005 under section 181, read with sections 57, 58, 59 and 86 of the Electricity Act, 2003.

(Petition No. 265/08 and Petition No. 59/09)

(Decided on 30-04-2009)

**CORAM**  
**YOGESH KHANNA,**  
**CHAIRMAN**

Counsel for HPSEB : Sh. Narinder Singh Thakur  
Advocate

Consumer Representative: Sh. P.N. Bhardwaj  
(u/s 94 of the Electricity  
Act,2003)

**ORDER**

(Last heard on 4.4.2009 and orders reserved)

By this order the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as "the Commission") proposes to dispose of two petitions i.e. Petition No. 265/08 dated 4.12.2008; and Petition No. 59/09 dated 2.4.2009, moved by the Himachal Pradesh State Electricity Board (hereinafter referred as "the Board") arising out of the order dated 5<sup>th</sup> April, 2008, passed in Suo-Motu case No. 49/2007, in relation to the contravention of the HPERC (Distribution Licensee's Standards of Performance) Regulations, 2005 (hereinafter referred as "the SOP Regulations").

2. The facts relating to the said petitions, are as follows:-

This Commission in pursuance of section 57, read with clause (i) of sub-section (1) of section 86 and clause (za) of sub-section (2) of section 181 of the Electricity Act, 2003, framed the SOP regulations specifying the standards of performance (SOP) of the distribution licensees intending to serve as the guidelines for them to operate their distribution system for ensuring quality, continuity and reliability of service to be rendered by them. The said

SOP regulations came into force on 3<sup>rd</sup> Nov., 2005 i.e. the date on which these were published in the Rajpatra, Himachal Pradesh. As per Schedule-I of the said SOP regulations, the Data Call Centres with appropriate information, communication and technology backbone, alongwith appropriate staffing of the same, were to be set up by the distribution licensee i.e. the Board by the following deadlines:-

Atleast one Sub-Division to be covered per Circle	Within six months from the commencement of the said SOP regulations (i.e. before 3 <sup>rd</sup> May, 2006)
Atleast one Sub-Division to be covered per Division	Within 12 months from the commencement of the said SOP regulations (i.e. before 3 <sup>rd</sup> Nov., 2006)
All Sub-Divisions to be covered	Within 24 months from the commencement of the said SOP regulations (i.e. before 3 <sup>rd</sup> Nov., 2007)

In addition to this, sub-regulation (3) of regulation 5 requires the distribution licensee (i.e. the Board) to educate the consumers of their rights frequently and sub-regulations (1), (3) and (4) of regulation 8 require each Operation Circle Unit of the distribution licensee to be treated as a Responsibility Centre to be overseen by a Control Centre for the implementation of the Standards of Performance. Responsibility centres were to be set up within 90 days of the enforcement of the SOP regulations i.e. to say before 3<sup>rd</sup> Feb., 2006 and Control centre within 30 days of the same (i.e. to say before 3<sup>rd</sup> Dec., 2005). The Control centre was to develop uniform formats for data collection and evaluation of performance of the Responsibility Centres simultaneously guiding the call centres.

3. Sub- regulations (1), (3) and (5) of regulation 9 also require the distribution licensee to submit a quarterly report and a consolidated annual report on the level of SOP achieved as per Schedule-I, compensation claims preferred and improvements made in performace. The licensee had to establish a working group within 30 days of enforcement of SOP Regulations (i.e. to say before 3<sup>rd</sup> Dec., 2005) for monitoring information and coordination with the Commission.

4. On all these aspects the Commission issued directions vide its letters No. HPERC/D(T&D)401-Vol-II/DK/2005-3993 dated 2.12.2005 and even No. 3992 dated 3.12.05, 2155 dated 20.7.06, 2379 dated 4.8.06, 2993 dated 25.9.06, 3719 dated 2.12.06 and 3953 dated 19.12.06 to the licensee Board to comply with the requisite provisions of these regulations on different occasions clearly mentioning therein that in case of failure of the Board to comply with the provisions of the said regulations the Commission will be constrained to initiate legal action, consistent with the provisions of the Electricity Act,2003. The Commission, being not satisfied with the steps taken by the Board to comply with the statutory provisions, expressed its concern, but even then no sincere efforts were made by the Board. During the hearing held on 21.4.2007, in the suo motu proceedings, the Board was directed to expedite the setting up of the call centres by 31<sup>st</sup> July, 2007. In this regard it was stated by the Board that the extension of building was under construction and it was likely to be completed by the end of August, 2007, and on 25.8.2007 the Commission granted the extension in time as asked for. Subsequently on 27.10.2007 the Board again stated that the call centres are to be put up in place by Dec., 2007 and asked for further extension upto 31<sup>st</sup> Dec., 2007. Apparently, there was apprehension that even if extension in time as asked for is accorded, the call centres, as envisaged under the SOP Regulations, will not be made functional for more time and the officers of the Board will continue seeking extension after extension. However, Commission vide its interim order dated 27.10.2007, granted extension in time for setting up and commissioning of the call centres upto 31<sup>st</sup> Dec., 2007 and also specifically directed the Board and its officers to take note that on failure of compliance of the SOP regulations, even after 31<sup>st</sup> Dec., 2007 the Commission shall be constrained to determine the quantum or extent of fines, penalties to be imposed therefor, under sub-regulations (3) of regulation 62 of HPERC (Conduct of Business) Regulations, 2005. Surprisingly enough, when the matter was again taken up on 29<sup>th</sup> March, 2008 (after the expiry of three months of the extended time i.e. 31<sup>st</sup> Dec., 2007), the licensee Board further asked for more time upto April, 2008. From the facts as brought out hereinbefore, it is observed by the Commission that the licensee is not serious in compliance of the regulations but to the contrary it is bent upon by-passing

regulations by seeking extension in time again and again. Despite repeated directions/orders by the Commission, the Board willfully ignored them, with the result that the regulations are being defied and are not implemented, thereby defeating the very essence and objective for which the said regulations have been framed.

5. Due to poor progress of CRM functioning of the Board this Commission on 5<sup>th</sup> April, 2008, after affording, on 29.3.2008, a reasonable opportunity of being heard, as envisaged under regulation 62(3) of the Conduct of Business Regulations and taking extremely lenient view, imposed, under section 142 of the Electricity Act, 2003, without prejudice to any other penalties to which it may be liable under the Act, upon the Board, by way of penalty, a fine of Rs. 25,000/- only and additional penalty for continuing failure @ Rs. 2000/- only per day recoverable immediately after 31<sup>st</sup> Dec., 2007 until the compliance to the Commission's satisfaction to be so notified by the Commission. The Board was further directed to submit the status/action taken reports on the fifteenth day of every month until compliance is made.

6. The Board filed a review petition on 14.5.2008 (registered as Review Petition No. 120/08) against the said order dated 5<sup>th</sup> April, 2008 and the same was dismissed on 2<sup>nd</sup> Sept., 2008. The operative part of that order reads as under:-

“10. The Commission is of the view that a very fair approach was adopted and the impugned order was passed much after deep deliberations and deep consideration. The review petition does not bring out any new and important fact, which after the exercise of due diligence, was not within the petitioner's knowledge or could not be produced by him at the time when order was passed. It does not merit review on these facts, which were in the knowledge of the Commission when it issued the impugned order and the Board has not been able to put forth any new fact or important matter or any error apparent in the order, to merit review.

In view of this the Commission finds no sufficient and justifiable reason to accept the review petition moved by the Board and hence the same is dismissed.”

7. The Board, aggrieved by the Commission's Orders dated 5<sup>th</sup> April, 2008 and 2<sup>nd</sup> Sept., 2008 agitated the matter further by way of appeal No. 39/08 titled as HPSEB V/s HPERC, on which the APTEL vide its order dated 16<sup>th</sup> March, 2009 directed the Petitioner/Appellant to approach this Commission, observing that-

“Since, Petitioner/Appellant is praying for the waiver of the penalty alone, we feel that it would be appropriate to direct the Petitioner/Appellant to approach the Commission and make further representation requesting the waiver of the penalty imposed by showing the circumstances like the bonafide conduct and compliance of the main order.”

On the face of the APTEL order this Commission is to consider the representation of the petitioner Board and to pass appropriate orders, which it may deem fit, in light of the circumstance shown by the petitioner and the provisions of law.

8. With the factual matrix, as brought in proceeding paragraphs of this order, the Board has moved two petitions i.e. petition No. 265/08 and 59/09.

9. Petition No. 265/08, is in the sequel to this Commission's, order dated 5<sup>th</sup> April, 2008, whereby the additional penalty for containing failure was imposed @ of Rs. 2000/- per day recoverable immediately after 31<sup>st</sup> Dec., 2007 until the compliance to the Commission's satisfaction to be so notified by the Commission and the Board was directed to submit the status/action taken reports on the fifteenth of each month until compliance is made. By this petition the Board has pleaded to consider the date of commissioning of the Call Centre w.e.f. 29<sup>th</sup> Sept., 2008. During the hearing of this petition, on 7.2.2009, Sh. P.N. Bhardwaj, the Consumer Representative, appointed by the Commission u/s 94 of the Electricity Act, 2003, stated that no response has been made on the free number 1260, stated to have been installed by the Board, and also expressed his concern over the delay in setting up and making Call Centres functional. The Commission therefore, directed the Secretary of the Commission to conduct spot inspection and report the status of the compliance by the Board.

10. The Secretary of the Commission conducted the spot inspection on 25<sup>th</sup> March, 2009 and submitted the status report on 2<sup>nd</sup> April, 2009. Er. R.K.

Dhiman, Chief Engineer (Comml.) of the Board, who appeared on behalf of the Board, has stated, during the course of hearing this petition on 4.4.2009, that he has no objection for taking into consideration the report submitted by the Secretary rather he urged that the review application (59/09) may be considered and disposed of on the basis of the said report.

11. The Secretary's report reveals that though toll free number 1260 was made functional w.e.f. 20.9.2008, its efficiency was tested subsequently and found inadequate for coverage within Himachal Pradesh and even within Shimla. The changed toll free number 18001808060 has been provided w.e.f. 25.2.2009 and has been found functional on 25.3.2009. Hence the 29<sup>th</sup> Sept., 2008 (the functional date as claimed by the Board) can not be deemed to be date of commissioning of the Call Centre, as despite changing the toll free number, it is stated to be accessible w.e.f. 25.2.2009. Against the target of covering all Sub-divisions within 24 months of the 3<sup>rd</sup> Nov., 2005 i.e. the date of commencement of the SOP Regulations, Call Centre as pilot project has been made accessible on line only in two Divisions and 10 pilot Sub-divisions w.e.f. 25.2.2009. Under Regulation 5(3) of SOP Regulations, the publicity through electronic and print media of CRM facilitation under SOP has been very limited leading to very low inflow of complaints to the Call Centre despite accessibility of the toll free number Statewide. This inflow persists despite the Commission, in its order dated 5.4.2008, pointing out that the Board had received 7 lakh complaints without compensating for poor standard of performance. The Board has taken the plea that wide publicity of this toll free complaint number could not be due to imposition of Model Code of Conduct and the lack of consumer awareness is the out come. Data Centre (as distinct from Call Centre) can only be deemed to be functional once the data inflow is classified and tabulated in uniform data formats for enabling comparative performance analysis on CRM and related criteria.

12. From the facts, delineated in the Secretary's report, it is abundantly clear that the Board is not yet serious in compliance of the statutory provisions contained in the SOP Regulations and the Call Centre is yet to be made operational effectively by resorting to publicity measures under regulation 5(3) and by setting up a functional data centre to develop uniform formats for data collection and evaluation of performance of the responsibility centres in

each Operation Circle Unit of the Board. Shelter taken by the Board that the publicity measures could not be undertaken due to imposition of the Model Code of Conduct is not well founded for the reason that the said Model Code of Conduct has been made applicable on the 2<sup>nd</sup> of March, 2009 and before that there was no such impediment. Also it was open for the Board to move for the Election Commission's clearance. Apart from this the petitioner Board itself submits that the data call centre, being constructed by the Maintenance Division, Vidyut Bhawan, Shimla, is functional with data in respect of energy bills, payment and complaint registration in respect of five Sub-divisions of City Electrical Division. Balance 118 Sub-divisions in IT Package are yet to be integrated with data Call Centre.

13. Mere setting up of call centre, without its connectivity with the Sub-divisional offices and that too without creating consumer awareness, can by no stretch of imagination be considered as compliance of the statutory provisions of SOP Regulations and the directions issued thereunder. The purpose of the SOP regulations is being rendered otiose and nugatory by the partial and incomplete actions of the Board. The continual defiance of the SOP Regulations by the Board is still defeating the very essence and objective for which the said regulations have been made. The Commission, therefore, declines to notify its satisfaction about the compliance of SOP Regulations, by the Board.

14. Petition No. 59/09, seeking review of the Commission order dated 5.4.08, has been moved by the Board in light of the order of Hon'ble APTEL passed on 16.3.2009 in Appeal No. 39/08 titled as HPSEB V/s HPERC. In this petition the Board has repeated the contents of petition No. 265/08 dated 6.12.2008 which has been considered by the Commission on merits, in the earlier part of this order. When this petition (i.e. petition No. 59/09) came up for hearing before this Commission on 4.4.2009, Er. R.K. Dhiman, Chief Engineer (Comml.), representing the Board stated in equivocal terms that he has nothing to add to the Board's submissions. .

15. A petition filed on 14.5.2008, seeking review of the Commission's order dated 5.4.2008, already stands disposed of by this Commission's Order dated 2.9.2008, Section 94(1) of the Electricity Act, 2003, provides that the Appropriate Commission shall, for the purpose of any enquiry or proceedings

under the Act, have same powers as are vested in a Civil Court under the Code to Civil Procedure, 1908, in respect of matters enumerated in clauses (a) to (g), Section 94(f) provides for reviewing its decision, directions or orders by the Commission. It is settled law that even in terms of the Civil Procedure Code, no review of review is maintainable. It has been held that an order passed on review application for review is not open to review again and again in **Abhaimalgai V,K, Santh Kumaran AIR 1999 SC 1486; 1998(7) SCC 386; Lily Thomas V/s UOI 2000 (6) SCC 224 at p.250; & Delhi Administration V/s Gurdeep Singh 2000 (7) SCC 296 (309-10) followed by the APTEL in Appeal No. 99 of 2006 decided on 12.9.2006 i.e. Urla Industries Association V/s Chhatisgarh State Electricity Regulatory Commission 2007 APTEL 331**. Further the APTEL vide its another order dated 9.12.2005 made in **Appeal No. 119 of 2005 Power Grid Corporation V/s CERC and others 2007 APTEL 1140**, has ruled that in law no second review of the decision or order is maintainable.

14. In the light of the above discussion and circumstances, the Commission does not find any ground to interfere with the Order dated 5<sup>th</sup> April, 2008 at this stage and both the petitions are, therefore, dismissed.

Before parting with the matter the Commission directs the Board to ensure that sufficient and accurate data is made available in time to enable the Commission to notify its satisfaction about the Board's compliance of the SOP Regulations.

(Yogesh Khanna)  
Chairman.