

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

Vidyut Aayog Bhawan, Block No. 37, SDA Complex, Kasumpti, Shimla- 171009

CORAM: Sh. Devendra Kumar Sharma, Chairman
Sh. Yashwant Singh Chogal, Member (Law)
Sh. Shashi Kant Joshi, Member

In the matter of:

In the matter of the Himachal Pradesh Electricity Regulatory Commission (Compensation to Victims of Electrical Accidents) Regulations, 2022.

ORDER

The Himachal Pradesh Electricity Regulatory Commission (hereinafter to be referred as “the Commission”), in exercise of powers conferred under Section 57 read with Section 181 (za) of the Electricity Act, 2003 (36 of 2003) read with Section 21 of the General Clauses Act, 1897 (10 of 1897) and all other powers enabling it in this behalf, notified the draft Himachal Pradesh Electricity Regulatory Commission (Compensation to Victims of Electrical Accidents) Regulations, 2022, on 24th August, 2022 and as required under Sub-section (3) of the Section 181 of the Act, the same were published in the Rajpatra, Himachal Pradesh on 26th August, 2022.

2. The Commission invited public objections and suggestions by way of insertions of Public Notice in two News papers i.e. “Hindustan Times” and “Amar Ujala” on 01.09.2022 under Rule (3) of Electricity (Procedure of Previous Publication) Rules, 2005 and the full text of the draft Regulations was made available on the Commission’s website: www.hperc.org. The last date for filing objections/suggestions was 30.09.2022. The Public hearing in the matter was scheduled to be held on 06.10.2022 at 2.30 PM.
3. The Commission, vide letter dated 02.09.2022, also requested the major stakeholders, including the State Government, Directorate of Energy, HIMURJA, the Chief Electrical Inspector, the Distribution and Transmission Licensee i.e. the Himachal Pradesh State Electricity Board Ltd. (HPSEBL), and the Himachal Pradesh Power Transmission Corporation Ltd. (HPPTCL), the Himachal Pradesh Power Corporation Ltd. (HPPCL) and Small Hydro Project Developers Associations to send their objections/ suggestions as per the aforesaid Public Notice.
4. A prior notice of public hearing scheduled to be held on 06.10.2022 was issued through publication in the newspapers “Times of India” and “Dainik Bhasker” and the major stakeholders were also informed of the date of public hearing vide letter dated 29.09.2022.
5. The Commission received comments/suggestions on the draft Regulations from the following stakeholders:-

- (i) The Himachal Pradesh State Electricity Board Limited (HPSEBL), Vidyut Bhawan, Shimla-171004 (HP).
 - (ii) The Himachal Pradesh Power Transmission Corporation Ltd., Himfed Bhawan, Below MLA Quarters, Panjari, Shimla-171005(HP).
 - (iii) Forum of the Hydro Power Producers, Room No. 103, 1st Floor, Himfed Building, Below BCS, New Shimla-171009 (HP).
 - (iv) Sh. Kameshwar Singh Dhaulta, Consumers' Representative, House No. A-62, Phase-1, Sector-2, Main Road, New Shimla-171009 (HP).
6. A public hearing was held on 06.10.2022 at 10.30 AM onwards, however, no stakeholder appeared during the said public hearing.
7. The HPSEBL in its comments/ suggestions has raised various objections and one of the major objections is that the framing of the proposed Regulations is beyond the legislative competence of the Commission, therefore, a significant time was taken in studying the various aspects of the matter and also the Regulations of other Commissions in this regard which has delayed the finalization of these Regulations.

8. **Consideration of written submissions made by the stakeholders and Commission's views.-**

After having carefully gone through all the written submissions, the Commission proceeds to consider the various suggestions made by the stakeholders and finalize its views on the subject, as follows:-

(i) General comments:-

- (a) The HPSEBL has submitted that the provision(s) of compensation proposed in the draft Regulations appears to be beyond the scope of Section 57 of the Electricity Act, 2003 and this aspect may be reconsidered.
- (b) The Consumer's Representative (CR) has commented that the proposed Regulations is a welcome step and proposed Regulatory Intervention to provide adequate monetary compensation by the Obligated Entity to the Victim of the electrical accident need to be put in place.

Commission's View:-

The Commission is of the view that electrical accidents are caused due to deficiency in the service standards and non-implementation of the safety and security norms laid down by the Central Electricity Authority as well as compromise with the standard operating procedures by an Obligated Entity. The Section 57 of the Electricity Act, 2003 needs to be viewed in a broad perspective. To address the issue raised by the HPSEBL, it is appropriate to quote the following paragraph from the Regulations framed in this regard by the Andhra Pradesh Electricity Regulatory Commission (APEREC for short):-

“An Act or illegal omission thus endangering human life or the personal safety of others or causing hurt or grievous hurt or death, as the case may be is also an actionable civil wrong leading to liability for compensation;

The doctrine of strict liability has been consistently held by judicial precedents to be imposing a liability on a person undertaking an activity involving hazardous or risky exposure to human life to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of that person and even if measures to prevent mishaps have been adopted; Whereas the Jurisprudential technicalities, procedural complications and proverbial law’s delays deprive the Victims of electrical accidents from getting prompt and adequate relief and humanitarian considerations mandate provision of a prompt and adequate relief.”

We have carefully gone through the above Regulations framed by the APERC and the Regulations framed in this regard by the State Electricity Regulatory Commission (SERC for short) on the subject and the relevant provisions of the Electricity Act, 2003. A careful perusal of Section 57 of the Electricity Act, 2003 and the Regulations framed by Andhra Pradesh Electricity Regulatory Commission and Regulations framed by other SERCs, leaves no matter of doubt that this Commission has the competence to frame the Regulations for providing compensation to the victims of electrical accidents.

Thus, the submissions of HPSEBL has no merit and the Commission decides to finalize the Regulations through this Order.

(ii) Comments on Regulation 1.-

(a) Sub-regulation (3):-

The HPSEBL has submitted that the proposed Regulations should also be applicable to the owner/user of premises where the accident occurred and the same may also be included in Sub-regulation (3) of Regulation 1.

Commission’s View:-

The compensation under the proposed Regulations shall be payable only on occurrence of an electrical accident by Power generating companies situated/ working in the Himachal Pradesh and the Transmission and Distribution Licensees, if such accident occurs in network/system under their control jurisdiction area of operation. As far as Distribution Licensee is concerned, the proposed Regulations are applicable upto the point of commencement of supply to the Consumer. The proposed Regulations do not intend to fix compensation for electrical accidents occurring in the premises of the Consumer and, therefore, the Commission decides to finalise the proposed draft provision without any modification in the proposed Sub-regulation.

(b) Sub-regulation (4):-

The Consumers' Representative has commented that no amount of monetary compensation can be substituted for a loss of life or limb or any physical injury to a Victim or his dependents. However, the proposed Sub-regulation restricts the eligibility for compensation to the Victims covered under Employee's Compensation Act, 1923 and H.P. Disaster Management and Relief Manual which cover majority of such cases and provide inadequate relief/compensation. He has submitted that such provision shall not only eliminate/ reduce the mandatory obligation of the concerned entities to provide compensation, as per the proposed Regulations but also their obligation to reduce or eliminate the risks of personal injury to any person or animal etc. on account of maintaining the system as per the norms. Further, in order to make the proposed Regulations more effective and beneficial to the Victims, it is suggested to allow compensation to Victims in addition to the existing provisions, as provided for insurance cover and compensation under civil suit(s) and also to delete the Sub-regulation (4) of the proposed Regulations to cover all Victims irrespective of their nature of engagement in job/work or otherwise.

Commission's View:-

The purpose of the proposed Regulations is to provide the Victim(s) of an Electrical Accident a right to claim compensation. But at the same time, the possibility of payment of separate compensation by the Obligated Entity(ies)/ State Government under any other scheme/law has also to be duly addressed. The Commission observes that provisions for payment of compensation to the employees covered under Employee's Compensation Act, 1923 or any other law for the time being in force is independent and can not in any manner be restricted and the victim(s)/claimant(s) is/are free to claim the compensation under any other provisions of law. Therefore, as suggested by the Consumer Representative, the Commission decides to delete the proposed Sub-regulation (4).

(c) Comments on Sub-regulation (11) of Regulation 2.-

The HPSEBL has submitted that the definition of the Obligated Entity may be revised to include the owner/user of premises where the accident occurred as below.-

“Obligated Entity' for the purpose of these Regulations means an intra State generating company or a licensee or owner/user of Energy in whose premises the accident occurred liable to pay compensation as per the provisions of these Regulations.”

Commission's View:-

As pointed out earlier in this Order, the compensation under these Regulations shall be payable by the Distribution Licensee where its network/ system is involved upto the point of commencement of supply to the consumer.

The Commission, therefore, do not find any substance in the submissions of the HPSEBL.

(d) Comments on Regulation 4.-

- (a) The HPSEBL has submitted that the final compensation should not be paid for injury or damage or loss of life occurring for any accident caused due to encroachment on the part of the Victims and accordingly the following may be included at Sub-regulation (6) as below.-

“The final compensation shall not be paid for injury or damage or loss of life occurring for any accident caused due to encroachment on the part of the Victims.”

- (b) Himachal Pradesh Power Transmission Corporation Limited and the Forum of the Hydro Power Producers have suggested that Sub-regulation (4) of Regulation 4 of the proposed Regulations may be modified to incorporate the provision that if the construction of any structure/ house/ building/cow sheds is carried out underneath EHV line or Right of Way of tower structure/line, in such a manner violating safety clearance of Regulations, despite warnings/notices to the owner of building/structure), no compensation shall be payable to Victim or owner on such account, by Obligated Entity, in case of any fatal or non-fatal accident under the Rules/Regulations/Act.

Commission's View:-

The Commission finds merit in the comments of the stakeholders and accordingly, decides to incorporate the provision that no compensation shall be payable to the Victim(s) by the Obligated Entity, in case of occurrence of any fatal or non-fatal accident on account of construction of any structure/house/building/cow-shed and encroachment etc. underneath the electrical line(s) or Right of Way of transmission line(s), as the case may be, by compromising the safety standards and clearances etc. despite warnings/ notices to the owner(s)/ occupier(s) of building/structure.

(e) Comments on Sub-regulation (4) of Regulation 5.-

The HPSEBL has commented that item (iii) of Sub-regulation (4) of the proposed Regulation 5 may be modified in the following manner:-

“within 7 working days from the date of claim, request to submit legal heir certificate and an indemnity bond from the claimant.”

Commission's View:-

The Commission is of the opinion that in order to avoid hardship to the Victim(s)/ Claimant(s), the Designated Officer of the Obligated Entity should obtain the documents such as proof of indoor hospitalization or report from the concerned Panchyat/local body where accident occurred or First Information Report (FIR) or Postmortem Report etc. in respect of deceased/injured human being or animal. The Commission, therefore, decides to modify the proposed provisions appropriately at the relevant places. The Commission also decides to enhance the amount of interim relief proposed in Regulation 5 to Rs. 1,25,000/- from Rs. 1,00,000 and the figures of Rs. 10,000/-, Rs. 5,000/- and Rs. 30,000/- respectively appearing in Regulation 3 have been substituted as Rs. 12,000/-, Rs. 8,000/- and Rs. 45,000/- respectively.

The Commission is also of the view that in the event of delay in submission of legal heir certificate, the payment of compensation shall be paid on getting the indemnity bond and has accordingly made the provision in the Regulation 9 and the submissions in this regard are not tenable.

(f) Comments on Regulation 8.-**(i) Sub-regulation (1):-**

The HPSEBL has suggested that a provision may be incorporated for the detailed enquiry report to be provided to the claimant by the Department of Electrical Inspectorate within 60 days and the existing Sub-regulation (1) of Regulation 8 of the proposed Regulations may be modified as following:

“The Department of Electrical Inspectorate shall provide, after conducting a detailed enquiry of electrical accident, a copy of detailed report to the Designated Officer of the concerned Obligated Entity and to the claimant within 60 days”.

Commission's View:-

The Commission observes that as per the provisions of the Electricity Act, 2003, the Electrical Inspector is obligated to submit its report in context of an electrical accident to the State Government. However, the provision to provide enquiry report to the Obligated Entity and Designated Officer of the Obligated Entity has been included in the proposed Regulations to ensure that the Obligated Entity takes cognizance of the cause of the accident and under takes immediate measures to restrict the repetition of such accidents/incidents in future. Therefore, the Commission decides to provide timeline of 5 days for completion of such enquiry by the Electrical Inspectorate and that in the event of non-submission of report within 5 days, the same shall be deemed to have been received so that the payment of compensation is not delayed on this account.

(ii) Item(c) of Sub-regulation (2):-

The HPSEBL has suggested to modify the existing item (c) of Sub-regulation (2) of Regulation 8 as following:

“within 10 days from the date of claim, request to submit legal heir certificate and an indemnity bond from the claimant, if not collected under Sub-regulation (4) of Regulation 5.”

Commission’s View:-

The Commission has already dealt this aspect in para 8(ii) (e) above.

(iii) Sub-regulation (3):-

The HPSEBL has suggested to modify the existing Sub-regulation (3) of Regulation 8 of Chapter-V of the proposed Regulations as following:

“The concerned authority of the Obligated Entity shall, within 30 days from the date of receipt of the enquiry report from the Department of Electrical Inspectorate, pass the final order.”

Commission’s View:-

The payment of compensation for electrical accident has to be made without any delay, therefore, the period of 30 days as submitted cannot be provided. Taking into account that the total time period provided right from the occurrence of the electrical accident to the filing of detailed enquiry report by the Electrical Inspectorate, the Commission feels that 10 days time period shall be sufficient to conduct the enquiry and pass the final order from the date of occurrence of accident/incident. The Commission, therefore, decides to finalise the proposed draft provision accordingly by making appropriate changes at relevant places in these Regulations.

(iv) Sub-regulation (4):-

The HPSEBL has suggested to increase the time provided for communication of final order by the Designated Officer of the Obligated Entity to the claimant(s) to 10 days from 5 days from the date of passing of final order as proposed in the draft Regulations.

Commission’s View:-

The final compensation is to be paid to the victim/claimant(s) within 14 days of the date of occurrence of accident/incident and the Commission is of the view that the proposed provision was not relevant. Therefore, the Commission decides to delete the same.

(v) Comments on Regulation 9.-

(a) Sub-regulation (1):-

The HPSEBL has suggested to increase the maximum time provided for payment of compensation, arrived at after adjustment of the amount already paid as immediate relief under Regulation 5 of the proposed Regulations, to the claimant(s) from the date of passing of the final order

passed by the Designated Officer of the Obligated Entity from proposed 10 days to 45 days.

Commission's View:-

The Commission has already dealt this aspect in para 8 (iv) above and is of the view that the proposed submission is not in the interest of the victim(s)/claimants.

(b) Sub-regulation (2).-

The HPSEBL has suggested to reduce the maximum additional amount payable to the claimant(s) in case of delay in payment of compensation to the Victim beyond the timelines provided in the proposed Regulations from Rs. 10,000/- to Rs. 5,000/-.

Commission's View:-

Considering that once the final order has been passed by the Designated Officer of the Obligated Entity, the compensation is required to be paid as early as possible and not later than 14 days from the date of occurrence. The Commission also feels that the penalty amount in the proposed Regulations is too low and may be flouted with impunity. Therefore, the Commission decides that in case the payment is delayed for any reason beyond the timeline, an additional amount of Rs. 500/- for each days default subject to the maximum Rs. 1,00,000/- (One lakh Rupees) shall suffice the purpose so that the compensation is paid without any delay. The Commission, therefore, decides to make this provision more strict and finalise the same in Regulation 9 in the following manner:

“ (5) In case the payment is delayed for any reason beyond the timeline provided in Sub-regulation (2) of this Regulation, an additional amount of Rs 500 (Rupees five hundred) for each day of default, subject to maximum Rs 1,00,000 (Rupees one Lacs) shall be payable to the victim(s)/claimant(s).

(6) In case the additional amount as per Sub-regulation (5) of this Regulation is paid by the Obligated Entity on account of delay in payment of compensation, the same shall not be passed through in the Annual Revenue Requirement of the Licensee/Annual Fixed Cost/Project Cost. The responsibility of the officer/official shall be fixed for such delay and brought to the notice of the Commission within a week after payment of such amount.”

(vi) Comments on Format III ('Claim form for Payment of Compensation').-

The HPSEBL has suggested to include copy of investigation report of Chief Electrical Inspector in the list of enclosures specified for Humans and Animals in Format III 'Claim form for Payment of Compensation'.

Commission’s View:-

The Commission has made changes at appropriate places so as to ensure seamless distribution of compensation. The Commission feels that the obligated entity is under an obligation to ensure safety standards and in case some electrical accident occurs due to the negligence of the Obligated Entity/ Generation Company, as defined in the Regulations, the victim(s)/claimant(s) need to be compensated immediately and the documents if any, and the application from the victim(s)/claimants(s) should be collected by the Designated Officer or any authorized representative, as the victim(s)/claimant(s) being under shock due to electrical accident may not be in a position to procure such documents and file the application for claim. Hence, on careful consideration of the matter, the Commission has decided to dispense with the formats and application.

The Commission has made suitable modifications in the quantum of compensation for loss of animals and have also carried out some other minor modifications at various provisions so as to ensure seamless payment of compensation. The Commission is also of the view that the proposed Regulations are in the interest of the victim(s)/claimant(s) and also the obligated entity. The draft Regulations are accordingly finalized and approved and be notified accordingly.

Place: Shimla

Dated: 22 .07.2023

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| Sd/- | Sd/- | Sd/- |
| (Shashi Kant Joshi) | (Yashwant Singh Chogal) | (Devendra Kumar Sharma) |
| Member | Member(Law) | Chairman |