

## **HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA**

In the matter of the draft Himachal Pradesh Electricity Regulatory Commission (Security Deposit)( Third Amendment) Regulations, 2020.

### **ORDER**

The Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as “the Commission”) made and published the Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations,2005 in the Rajpatra, Himachal Pradesh, dated 30<sup>th</sup> March, 2005 (hereinafter referred as “the said regulations”). The said regulations came into force with effect from the 30<sup>th</sup> March, 2005 and were subsequently amended on 11.11.2011 and 01.12.2015.

2. Pursuant to the said regulations the initial security deposits rates were notified long back during the year 2005 based on the tariff applicable during FY 2004-05 which has increased on year to year basis. Whereas the regulation 6 of the said regulations provides for review of security deposit rates in respect of those consumers having poor credit rating, the regulations do not provide for revision of security deposit rates for the consumers whose credit rating is not poor but their monthly bills have increased due to increase in electricity consumption and revision of tariff etc.
3. On the face of inadequate security deposits the HPSEBL is experiencing difficulties to recover outstanding amounts from the consumers defaulting due to various reasons. In order to protect its revenues and to secure the timely recovery of the outstanding bills, the HPSEBL has approached this Commission for amendments in the said regulations. In relation to the proposal submitted by the HPSEBL, the Hon’ble High Court of Himachal Pradesh has also expressed its considered view on the suggestions/recommendations of the HPSEBL that these proposals need to be approved by the Commission.
4. The Commission, after having stock of the proposal initiated by the HPSEBL and in exercise of the powers conferred under sub-section (3) of section 181 of the Electricity Act, rule 3 of the Electricity (Procedure for Previous Publication) Rules, 2005, and all other powers enabling it in this behalf, proposed to make certain amendments in the Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations,2005 and accordingly invited public objections and suggestions on the draft amendment regulations by way of the publication in the Rajpatra, Himachal Pradesh.,on 18.02.2020 and insertion in two News papers i.e. “The Tribune” and “ Dainik Jagaran” on 19.02.2020 for the information of all the persons likely to be affected thereby and public notice was also sent to the major stakeholders vide Commission’s letter dated 19.02.2020.the full text of the draft regulations was also made available on the Commission’s website [www.hperc.org](http://www.hperc.org). The last date for inviting suggestions/objection was 09.03.2020.
5. The Commission received suggestions/objections on the draft amendment regulations from the following stakeholders:-
  1. The Himachal Pradesh State Electricity Board Limited.
  2. The Parwanoo Industries Association.
  3. The Confederation of Indian Industries, Chandigarh.

4. The Baddi Barotiwala Nalagarh Industries Association, Baddi.
5. The Kala-Amb Chamber of Commerce & Industry, Kala-Amb.
6. M/s UltraTech Cement Baga.

To facilitate fruitful discussions in the public hearing fixed for 13<sup>th</sup> March, 2020, the objections and suggestions received from the stakeholders were sent to the HPSEBL in advance and they were also requested to participate in the public hearing.

The Public hearing in the said matter was also conducted on 13.03.2020 in the Commission. The list of participants who attended the public hearing is annexed as **Annexure-“A”**.

#### **6. Objections and issues raised during the public hearing.-**

During the public hearing, the stakeholders and their representatives presented their views. The issues and concerns voiced by them are given in brief as under:-

6.1 Shri R.K. Bansal, representing M/s Confederation of Indian Industries, Baddi Barotiwala Nalagarh Industries Association, Parwanoo Industries Association (PIA) and Kala-Amb Chamber of Commerce & Industry (hereinafter referred to as the “Industries Associations”) reiterated the submissions made in writing by the Parwanoo Industries Association stating that:-

- (i) The industrial consumers should have the option to deposit the security in the shape of the Bank Guarantee;
- (ii) Section 47 of the Electricity Act, 2003 provides for charging only reasonable security and also the interest payable by the distribution licensee equivalent to the bank rate or more;
- (iii) During the first year of operation the industrial consumers normally have to face financial constraints and are also not able to consume electricity upto their full capacity. As such the initial security should be kept minimum. Since the provisions for annual review of the security amount already exists in the regulations, the initial security should not be increased as the shortfall, if any, shall automatically be offset through the process of annual review;
- (iv) The amount of initial security should be increased only after detailed analysis of the data concerning consumption pattern of the consumers of various categories;
- (v) The amount of security deposit should be linked with the average dues at any given point of time and according to him security amount equivalent to 43 days of billing is adequate;
- (vi) The increase in the rates of security deposit can prove to the disadvantages of the HPSEBL keeping in view the fact that it will increase the interest liability and it may also make the field offices more negligent and callous;
- (vii) No interest should be charged in case of the consumer delays the payment of the additional security keeping in view the fact that the licensee is empowered to disconnect the supply to the consumer who defaults in this regard after giving suitable notice;

- (viii) The process of annual review should also provide for refund of security amount to the consumer in case the security amount based on the billing for last 12 months is less than the amount of security deposit actually deposited;
  - (ix) The provision of conducting credit rating of the consumers should be omitted as with the proposed amendment no incentive and disincentive is available to the consumers;
  - (x) The payment of additional security should be allowed in quarterly installments in cases where the amount of additional security exceeds 15% (instead of 30% proposed in the draft regulations) of the average monthly bill of the previous year.
- 6.2 The representative of the HPSEBL stated that the intention of the Board is not to arrange money at cheaper rates, as, contended by the industrial consumers, but the same is aimed at protecting the outstanding dues against the consumers. He further stated that since any consumer, irrespective of credit rating can default in clearing his dues, the amount of security deposit to be charged from the consumers should be on uniform basis. In regard to the formula for computing the amount of Initial Security Deposit, he stated that the formula proposed by the Commission is in order.
- 6.3 Shri Deepan Garg, representative of M/s Ruchira Papers, Kala-Amb stated that a practical approach needs to be followed while considering revision of the rates of security deposit and the fact that the quality of supply to the consumers is not upto to the mark which should also be taken into consideration. He further stated that the consumers should not be burdened by way of higher rates of security deposit because of the general negligence of the field officers of the HPSEBL in timely recovery of dues.
- 6.4 The matter regarding provisions for the Bank Guarantee was deliberated at length. The representative of the Industries Associations stated that the the Bank Guarantee is as good as cash for the security purpose and that the industrial consumers should have option to deposit the security in the shape of the Bank Guarantee. It was mentioned by them that if they are made to deposit the security in cash, it will not only put extra financial burden on them but may also discourage the industrial consumers to set up industries in the State. It was requested that the proposal for enhancing the limit from Rs. 10 lacs to Rs. 25 lacs should be dropped. It was further stated that if at all the security deposit is got deposited in cash, the consumers should be allowed interest on the security deposit at the rate corresponding to the rate at which they borrow money, which was stated to be of the order of 12% per annum. The representative of the HPSEBL, when asked to clarify the rationale for insisting for security deposit in cash instead of the Bank Guarantee, mentioned that the acceptance of security deposit in the shape of the Bank Guarantee involves additional work load in getting the Bank Guarantee checked for their authenticity and correctness and also for monitoring thereof and their field officers are not equipped for the same. He stated that a large number of consumers have deposited the Bank Guarantee in lieu of security deposit. On this, the representative of industrial consumers stated that the consumer cannot be put to financial burden simply because the acceptance of the Bank Guarantee would involve some

workload. They, however, further suggested that the HPSEBL can insist the Bank Guarantee for longer durations and can also short list the names of the banks from which the Bank Guarantee shall be accepted. This will facilitate significant saving in time in handling the Bank Guarantees. Shri S.K. Thakur, Joint Secretary, BBNIA, stated that authenticity of the Bank Guarantee submitted by the consumer can be got checked from the banks within 7 days.

**7. Consideration of written submissions and viewpoints expressed at the public hearing by the stakeholders and Commission's views.-**

After having gone through all the written submissions made and viewpoints expressed at the public hearing, we now proceed to give our views on the various suggestions which have been considered to be relevant to the amendments proposed in the draft regulations, as follows.-

**7.1 Amendment in regulation 4.-**

**7.1.1 Obligations of consumers:-**

The HPSEBL has submitted that the proposed amendments to regulation 4 are not consistent with the Act nor are these consistent with subsequent regulations of the Security Deposit Regulations. It has been mentioned that section 47 of the Act does not regulate consumers and therefore neither can the regulations framed by the Commission regulate consumers. These regulations have to be in terms of the distribution licensee. It has been suggested that in view of foregoing, the regulation 4 may be suitably modified to include regulations in such form and in such manner as to be in alignment with sub-section(2), sub-section(3), sub-section (4) and sub-section(5) of Section 47 of the Act.

**Commission's View:-**

The provisions of the Act, as referred to by the HPSEBL do not in any way debar the inclusion of the consumers obligations in the regulations. In fact, the proposal submitted by the HPSEBL also mentions on the obligations of the consumers. The comments now given by the HPSEBL in this regard are in conflict with the proposal submitted by it. However, keeping in view the fact that no harm shall be done if the text of the proposed amendment is slightly modified to cover this aspect, we decide to amend sub-regulation (1) of regulation 4 suitably, as stated in the subsequent paras of this Order.

**7.1.2 Distinction between Initial Security Deposit and Additional Security Deposit:-**

The HPSEBL has submitted that unambiguous distinction exist between initial Security Deposit and Additional Security Deposit for the reason that initial Security Deposit is receivable at the beginning when the licensee is not aware of the consumption pattern of the consumer. The regulations on initial Security Deposit and Additional Security Deposit are contained in regulation 5 and regulation 6 respectively and accordingly the previous regulation 4, the current regulations, may be suitably modified by moving these appropriately under relevant regulations 5 and regulation 6. It has been proposed that the proposed draft amendment to sub-regulation (1) of

regulation 4 be considered under regulation 5 and expression “additional load” be deleted.

**Commission’s View:-**

Initial Security Deposit refers to the Security Deposit obtained for release of new connection or the same obtained for the first time, in respect of any additional load applied for by an existing consumers. The Security Deposit by an existing consumer for additional load will thus form a part of initial Security Deposit even though the same consumer had earlier deposited some security for the original load for his connection. As such, we decide not to make any changes in the proposed text in this regard.

**7.1.3 Text of the proposed amendment of sub-regulation (3):-**

The HPSEBL has proposed in relation to the sub-regulation (3) of regulation 4, as proposed in the draft regulations, that-

- (i) draft amendment be considered under regulation 6 and word ‘consumer’ be substituted with the expression “licensee for any consumer”; and
- (ii) the letter ‘n’ be substituted with the expression “months of billing cycle” and the language of the proposed draft amendment be corrected ; and accordingly the ‘note’ under the proposed draft amendment be deleted;

**Commission’s View:-**

- (i) The provision shall be retained with certain modification in text in view of the reasons similar to discussed under para 7.1.1 in relation to sub-regulation (1) of regulation 4.
- (ii) As regards the suggestion to describe the term ‘n’ in running form instead of describing the same in shape of a note, we find that it will not make any material difference and decide to retain the same in the shape of a note only.

**7.1.4 Review of Security:-**

The Industries Associations have submitted that, contrary to the statement given by the HPSEBL, provision for increasing the Security Deposit as per the applicable billing cycle already exists in the existing regulations and that the proposer of this amendment has also been applying this existing provision to review the security of consumers.

**Commission’s View.-**

This does not in any way require special consideration as the present proposal is only focused at providing clear cut provisions for review of Security Deposit which can be implemented smoothly without any ambiguity.

**7.1.5 Level of security viz. a viz. interest:-**

- (i) In relation to the draft regulation 4(3), the Industries Associations have stated that the increase in the levels of Security Deposit to be maintained from one month, as earlier notified, to a level of 2.35 months in the case consumers on monthly billing cycle is enormous and lacks justification. It has been mentioned that the security level should be pegged

at 1.5 months only as it is a reasonable level as per provisions of section 47 of the Electricity Act, 2003.

- (ii) M/s UltraTech Cement Limited, Baga have submitted in relation to the provision that the logic behind adding 1.35 months for billing is not clear and one month is more than sufficient to ascertain the default in payment as the due date is less than one month in every case. It has also been mentioned that most of the States like Uttar Pradesh, Uttarakhand, Madhya Pradesh, Rajasthan etc. have adopted the security deposit equal to two months average bill and even it is one month in Maharashtra. They have requested to retain security deposit as (n+1) month in line with nearby States to avoid to block the working capital of the consumers who are the most prompt category of consumers paying the bills and dues in time.
- (iii) The increase in security level should be coupled with increase in the interest rate payable on security. The entrepreneurs make investments for setting up industrial units, a large part of funds being borrowed funds. The borrowing rates of interest are in the range of 12% per annum, whereas as per present regulations interest rate of only about 6% is allowed based on the bank rate notified by the RBI. The interest on security should be based on lending rates, as in that case, the consumers will not be at loss of interest while banking the borrowed funds with the utility, while the Utility also stands secured. The section 47 of the Electricity Act, 2003 empowers the Commission to fix a rate equal to the bank rate or more, whereas it is not specified in the Act that the bank rate shall mean the bank rate notified by the RBI. There are different kinds of bank rates under different names. The whole objective should be to compensate the consumer in a way that he is not pinched by the low interest rate paid on security.

**Commission's View.-**

- (i) We feel that the proposed provision for linking the Security Deposit with dues for (n+1.35) months is quite reasonable and the rationale of linking Security Deposit with the dues to (n+1.35) months shall be discussed in a subsequent paragraph of this Order.
- (ii) The proposed regulations not only contain adequate provisions for their uniform and smooth implementation but also duly take into consideration the aspects brought out by the objector. As regards suggestion that the consumer shall be compensated in a way that he is not pinched by the low interest rate paid on security, we feel that the interest rate already being allowed is quite reasonable and suggestion for allowing higher interest rate is not acceptable.

**7.1.6 Timelines for payment of Initial Security Deposit:-**

The Industries Associations during the course of public hearing also raised the question about timelines in which the Initial Security is to be deposited. It has been submitted that regulation 4(4) as proposed and regulation 4(3) as existing clearly conclude that the security is required to be obtained necessarily before the release of

the connection, which is logical. But, in practice, the security amount is demanded at the time of application for power connection, which is highly objectionable. In the past, it has occurred that security was demanded at the time of application, whereas the actual release of load was affected several years later, due to delays in setting up of the factory or some infrastructure related issues. The security amount is withheld for an indefinite period by the licensee. This has created problems in payment of interest on security. A clear procedure should be defined that the security shall become payable only after the sanction of load but before the actual release of the load to the consumer. The regulations are clear on this, but the implementation is faulty.

**Commission's View:-**

The timelines in which the initial Security Deposit is to be obtained has already been clearly spelt out in sub-para 3.1.4 of the Supply Code. In order to avoid any conflict, the text of the proposed amendment shall be suitably modified and the matter shall continue to be governed by the provisions of the Supply Code.

**7.1.7 Amendment of sub-regulation (4) of Regulation 4 Mode of payment of Security Deposit.**

**Comments:-**

- (i) The HPSEB has submitted that the use of the Bank Guarantee being against the orders of the Hon'ble HP High Court, all the provisos pertaining to the Bank Guarantee under sub-regulation (4) and sub-regulation (5) be deleted (modified where Bank Guarantees exist by substitution with Demand Draft) and therefore the proposed draft amendment may not be effected.
- (ii) The Industries Associations have objected the move to increase the lower limit of security in the form of Bank Guarantee to a level of 25 lakhs from the present level of ten lakhs and have mentioned that the basic question that arises from this move is whether the sanctity of the Bank Guarantees is not being acknowledged by the Utility. Whether a Bank Guarantee is a proper instrument for providing security or not, cannot be questioned as Bank Guarantee is considered at par with payment in cash as long as security is concerned. Earlier the limit was increased to 10 lakhs a few years ago, and now again the proposal to increase the same to a level of 25 lakhs clearly shows the intent of this amendment. Either the Bank Guarantee is not considered secure enough or the Utility is trying to raise cheaper funds through security recovered in cash from the consumers. It has been suggested that a rate of 12% or an interest equivalent to lending rates of banks be fixed as interest on security, so that the meaning of security only remains to the purpose of security and not for raising funds for the Utility. It has been mentioned that the intention of the Act, is obviously not to make the security a tool for raising funds for the Utility. Security has to be fixed only to a level to secure the outstanding and nothing beyond.

### **Commission's View:-**

The matter regarding provisions for the Bank Guarantee was deliberated at length at the public hearing. The representative of the Industries Associations stated that the Bank Guarantee is as good as cash for the security purpose and that the industrial consumers should have option to deposit the security in shape of the Bank Guarantee. It was mentioned by them if they are made to deposit the security in cash, it will not only put extra financial burden on them but may also discourage the industrial consumers to set up industries in the State. It was requested that the proposal for enhancing the limit from Rs. 10 lacs to Rs. 25 lacs should be dropped. It was further stated that if at all the security deposit is got deposited in cash, the consumers should be allowed interest on the security deposit at the rate corresponding to the rate at which they borrow money, which was stated to be of the order of 12% per annum. The representative of the HPSEBL, when asked to clarify the rationale for insisting for security deposit in cash instead of the Bank Guarantee, mentioned that the acceptance of security deposit in shape of the Bank Guarantee involves additional work load in getting the Bank Guarantee checked for their authenticity and correctness and also for monitoring thereof and their field officers are not equipped for the same. He stated that a large number of consumers who have deposited the Bank Guarantee in lieu of security deposit. On this, the representative of industrial consumers stated that the consumers cannot be put to financial burden simply because the acceptance of the Bank Guarantee would involve some workload. They, however, further suggested that the HPSEBL can insist the Bank Guarantee for longer durations and can also short list the names of banks from which the Bank Guarantee shall be accepted. This will facilitate significant saving in time in handling the Bank Guarantees. Shri S.K. Thakur, Joint Secretary, BBNIA, stated that authenticity of Bank Guarantee submitted by the consumer can be got checked from the banks within 7 days.

After considering the submissions and arguments made by the stakeholders, we decide to retain the provision proposed in the draft regulation in this regard with a modification that a new sub-regulation (8) shall be inserted to provide that the Bank Guarantee in sub-regulations (4), (5) and (6) shall be furnished on a form containing the terms and conditions and validity period etc., as may be standardized and posted on the website of the distribution licensee, from time to time. We also observe that the HPSEBL has not been able to justify their proposal to all together do away with the Bank Guarantee provisions with facts and figures. We would expect the HPSEBL to study these revised provisions in further detail and if some of their concern are not fully safeguarded, it may submit a detailed and well reasoned proposal, alongwith the modalities and phases for the implementation thereof with full detail for further consideration of the same. The Commission shall not be averse even to do away with the Bank Guarantee provisions all together if the HPSEBL gives complete justification in this regard.

In view of the discussion under the sub-paras 7.1.1 to 7.1.7, we decide to amend regulation 4 of the existing regulation as follows, namely;-

- (i) for the sub-regulation(1), the following sub-regulation (1) shall be substituted, namely:-  
 “(1) The applicant for a new electricity connection or additional load shall, on demand from the licensee at the rates worked out as per regulation 5, deposit, within the time limits in which such amount is demanded, the initial security deposit for the connected load (in case of connections covered under single part tariff) and for the contract demand (in case of connections covered under two part tariff).”;
- (ii) for the existing sub-regulation (3), the following sub-regulation (3) shall be substituted, namely:-

“(3) Save as provided in sub-regulation (1) and sub-regulation (2), the consumer shall also, on demand from the distribution licensee as per the provisions of Regulation 6, deposit such additional amount by which the total amount of security already deposited by him falls short of the amount equivalent to the average bill (excluding arrears but including late payment surcharge, if any) for (n+1.35) months based on the bills raised in relation to the period of twelve billing months (April to March) of the immediately preceding year.

**Note:** ‘n’ means the number of months contained in the billing cycle applicable for the applicant depending upon the area in which connection is to be released and the tariff category.”;

- (iii) in the first proviso to sub-regulation (4), for the words “i.e. at the time of release of new connection or for sanction of additional load exceeds rupees ten lacs”, the words “exceeds rupees twenty five lacs” shall be substituted;
- (iv) in sub-regulation (5), for the words “rupees ten lacs” appearing to its first proviso, the words “rupees twenty five lacs” shall be substituted;
- (v) in sub-para (b) of sub-regulation (6), for the words “within the validity period, the licensee shall recover the corresponding amount”, the following words, brackets and figure shall be substituted, namely:-  
 “even till the date falling on 30<sup>th</sup> day prior to expiry of the validity period, the distribution licensee shall immediately get the Bank Guarantee encashed well before the expiry of the validity period and further in such cases, the licensee shall also immediately review the adequacy of the security deposit as per the sub-regulation (1) of regulation 6 and recover the amount of additional security deposit, if due,”; and
- (vi) after existing sub-regulation (7), the new sub-regulation (8) shall be inserted, namely:-

“(8) Save as provided in sub-regulations (4), (5) and (6), the Bank Guarantee shall be furnished on a form containing the terms and conditions and the validity period etc., as may be standardized and posted on the website by the distribution licensee, from time to time”.

## **7.2 Amendment in regulation 5.-**

### **7.2.1 Shifting the proviso relating to Security Deposit for additional load:-**

The HPSEBL has commented that the proviso contained under sub-regulation (1) of proposed draft amendment be moved to regulation 6.

#### **Commission’s View:-**

The proviso relates to the initial security deposit to be got deposited in case of existing consumer applies for additional load/contract demand, as the case may be. As such, there is no rationale of shifting the proviso to regulation 6 which deals with annual review of security deposit.

### **7.2.2 Scheduled date for revision of rates:-**

The HPSEBL has suggested that the saving regulation and provisos contained under sub-regulation (3) of proposed draft amendment be simplified and accordingly suitably modified to provide for calculating the category-wise rates and circulating the same to the field units within one month of issuance of Tariff Order by the Commission.

#### **Commission's View:-**

The provision proposed in the draft regulation is not only quite clear but also indicates almost a fixed date from which the Security Deposit rates shall be revised every year. As such, we decide to retain the same without any change.

### **7.2.3 Need for revision of Security Deposit rates:-**

The Industries Associations have submitted that simply because the initial security rates have not been revised since 2005, cannot form the basis of revision of rates of initial security deposit. It is the adequacy of the rates, which is more important. It could be a case that a very high rate of initial security was notified in the year 2005. The whole objective, in our view, that the rates need to be reviewed, not necessarily upwards after a reasonable analysis as per logics is carried out in each category of consumer, which should essentially be based on energy bills of the consumers in a category during the first year of the connection.

#### **Commission's View.-**

The formulation for the computation of the rates of security deposit has been evolved on realistic basis also keeping in view the views expressed by the Hon'ble High Court of Himachal Pradesh on the subject. Even otherwise since no rates are being fixed in absolute terms and only formulations and values of parameters are being fixed, the comment may not be relevant.

### **7.2.4 Rationale of linkage with dues for (n+1.35) months:-**

The Industries Associations have submitted that there is no rationale in assuming the average expected outstanding to a level of  $n+1.35$ , which clearly points out that the recovery period of a billing cycle is 1.35 months after the billing cycle. The collection time for any bill cycle can be calculated as per provisions of the Supply Code as follows:

Time period for raising bill after the reading is taken = 3 days

Time period for payment of bill = 10 days

Time for disconnection notice = 15 days

Total time till disconnection = 28 days after date of final reading

Therefore, in all a maximum time for collection of bill works out to 28 days instead of 1.35 months as suggested in the draft amendment. It should also be noted that as soon as a bill is paid, the outstanding immediately falls to 28 days only. So, the outstanding towards a consumer at any point of time varies between 28 days and  $n+28$  days, the average of which works out to  $n/2 + 28$  days. In case of monthly billing cycle this would calculate to 43 days only, if average outstanding at any point of time is considered.

In the neighboring State of Punjab the level of security that a consumer has to maintain is fixed at 1.50 months.

**Commission's View.-**

In addition to the billing for the period corresponding to the billing cycle and the activities mentioned by the objector, other changes such as late payment surcharge and fixed charges upto the period of permanent disconnection may also accrue, which have also to be protected through security deposit. This adequately justifies the period of 1.35 months (apart from the period billing cycle) considered in the proposal. As regards the suggestion that the security deposit should be linked with the average dues that may accrue in a period, we find it will be appropriate that the security deposit should be linked with the maximum dues that may accrue at any given time and not with the average dues.

As already mentioned in the Explanatory Memorandum also, the component of 1.35 months, as proposed in the draft amendment regulations, broadly take into account the potential dues which may accumulate upto the date of permanent disconnection. The suggested period of 28 days when adjusted with the impact of the fixed charges/ demand charges as well as the surcharge for late payment etc., justifies the proposed component of 1.35 months. As regards the suggestion that Security Deposit should be linked with the average outstanding, we feel that it will be appropriate that the security deposit should be linked with the maximum dues that may accrue at any given time and not with the average dues.

**7.2.5 Rationale of formula:-**

The Industries Associations have submitted that a theoretical formula has been drafted and values have been assumed without any rationale and without studying its implications and results and that not even a comparison of the proposed rates that result with the application of the formula suggested with the existing rates of security appear to have been made. It has also been suggested that no increase in flat rates of initial security be allowed unless and until it is based on actual analysis of the sample data of the bills of the consumers of any respective category.

**Commission's View.-**

The Commission has fixed the parameters and the actual rates are to be computed by the Distribution licensee. The rationale for linking it with dues for (n+1.35) months has been adequately justified in sub-para 7.1.4 of this Order. As regards, the parameters, the same correspond to the potential use of electricity by various categories of consumers and are in line with the values already given in LDHF formula contained in the Supply Code. As regards the suggestion that no increase in flat rates of initial security be allowed until and unless it is based on actual analysis of sample data of the consumers bills, we feel that the same shall amount to long term deferment of the proposal without any valid grounds, on one or other pretext, and is not acceptable. Since the values correspond to potential use, the same are bound to be higher than the actual category averages.

### **7.2.6 Need of appropriate security:-**

The Industries Associations have referred to the background position brought out in the draft prepared by the Commission stating that “it has also been stated that the Hon’ble High Court of Himachal Pradesh has expressed its considered view on suggestions/ recommendations of the HPSEBL that the proposal needs to be approved by the Commission.” On this, they have submitted that the objectors, by and large, fully agree with the view of the Hon’ble Court that an adequate amount of security should be available with the HPSEBL so as to protect the revenue of the Utility. At the same time it is important to keep into mind that excessive security can lead to callous approach on the part of field officers in recovering the dues of the licensee within the time frame of the regulations. Excess security can also result in excess payment of interest of security.

#### **Commission’s View.-**

The HPSEBL has proposed calculation of the equivalent consumption based on LDHF formula as per the Supply Code for assessment of the units for the load being released to the consumer and taking the average tariff for respective categories as per the HPERC tariff and to be circulated annually by the HPSEBL. This proposal of the HPSEBL has been supported by the orders of the Hon’ble High Court. The rationale for linking the security rates with dues of (n+1.35) months has been adequately clarified in sub-para 7.2.4 of this Order. We feel that whereas the proposed formulation for the Security Deposit rates would facilitate protection of the amount corresponding to potential use of electricity, it does not accommodate the impact of any callous approach of the field officers. As such the callous on the part of field officers of the HPSEBL an approach, if any, would result into accumulation of arrears beyond Security Deposit and would expose the distribution licensee to additional risk.

### **7.2.7 Periodicity of revision of rates:-**

The Industries Associations have submitted that for the sake of simplicity, the flat rates of security should be adopted for a block of three years, to be revised every three years based on actual analysis.

#### **Commission’s View.-**

Since the tariff is determined on annual basis, the revision of security deposit rates has also been proposed on annual basis.

### **7.2.8 Need for limiting rates of Initial Security Deposit:-**

#### **The Industries Associations have submitted as under:-**

- (i) During the first year, especially the industrial category consumers are not able to operate at full capacities. Hence, the initial security should be kept at a low level, so that that generally the initial security is not obtained at a surplus level.
- (ii) The initial security deposited by many consumers, particularly the SME’s which constitute a large percentage of industrial consumers, is already in excess of their monthly bills, even after many years of their operation.
- (iii) Since the annual review of security is already in force and is also suggested in these draft amendments, the consumers,

who consume more during the second and subsequent years are liable to review on the formula decided by the Commission, once the draft amendment takes the shape of final amendment. Therefore, even if the initial security remains at a slightly lower level, the provision for annual review for additional security shall take care of adequate revision to the appropriate level in the subsequent years.

**Commission’s View.-**

Initial Security deposit has to protect the amount corresponding to the potential use on normative basis.

**7.2.9 Impact on growth:-**

The Industries Associations have stated that they have worked out the rates of Security Deposit based on the draft amendment as under:-

Category	D (days)	H (Hours/day)	F (Demand Factor)	T (Average Tariff)	n (Billing Cycle)	Rate at n+1.35 (Rupees)	Per
Domestic Supply (DS)	30	8	0.3	4.80	2	1158	KW
Non-Domestic Non-Commercial Supply (NDNCS)	25	12	0.4	5.69	1	1605	KVA
Commercial Supply (CS)	25	12	0.4	5.84	1	1647	KVA
Small Industrial Power Supply (SIPS)	25	8	0.6	7.26	1	2047	KVA
Medium Industrial Power Supply (MIP)	25	12	0.6	5.25	1	2221	KVA
Large Industrial Power Supply (LIPS)	25	20	0.75	5.54	1	4882	KVA
Irrigation and Drinking Water Pumping Supply (IDWPS)	30	12	1	5.76	1	4873	KVA
Bulk Supply (BS)	30	12	1	6.14	1	5194	KVA
Street Lighting Supply (SLS)	30	10	1	5.00	1	3525	KVA
Temporary Metered Supply (TMS)	30	12	1	9.25	1	7826	KVA
Railway Traction	30	12	1	5.54	1	4687	KVA
Note: T has been calculated on the basis of Table 225 of Tariff Order for FY 19-20							

It has been mentioned that these rates of initial security as notified in the draft amendment are mind boggling and are bound to have negative results on the business of the Utility and that no new investment will come into the State. It has also been mentioned that Industry amongst various other categories of consumers shall be the worst hit, resulting in a heavy impact on the employment within the state and that the business plan of the Utility will register negative growth if this formula in the draft regulation is allowed.

**Commission’s View:-**

We feel that electricity is one of the most important input required for growth of industry. In order to enable the distribution licensee to provide this important input in an efficient and economical manner, it is of

paramount importance that the distribution licensee should also have good financial health and its dues should be adequately protected.

7.2.10. In view of the discussions in the preceding sub-paragraph 7.2.1. to 7.2.9, we decide to finalize the regulation 5, as proposed in the draft regulations, without any change. Accordingly, for the regulation 5 appearing in the existing regulations, the following shall be substituted, namely;-

**“5. Initial security deposit.-** (1) *The distribution licensee shall recover and the applicant shall pay the initial security deposit towards the electricity to be supplied to him, at the rates worked out in sub-regulation (2) of this regulation for each kW of the connected load applied for/ sanctioned in case of the tariff categories covered under single part tariff and for each kVA of contract demand applied for/sanctioned in case of tariff categories covered under two part tariff, as per the tariff order of the Commission for the relevant year:*

*Provided that in case of application for additional load, the initial security deposit shall be recovered only for such additional load or contract demand, as the case may be, and not on the total connected load or contract demand inclusive of the additional load or contract demand.*

(2) *The distribution licensee shall work out the per kW or per kVA rates of initial security deposit in accordance with the following formula :-*

$$\text{Rate in Rs. /kW of connected load} = L * D * H * F * T * (n+1.35)$$

*or per kVA of Contract Demand*

Where,

*‘L’ is 1 kW of connected load for applicant(s) falling under single part tariff; and 1kVA of contract demand in case of applicant(s) falling under two part tariff as per the retail tariff order of the Commission for the relevant year for which such rates are to be calculated;*

*‘D’ is the average number of working days in one month for the relevant tariff category, as tabulated in the table below;*

*‘H’ is the number of hours per day for which power is used on average basis by the consumers under respective categories and the values for the same for the respective categories of consumers shall be taken as given in table below;*

*‘F’ is demand factor for respective categories of consumers as per the value tabulated below;*

*‘T’ is the average tariff in Rs./kWh or Rs./ kVAh as the case may be, for the relevant category (i.e schedule of tariff) in accordance with the retail tariff order of the Commission for the relevant year for which such rates are to be calculated;*

*‘n’ is the number of months contained in the billing cycle applicable for the applicant depending upon area in which connection is to be released and the tariff category;*

**Table**

<b>Category</b>	<b>D</b>	<b>H</b>	<b>F</b>
<i>Domestic Supply</i>	30	8	0.3
<i>Non-Domestic Non-Commercial Supply</i>	25	12	0.4
<i>Commercial Supply</i>	25	12	0.4
<i>Small Industrial Power Supply</i>	25	8	0.6
<i>Medium Industrial Power Supply</i>	25	12	0.6
<i>Large Industrial Power Supply</i>	25	20	0.75
<i>Irrigation and Drinking Water</i>	30	12	1

<i>Pumping Supply</i>			
<i>Bulk Supply</i>	30	12	1
<i>Street Lighting Supply</i>	30	10	1
<i>Temporary Metered Supply</i>	30	12	1
<i>Railway Traction</i>	30	12	1

*Provided that in case of the Below Poverty Line (BPL) beneficiary, the rate of initial security deposit shall be equal to ‘one half’ (or ‘50%’) of the respective rate that would have been applicable in normal cases;*

**Explanation:-** *For this purpose “the Below Poverty Line (BPL) beneficiary” means the person belonging to very poor category of persons below poverty line, declared as such, by general or special order, by Central/ State Government, from time to time.*

- (3) *Save as provided in the 3rd proviso to this sub-regulation, the distribution licensee shall calculate the category wise rates of security deposit in the beginning of the each financial year and circulate the same to its field units which shall be charged from the applicants to whom demand notices are issued on or after the first day of July of that year:*

*Provided that in case the issuance of tariff order for the relevant year is delayed for some reasons, such rates shall be worked out and applied w.e.f. the 16<sup>th</sup> day from the date on which the retail tariff order is issued by the Commission:*

*Provided further that the rates applicable for the previous year shall continue to remain applicable till the rates based on the tariff order of the relevant current year are worked out and applied as per the first proviso to this sub-regulation:*

*Provided further that the distribution licensee shall work out and shall circulate the same before the 30<sup>th</sup> September, 2020 such rates for the period 1<sup>st</sup> October, 2020 to 30<sup>th</sup> June, 2021 by taking into account the average category wise rates as per the retail tariff order for the latest year as available on the said date.”*

### **7.3 Amendment in regulation 6.-**

#### **7.3.1 Realignment of provisions relating to additional load:-**

The HPSEBL have submitted that in view of foregoing suggestions for the alignment of regulation 4 with the Act and the moving of proposed draft amendments under regulation 4 and regulation 5 to proposed draft regulation 6, amendment regulations with respect to additional load based on LDHF formula be suitably inserted.

#### **Commission’s View:-**

The comment loses its relevance in view of our findings in the matter in preceding paragraphs. The provisions relating to initial security deposit for the additional load, as may be applied for by the existing consumers have essentially to be a part of provisions for initial security deposit and not of those for review.

#### **7.3.2 Demand Notice for additional security:-**

#### **Comments of the HPSEBL:-**

The existing sub-regulation (1) and sub-regulation (2) and the provisos to sub-regulation (1) and sub-regulation (2) of the proposed draft amendment limiting/restricting therein review of Security Deposit and being detrimental to the orders of the Hon’ble High Court and resulting in over riding the effect of the orders of the Hon’ble High Court, these proposed provisos be deleted alongwith existing sub-regulation (1) and sub-regulation(2)(a).

**Comments of Industries Associations:-**

The second proviso of the regulation 6(2) of the draft regulations provides for recovery of 30% of average monthly bill to be recovered as additional security at the intervals of three months till the amount required for additional security is fully paid by the consumer. We suggest that this level of 30% be changed to 15% as the consumers will not be in a position to arrange the sudden requirement of funds for covering the additional security.

**Commission's View:-**

We find that the proposal submitted by the HPSEBL does not contain any provisions with regard to the procedural aspects concerning review of security deposit and timelines for recovery thereof. The representative of the HPSEBL failed to establish, during the public hearing, as to how the proposal is detrimental to the orders of the Hon'ble High Court. As such, there is neither any intention nor any question of overriding the orders of the Hon'ble High Court of Himachal Pradesh. We, however, find it appropriate to make clear-cut provision in the regulation about the time lines in which additional security deposit is to be got deposited in case where the amount of additional security significant as compared to the average monthly billing. The provision proposed in the draft regulations for allowing, subject to certain conditions, payment of additional security in quarterly instalments is quiet reasonable. We otherwise also feel that, except for the first one to two years after notification of these amendment regulations, the provisions may come into picture only in rare cases. We have also considered the suggestion given by Industries Association to restrict the recovery of additional security deposit to 15% of average monthly bill in one quarter and find it appropriate to retain the same as 30% as proposed in draft regulations. Accordingly the provisions, as proposed in this regard, shall be retained.

During the course of public hearing it was highlighted by the HPSEBL that there is a need for suitable provision enabling the distribution licensee to obtain/update the information from the consumers having deposit above Rs. 5 lacs. Even though the distribution licensee requires the information as considered appropriate by it from the consumer, we find it appropriate to make suitable enabling provisions in regulation 6. Accordingly, we decide to insert suitable provision in sub-regulation (1) of regulation 6.

**7.3.3 Partial refund of Security based on review:-**

The Industries Associations have submitted that no provision has been drafted for refund of initial security, if found in excess as a result of annual review, it has been suggested that a provision should also form a part of the amendment suggested and that a provision for partial refund of security on annual basis should also be incorporated in the proposed amendment.

**Commission's View:-**

Initial security deposit has to protect at least the amount corresponding to the potential use on normative basis. In case the actual consumption during a period happens to be lower than the normative level, it cannot be assumed that the consumer will not use electricity upto normative levels

in subsequent period. As such, we do not find it appropriate to specify the provisions for downward revision of security deposit owing to low energy consumption in any year.

#### **7.3.4 Interest to be paid by the consumer on shortfall in security:-**

The Industries Associations have submitted that regulation 6(3) is inconsistent with the provisions of section 47 of the Electricity Act, 2003, which only provides for disconnection in the case of failure to provide adequate security. It has been mentioned that the regulation 6(3) is contrary to the provisions of the Act as it provides for reverse payment of interest. When a disconnection has to be carried out after the expiry of notice for requisite security, the question of payment of interest does not arise at all. It has been mentioned that it is logical to view that, the licensee is required to pay interest on security deposit, but no interest should be charged in case the consumer delays the payment of the additional security keeping in view the fact that the licensee is empowered to disconnect the supply to the consumer who defaults in this regard after giving suitable notice. It has been mentioned that the consumer will lose interest on the amount that he has not deposited and simultaneously pay interest on the shortfall in security, which is not in the interest of fairness. It has been suggested that without any prejudice to the right of the licensee to disconnect the supply in the event of failure to provide security as per regulations, provision for reverse payment of interest should be deleted.

#### **Commission's View.-**

The provision for charging surcharge for delayed payment of the additional security demanded by the distribution licensee already exists in the regulations and is not a subject matter of the amendment regulations under consideration at present. We, however, after going through the sub-sections (2) and (3) of the section 47 of the Electricity Act, 2003, find that the existing provision in the regulations does not conflict with the provisions of the Act *ibid* in any way. Disconnection of supply for non-payment of the additional security is an extreme step which the licensee will have to take in case of default in payments. However, the provisions for charging late payment surcharge may persuade the consumer to make timely payments. This provision is otherwise also not a subject matter of the amendments presently under consideration. No changes are contemplated in this regard.

#### **7.3.5 Credit Rating of consumers:-**

##### **(i) Comments of Industries Associations:-**

The Industries Associations have submitted that in the current regulations a procedure for credit rating of consumers is laid down in regulation 6. The consumers with poor credit rating are required to pay higher amount of security. The normal level of security as per existing regulations boils down to a level of one month average consumption. But, the credit rating provides for demanding higher security from consumers with the poor rating. Hence the existing regulations differentiate between good pay-masters and consumers with bad payment record. Therefore, a security equal to one month's consumption was allowed to the consumers, even though it does not cover the Utility fully to the extent of their outstanding at any point

of time. The billing cycles as well as payment periods and the period of disconnection notice were known even earlier, but such regulations were approved on the basis that poor rated consumers should fully secure the outstanding, whereas the good paymasters only covered one month outstanding.

It has further been submitted that in the draft amendment a security level of 2.35 months have been proposed, in order to fully cover the maximum outstanding towards a consumer and that if such an approach is adopted, then there is no need for provisions related to credit rating. Hence, if the final amendment is to be based on full security, the credit rating provisions should be deleted. They have suggested that Regulation 9 shall no more be required.

(ii) **Comments of the HPSEBL:-**

The representative of the HPSEBL stated during the public hearing that any consumer irrespective of his credit rating can default in clearing his dues.

**Commission's View.-**

The provision for credit rating of the consumers would help the distribution licensee in identifying the consumers for which the dues should be monitored more meticulously. Moreover, as per the provisions under regulation 6, separate treatment has been given to the consumers with the poor credit rating. We feel that there will be no harm done if the provisions already existing in the regulations about the credit rating are retained. Even otherwise the same are not a subject matter of the proposal of amendment regulations being finalized at present.

7.3.6 In view of the foregoing, we decide that in regulation 6 of the said regulations:-

(i) "for sub-regulation (1), the following sub-regulation (1) shall be substituted, namely:-

**(1) General Review.-** *The distribution licensee shall, on first day of July of each year or soon thereafter, check the adequacy of the security deposit recovered by it from the each consumer excepting those specifically exempted from payment of security deposit in accordance with sub-regulations(1) of regulations 3 and shall ascertain, in case of each consumer, as to whether the amount already recovered from him on account of security deposit falls short of the amount required to be maintained in accordance with sub-regulation (3) of regulation 4 and shall, in case of any shortfall, issue demand notice for the additional security deposit as per sub-regulations (2) of this regulation:*

*Provided that in cases falling under sub-regulation (6) of regulation 4, or when the circumstances otherwise so warrant, the distribution licensee may carry out special review in relation to individual consumers even more than once in a year on the basis of average billing for 12 months immediately preceding the month in which such additional review is made:*

*Provided further that in case of consumer(s) where the amount of security deposit exceeds, or is likely to exceed as a result of any such review, Rs. 5 Lacs, the distribution licensee may also require such consumers to submit the additional information from them on the formats, as it may, from time to time, standardise and post on its website."*

(ii) *in clause (a) under sub-regulation (2), for the existing proviso, the following provisos shall be substituted, namely :-*

*“Provided that if the shortfall is less than rupees 500 (five hundred only) of the existing security deposit, no demand shall be made by the licensee:*

*Provided further that, save as provided in the fourth proviso to this clause, the amount of additional security deposit to be demanded in any period of three months shall not exceed 30% of the average monthly bills raised in relation to the period of twelve billing months (April to March) of the immediately preceding year:*

*Provided further that in case the demand for additional security deposit is restricted in accordance with the preceding proviso, the demand (s) for the balance amount of additional security deposit shall be raised at intervals of three months ensuring that the limit as per the preceding proviso is not exceeded in any such demand notice for additional security deposit:*

*Provided further that the amount of additional security deposit in case of existing consumers appearing in the list of poor credit rated consumer (s) as per sub-regulation (2) of regulation 9, the entire amount of additional security deposit shall be recovered through a single demand notice and the restriction as per the preceding two provisions shall not be applicable in that case.”*

#### **7.4. Amendment of regulation 8.-**

No comments have been received on the proposal in this regard. As such, we decide to finalize the amendment regulation 8 of the current regulations on the proposed lines only. Accordingly, for sub-regulation (2) of regulation 8 of the said regulations, the following sub-regulation (2) shall be substituted, namely:-

*“(2) In case of permanent reduction of connected load (in case of single part tariff) and contract demand (in case of two part tariff), the total amount of security deposit already recovered from that consumer shall be apportioned against the security deposit for the balance connected load/contract demand, as the case may be, worked out at the rates of initial security deposit as applicable for FY 2020-21 or any subsequent period encompassing the effective date of such reduction and the balance amount of security deposit already recovered, if any, shall be refunded to that consumer after adjusting the outstanding dues recoverable from him:*

*Provided that such refund, if due, shall first be made by way of release of Bank Guarantee, if any, to that extent and the refund in cash shall be made only after exhausting the said mode involving release of Bank Guarantee:*

*Provided further that refund, if due, shall be made to the consumer within thirty days of the effective date of reduction of connected load/contract demand:*

*Provided further that in case where any refund is required to be made in cash, if such refund is delayed beyond the period of 30 days as specified above, the distribution licensee shall pay the simple interest @12% per annum on the such amount for the numbers of days for which the same is unduly withheld (other than Bank Guarantee) beyond the permitted period of 30 days.”*

We, after the consideration of the objections and suggestions made, on the draft regulations, by the stakeholders and deliberations thereon at the public hearing conducted and the recommendations made by the Hon’ble High Court of Himachal Pradesh finalise the proposed draft regulations and carry out the amendments in the Security Deposit Regulations in terms of this order.

-sd-  
(Bhanu Pratap Singh )  
**Member**

-sd-  
(S.K.B.S. Negi)  
**Chairman**

**Place:** Shimla

**Date:** 03/07/2020

**List of participants who have attended the public Hearing on 13.03.2020**

<b>Sr. No.</b>	<b>Name</b>	<b>Organization</b>
1	Sh. Rakesh Bansal	CII, BBNIA, PIA, KCCI Parwanoo
2	Sh. D.R. Sharma	BBNIA and Vardhman, Baddi
3	Sh. S.K. Thakur	BBNIA Baddi
4	Mohit Pathak	Parwanoo Industries Association (PIA)
5	Sh. Megh Raj	M/s H.M. Steel Limited, Kala Amb
6		M/s Prime Steel Ind. Pvt Limited, Barotiwala
7	Sh. Sanjay Singhla	M/s MMG Helthcare, Kala Amb
8	Sh. Deepaan Garg	M/s Ruchira Papaers , Kala Amb and CII
9.	Sh. Nav Rattan	M/s OPI Kala Amb
10	Sh. Mani Lokeshwar Chauhan	M/s CII, Shimla
11	Sh. Tushar Gupta	S.E, O/o CE (Comm.), HPSEBL, Shimla
12	Sh. Anup Ram	S.E. O/o CE (Comm.), HPSEBL, Shimla
13	Sh. Sandeep Sharma	AEE ( SERC), O/o CE (Comm.), HPSEBL, Shimla