

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION

SHIMLA

In the matter of

The Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Sharing of Cost of Terminal Benefits of Personnel of the erstwhile Himachal Pradesh State Electricity Board and Successor Entities) Regulations, 2015.

Coram:
Subhash Negi
Chairman

ORDER

Background

In exercise of powers conferred by sections 131, 132 and 133 of Electricity Act, 2003, the Government of Himachal Pradesh on 10th June, 2010, vide “Himachal Pradesh Power Sector Reforms Transfer Scheme, 2010” undertook the re-organization of ‘Himachal Pradesh State Electricity Board’ (hereinafter referred to as “HPSEB”) by transferring its functions, undertaking, assets, properties, rights, liabilities, obligations, proceedings and personnel to various successor entities. All the personnel of the erstwhile HPSEB including existing pensioners were transferred to the ‘Himachal Pradesh State Electricity Board Ltd.’ (hereinafter referred to as “HPSEB Ltd.”). The Transfer Scheme protects the Terminal Benefits, including pension, of such personnel and casts the responsibility, for making appropriate arrangements for funding of personnel related benefits, upon the HPSEB Ltd. and the Govt. of Himachal Pradesh.

Presently there are no separate regulatory provisions for recovery of the cost of the Terminal Benefits of employees, retired before the commencement of the Transfer Scheme, and the Terminal Benefits of the personnel, retiring after the commencement of the Transfer Scheme, for the services rendered before the commencement of the Transfer Scheme, from the operation and maintenance expenses. For the purpose of recovery of the past liabilities on account of Terminal Benefits in a structured manner, the Commission in exercise of the powers conferred by clause (zp) of sub-section (2) of section 181, read with sections 61, 62 and 86, of the Electricity Act, 2003, has proposed to frame Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Sharing of Cost of Terminal Benefits of Personnel of the erstwhile Himachal Pradesh State Electricity Board and Successor Entities) Regulations, 2015.

Pursuant to the provisions contained in sub-section (3) of section 181 of the Electricity Act, 2003, read with rule 3 of The Electricity (Procedure for Previous Publication) Rules, 2005, requiring previous publication of the regulations, the Commission published the draft of Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Sharing of Cost of Terminal Benefits of Personnel of the erstwhile Himachal Pradesh State Electricity Board and Successor Entities) Regulations, 2015 in the Rajpatra, Himachal Pradesh on date 7th February, 2015 and the said draft

amendment regulations were also hosted on the Commission’s website www.hperc.org for the information of all the persons likely to be affected there by and inviting their objections/suggestions thereon.

The Commission also inserted a Public Notice on date 10th February, 2015 in the newspapers “The Tribune” and “Amar Ujala” inviting objections or suggestions on the aforementioned draft regulations within 30 days from the date of their publication in the Rajpatra, Himachal Pradesh. The copy of these draft amendment Regulations were also circulated to various stakeholders for inviting their objections or suggestions thereon.

Objections and suggestions received in the office of HPERC

In response to the publicity given to the draft regulations comments/ suggestions were received from 5 stakeholders. The objections/ suggestions received along with Commission’s views thereon are as under:

Objections and suggestions and Commission’s views:

Objections/ Suggestions	Commission’s Views
HPSEB Pensioner Welfare Association	
It is the general phenomenon that the institutions/ organizations having business with each other carry out the adjustments in payable and receivables or go on keeping pending the payments of payables for one or the other reasons. There is a live instance that the claims of crores raised to PSEB, HSEB and DESU on account of leave and pensionary contribution of the employees allocated to H.P. on re-organization of Punjab in 1966, were never paid. There must be clear cut protective clause in the regulation so that no payment is held up or adjusted.	This is the obligation of the HPSEBL to recover monthly contributions towards terminal benefits from the borrowing organisations for its Personnel on deputation or on secondment w.e.f. commencement of Transfer Scheme and all such contributions should be based on the formulae to be evolved by the HPSEBL on realistic basis to affect the actual contributions. The entire admissible cost will be provided in the ARR of the HPSEBL, who is responsible for such payments. Due contributions shall be adjusted against total cost of the ARR.
As has been experienced in the cases of amount deposited by other Deptts./parties against deposit works, the Board utilizes that amount for other purposes and owing to which the deposit works are delayed for want of funds/material, whereas the amount deposited for specific works should be kept separately to be utilized only for those works as per requirement. The same practice is apprehended in case of contributions proposed to be received from other entities. The share of contribution received should be maintained separately so that this amount is not utilized for other business of the Board.	
There should be a clause advising the HPSEBL to Carry out accounting transactions for receivable contributions from the respective entities on tentative basis in the beginning of Financial Year in the month of April by debit to “Pension Contribution Receivable” by credit to” Terminal benefits payable” and final adjustment are made	
	The Commission agrees with these suggestions. The normal accounting procedure is to be devised by the HPSEBL and accordingly the company shall devise the accounting system/procedure, keeping in view these suggestions also.

in the end Financial Year.	
<p>A clause in the regulations is essentially required advising the HPSEBL to evolve a mechanism for timely payments to prevent/eliminate delay in release of the terminal benefits including arrears of D.A. and medical claims etc. payable on time. It is unfortunate that the pensioners are being treated as second grade entities, may it be issuance of orders for defraying their justified claims including medical or any other ones. The order for grant of pension allowance @ 5%, 10% & 15% of the basic pension was issued by the Himachal Pradesh Govt. on 23/4/14 but unfortunately the orders in HPSEBL have not been issued till date despite one year going to be elapse. Sometime, even a simple endorsement takes 6 months, whereas the Himachal Pradesh Govt. orders which are only to be endorsed should not be delayed and Executive Director should be authorized to do the needful.</p>	<p>This is an Administrative matter and is to be looked by the HPSEBL as its obligation to pay.</p>
<p>Though the sharing of liability by Govt. of Himachal Pradesh has been shown as return on equity but for any eventuality the Himachal Pradesh Govt. should not be absolved of statutory guarantee provided for by them in the transfer scheme.</p>	<p>The Commission agrees with these suggestions. Main responsibility stands with the Government of Himachal Pradesh as per the Transfer Scheme of 14.06.2010 and accordingly will be provided in the regulations also.</p>
<p>HPSEBL Employees Association</p>	
<p>The proposed regulations will give a legal authority for passing through the pension liability as per actual expenditure in concerned state power sector entities, which is appreciable.</p>	<p>Proposed regulations are basically a mechanism of sharing the cost of terminal benefits of the Personnel retiring/ retired from HPSEBL/erstwhile Board.</p>
<p>Presently LS & PC amount is being charged as per FRSR which is not sufficient to meet the terminal benefits of that personnel for respective period of secondment/ deputation. Therefore for realistic based contribution formula, the consent of state sector utilities will definitely be needed as such either direction of State Govt. or an agreement be signed in this regard.</p>	<p>Regulation has been provided to recover the monthly contributions for the personnel on deputation/ secondment based on the formulae to be evolved by HPSEBL on realistic basis to effect actual required contributions.</p>
<p>When the Discom. will earn profit and dividend is to be paid to the owner i.e. GoHP and book entry in this context will be taken in the books of account, on such eventuality an arrangement will be required so that the GoHP will adjust that dividend as pension share in HPSEBL.</p>	<p>This is a normal accounting procedure to be taken care by HPSEBL only. However, entire amount of return on equity shall be adjusted irrespective of dividend.</p>
<p>It will further sharpen the revenue and expenditure gap as earlier RoE of the owner of the company was taken in Board's revenue which has now been adjusted against pension, therefore, this gap of HPSEBL need to be compensated.</p>	<p>There will not be any gap in revenue and expenditure and all the terminal benefits were being provided in the ARR of HPSEBL earlier also. These Regulations will provide the mechanism how to share the cost of terminal benefits.</p>
<p>The transfer of tangible assets to the successor entities for</p>	<p>These are to be mutually agreed</p>

<p>the purpose of pension liability is appreciable initiative but it could not be understood as what will be the criteria for evaluation of tangible assets transferred to the successor entities.</p>	<p>between the borrowing entity and the parent organisation.</p>
<p>Whether the Directorate of Energy, GoHP can be legally considered as a successor entity of HPSEBL?</p>	<p>No, but cost will be shared to the extent the assets transferred to these entities.</p>
<p>In the case of interstate sale of power, the tariff of HPPCL will be decided by the CERC, whether the proposed pension surcharge will be allowed by the CERC or otherwise?</p>	<p>In case of HPPCL, it may be the part of the capital expenditure for the project for which the tariff is to be determined by the Appropriate Commission and will be applicable to the extent of transfer of assets and at operation stage it will be part of O&M cost.</p>
<p>It is observed that this is year to year based mechanism. The terminal/ pension liabilities of HPSEBL are increasingly rapidly and after 5 years it will touch the figure of approximately Rs.1050 Cr. As per the proposed mechanism of sharing only 5% pension surcharge will be borne by HPTCL, HPPCL, HPSLDS and remaining 95% by HPSEBL. Which reveals that proposed mechanism will not reduce the future pension liability in ARR of Discom. Therefore, a long term mechanism is also needed in order to avoid this rapid increase in pass through of Discom tariff.</p>	<p>The proposed regulations do not, in any way affect or limit, the Government responsibility under the Transfer Scheme. Previously also all the cost of terminal benefits was provided in the ARR of HPSEB Ltd. in the respective years. With these Regulations the mechanism for sharing the cost of terminal benefits will be streamlined. However, the express provisions shall be made in the Regulations.</p>
<p>Himachal Power Engineers Association</p>	
<p>While the Regulations specify that HPSEBL shall recover monthly contributions towards terminal benefit from borrowing authorities for its personnel on deputation or on secondment basis, there is no mention about what HPSEBL shall be doing with the amount recovered through these monthly contributions. It is submitted that HPSEBL may be directed to use this fund as seed money for establishment of a Pension fund in the long run.</p>	<p>These contributions will be used by HPSEBL for bearing the pension liabilities on year to year basis, by adjustments in ARR.</p>
<p>The annual share of State Government towards terminal benefits in respect of the existing pensioners, and the fifty percent of the terminal benefits of the personnel retiring after commencement of transfer schemes, may be increased. This increase shall be in line with the Clauses 7(7) and 7(8) of the notification dated 15th June, 2009 and Clauses 5(10) and 5(11) of the Transfer Scheme which make HPSEB Ltd. and GoHP jointly responsible for the protection of the terminal benefits and other facilities available to the personnel including existing pensioners on their transfer from HPSEB to HPSEBL.</p>	<p>As per the transfer scheme Govt. of Himachal Pradesh shall be responsible for meeting these obligations and in the Regulations only the share of HP Govt. has been proposed to the income on return on equity vested with the distribution licensee. However, if the HP Govt. wants it can increase its share to meet its obligations.</p>
<p>It is also submitted that in line with the practice adopted in</p>	<p>Under Clause (1) of Article 288 of the</p>

<p>some States a generation cess may be levied as Pension cess on Generating Stations commissioned before the implementation of the Transfer scheme to meet the cost of terminal benefits of existing pensioners and personnel retiring after commencement of transfer schemes.</p>	<p>Constitution of India, the generation cess can be imposed only by the State Government subject to conditions laid down therein. Thus it is not in the preview of the HPERC. However, the projects commissioned by Board are retained in HPSEBL and hence separate cess on these station is not required because HPSEBL is providing these cost in its ARR.</p>
<p>Sh. Arun Kumar</p>	
<p>The proposed pension surcharge is additional liability to the consumers of the State. Liability towards Pension and terminal benefits of the erstwhile employees of HPSEB is mainly liability of the Government of Himachal Pradesh.</p>	<p>There shall not be any additional burden on HPSEBL because before this all the terminal benefits were being provided in the ARR of HPSEBL.</p>
<p>That prime responsibility for payment of pension and terminal benefits lies with Government of Himachal Pradesh since it was controlling all of the activities of Himachal Pradesh State Electricity Board. Before the setting up of Electricity Regulatory commission in 2001 tariffs for sale of electricity and policies regarding employees of the HPSEB were directly decided and controlled by the Government of Himachal Pradesh.</p>	<p>All the assets and liability of HP Govt. vested with the HPSEBL after its reorganisation, these regulations however will facilitate the mechanism to share terminal benefits.</p>
<p>That HPSEBL should not be the nodal agency for employees of the Himachal Pradesh Transmission Corporation Limited (HPPTCL) and Himachal Pradesh Power Corporation Limited (HPPCL). These organizations are new and they should take suitable measure for their employees. HPSEBL should charge the amount of the pensionary benefits of their employees on deputation to these organizations.</p>	<p>HPSEBL being the employer/parent organisation shall be the nodal agency for discharging these functions.</p>
<p>Majority of the assets created prior to the Transfer scheme have been retained by the HPSEBL, therefore, the responsibility of the Liability is also of the State Government and HPSEBL and not of these two organizations namely HPPTCL and HPPCL.</p>	<p>Responsibilities of HPPTCL and HPPCL shall be to the extent of the assets transferred to them.</p>
<p>Some of the engineers & employees of the Board have most of time remained on deputation and have served other organizations like Satluj Jal Vidyut Nigam and including private developers. These organizations have deposited very small amounts towards pension contribution.</p>	<p>It is the obligation of HPSEBL to recover the monthly contribution from the borrowing organisation on actual basis.</p>
<p>That Govt. of H.P. and HPSEB both did not allow HPPTCL or HPPCL to function autonomously. Assets were not transferred as per the spirit of Electricity Act 2003 and even all the employees were retained by HPSEBL. Hence, on one hand financial burden in respect of pensioners increased on the other hand independent working of HPPTCL and HPPCL also suffered reducing their efficiency.</p>	<p>Not in the preview of the HPERC.</p>

<p>That efficiency of HPSEBL instead of improving is reducing and its per unit administrative cost is steadily increasing during last few years.</p>	<p>Not relevant to these Regulations.</p>
<p>That pension surcharge is additional liability on the consumers and its maximum amount should be recovered from the Government of H.P. It is suggested that cost of terminal benefits and pension etc. should be recovered from the revenue of State Government to be obtained from sale of free power, return on equity and only the balance amount should be accounted for in the ARR of HPSEBL.</p>	<p>No additional liability shall be there as the cost of terminal benefits has been provided in the ARR of HPSEBL in the previous years also. However, liability of the Government is also not absolved with these regulations and accounting of sale of free power etc. is not in the preview of the HPERC.</p>
<p>That norms for efficiency be fixed for HPSEBL employees and otherwise unviable sectors such as distribution function in remote area, should be transferred to the local Panchayats, local bodies, implementation of hydro electric projects to HPPCL and transmission assets and its related works to HPPTCL.</p>	<p>Not relevant to these Regulations.</p>
<p>H.P. Power Transmission Corporation Limited</p>	
<p>That the Commission has no jurisdiction to frame any such regulations as proposed. The Electricity Act 2003, no where speaks of any such functions or powers which could be invoked by the Commission to frame such Regulations.</p>	<p>Commission fixes the tariff as per the provisions of Electricity Act 2003, and all the liabilities and receipts are the part of the ARR. On this account HPERC is proposing regulations to facilitate the mechanism for smooth accounting.</p>
<p>That the unbundling of the erstwhile Himachal Pradesh State Electricity Board (HPSEB) has not taken place in its true perspective and as per the spirit contained in the Electricity Act 2003. HPPTCL is a corporation established under the Companies Act. As per the Companies Act, HPPTCL has to be an independent entity. The transfer scheme as notified by the Govt. of H.P. on 10.6.2010 does not transfer the staff permanently to HPPTCL. Instead the staff is deployed on secondment basis by HPSEBL. In number of other states, the entire transmission wing, including the manpower and all transmission network having capacity of 66kV and above have been transferred permanently with all their assets and liabilities. Also the liability of terminal benefits prior to the unbundling has been borne by the respective states. On the other hand, entire works of 66 kV and above have not been transferred to HPPTCL. In addition, no staffs have been transferred permanently to HPPTCL. HPSEBL is still holding and undertaking transmission works of 66kv and above. The transfer scheme notified by the Govt. of H.P. no where specifies the transfer of staff from HPSEBL to HPPTCL. The complete transmission wing along with the manpower working in the wing were required to be transferred to HPPTCL permanently, in case the pension and terminal benefits are to be borne by HPPTCL as proposed in the</p>	<p>Not relevant to these Regulations.</p>

regulations	
<p>HPPTCL has no Control over the Staff being sent on secondment by HPSEBL to HPPTCL. The personnel of HPSEBL are thrust upon HPPTCL without any choice. HPPTCL has no choice on the quality and quantity of the personnel who are on secondment with us from HPSEBL. HPSEBL post staff and repatriates the same at its will on which HPPTCL has no control. Even at present, HPSEBL has posted about 100 persons against agreed 146 No., that also the staff not wanted by HPSEBL. It has also been observed that the personnel do abruptly opt for repatriation. In one of the cases, HPPTCL issued inter office transfer orders of an official and the official filed a writ petition against the orders. The Hon'ble High Court in place of upholding the need based transfer orders, allowed the request of the employee for his repatriation to HPSEBL. The status of the HPPTCL can be well adjudged from the above. The Cadre Control Authority of HPPTCL vests with HPSEBL. HPPTCL is not a subsidiary Company of HPSEBL and deploying staff by HPSEBL at its will is against the spirit of the Companies Act and detrimental to the interest of HPPTCL, especially when HPSEBL is practically a competitor of HPPTCL as far as laying of transmission network is concerned.</p>	<p>These are administrative issues to be settled by Department of Power. HPPTCL liability shall be to the extent of the assets transferred and HPPTCL has to make the monthly contribution for the staff posted in HPPTCL to the HPSEBL on realistic basis.</p>
<p>That HPPTCL will be in a position to meet out all the terminal benefits of its employees, in case a proper and permanent transfer of the assets and personnel working in the transmission wing of HPSEBL is made to HPPTCL. In no eventuality, HPPTCL can be burdened with the terminal benefits liability of erstwhile HPSEB and present HPSEBL merely on account of temporary deployment of staff.</p>	<p>Not relevant to these Regulations.</p>
<p>That it is not only the personnel of HPSEBL who are on secondment with HPPTCL. A number of employees from AIPIL, HPFC, Himfed, HPTDC and Revenue department are also working with HPPTCL on secondment. With increase in our requirement of staff with the addition of assets, HPPTCL is planning to take more personnel from other departments on secondment basis. Adopting different yardstick for personnel deployed on secondment basis from different departments shall attract severe audit objections. In case HPSEBL is permitted to evolve a formulae of terminal benefits contributions in a manner other than the normative contribution method prescribed by the Govt. of H.P., there will be two sets of rules to be followed by HPPTCL which will itself amount to discrimination as no organization is permitted to follow two sets of rules for its employees on secondment basis.</p>	<p>This is to be on the actual and realistic basis. HPSEBL should neither subsidize nor recover from consumers which is otherwise to be borne by borrowing organisation.</p>
<p>In the states mentioned in para 13 of the HPSEBL memorandum and in almost all other states of the country, there is proper unbundling and successor companies have been created by completely transferring the manpower and</p>	<p>Not relevant to these Regulations.</p>

assets on permanent basis.	
Since no personnel have permanently been transferred by HPSEBL to HPPTCL, HPPTCL cannot be considered as transferee as far as manpower is concerned. Hence, no liability as proposed in the regulations can be fastened upon HPPTCL.	Not relevant to these Regulations.
As mentioned in para 17 of HPSEBL memorandum, HPPTCL has been termed as successor entity of HPSEB. In this regard it is submitted that the HPPTCL can only be burdened with the liabilities related with the assets and the personnel transferred to it permanently. In view of the above submissions HPPTCL cannot be burdened with the liability of benefits proposed in the regulations.	Not relevant to these Regulations.
That the Hon'ble Commission by way of the draft regulations para 3(2) (a), is giving unfettered powers to HPSEBL to evolve a new formulae to receive contributions from HPPTCL against the existing formula of normative contribution prescribed by the State Govt. The normative contribution formula has stood the test of time and as such the only method which could be adopted to receive the contributions.	HPSEBL is a commercial organisation and has to watch their interests also.

A part from the above, the regulations under section 181 of the Act can be framed prospectively and are to be consistent with the provisions of the said Act. Thus the obligations cast upon the State Government under statutory transfer scheme made under the Act, in no way be affected or limited. Hence, there is need to amend proposed sub-regulation (2) of regulation 1 and also to insert provisions to the extent that the obligations of the State Government under the Transfer Scheme shall remain unaffected.

The Commission, after extensive discussions within the Commission and also taking into consideration the facts and views as set out in preceding paras and objects and reasons stated alongwith the draft regulations, orders that the proposed amendment published in draft form be now finalized and notified in the Official Gazette.

Place Shimla

Dated: 31st March, 2015.

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(Subhash C. Negi)
Chairman