

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 48 of 2022
Date of Order: 10.01.2023

Petition under Section 86(1)(c) of the Electricity Act, 2003 read with Section 39 of the Electricity Act, 2003 and Regulations 10, 13, 14, 15, 16, 23, 24, 25 and 45 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011 and Regulations 10 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005.

AND

In the Matter of : Bhakra Beas Management Board, SLDC Complex, Industrial Area Phase-1, BBMB, Chandigarh, 16000, Through Director/Power Regulation.

.....Petitioner

Vs.

1. Punjab State Power Corporation Limited Through its Chief Engineer/PP&R, D-3 Shakti Vihar, PSPCL, Patiala-147001.
2. Punjab State Power Corporation Limited, Through its Chief Engineer/SLDC, Ablowal, PSTCL-Patiala-147004.

....Respondents

Commission: Mr. Viswajeet Khanna, Chairperson

Mr. Paramjeet Singh, Member

Petitioner: Sh. Abhay Gupta, Advocate,

PSPCL: Sh. R.S. Randhawa, CE/ARR &TR

PSTCL: Ms. Silky Rani, Sr.Xen/OA

Order

1.0 Bhakra Beas Management Board (BBMB) has filed the present petition seeking waiver of Open Access (LTA) charges, wheeling charges & SLDC Charges for evacuation of power on STU lines of

PSPCL/PSTCL from its proposed 10 MW Ground Mounted Solar Power Project at BBMB Talwara and upcoming Ground Mounted/Floating Solar Power Plant to be installed at different locations in BBMB.

1.1 BBMB has submitted in the petition that it is engaged in regulation of the supply of Water & Power from Bhakra Nangal and Beas Project to the state of Punjab, Haryana, Rajasthan, Himachal Pradesh and Chandigarh. As per section 78 to 80 of the Punjab re-organization Act, the ownership of the generating stations and the transmission assets is with the participating states. Energy generated at BBMB Power Houses is apportioned among the partner/beneficiary states in a fixed ratio. No tariff is being charged from the partners states by BBMB for apportionment of energy amongst its partner states. The Ministry of New and Renewable Energy, Gol vide reference dated 06.09.2019 has assigned BBMB with the mandate to develop solar power projects of 500 MW. This will result in generation of Green Power to the benefit of partner states as well the Nation. BBMB, in its 231st & 233rd board meetings which were attended by the representative of all the partner states of BBMB has taken a decision that BBMB shall go ahead with the process for setting up Ground Mounted and Floating Solar Power Plants. Entire power generated from the proposed solar power plant will be apportioned amongst the partner states without any extra charges as per their share quota and no part of it is used for any commercial benefit to BBMB. Any expenditure on the evacuation of solar power shall also be apportioned amongst the partner states including Punjab in the agreed ratio. Accordingly, BBMB initiated the process of the installation of 15 MW Floating Solar Power Plant at Nangal Pond Neila & 18 MW Ground Mounted solar Power Plant at various locations in Talwara & Nangal BBMB. The evacuation of power on 66 KV PSPCL sub-station, Talwara for Ground Mounted Solar Power Project is most suitable. In this

context, PSPCL intimated to BBMB that for evacuation of power on their STU network, Open Access (LTA), Wheeling Charges & SLDC charges shall be applicable. The LTA charges for 10 MW Ground Mounted Solar Power Project at Talwara comes out to be tentatively Rs. 1.70 per Unit for the FY 2020-21. These charges are likely to be increased every year. The discovered levelized tariff for total 18 MW Ground Mounted Solar Power project group competitive bidding, after negotiation, is Rs. 2.63 / unit. In case BBMB has to pay Open Access charges and SLDC charges to evacuate its power then these projects may become unviable.

The transmission system of the partner states is also being used for evacuation for power from Hydro Power Station of BBMB for which no Open Access or SLDC charges are being paid by BBMB to partner states. The evacuation of additional small quantum of power from the proposed solar power projects through partner states STU systems may be treated on parity, in a similar manner, and no transmission charges as such should be levied. BBMB transmission system is not only used for evacuation of power from BBMB projects but additional outside central sector power is also being transmitted through BBMB transmission system to the partner states for which BBMB is not claiming any additional transmission charges from them. It is therefore, evident that the petitioner is not operating its generating and transmission assets for any commercial use. Further, power so generated from the proposed solar projects shall be allocated to partner states as per existing power share formula which state utility can consider for fulfilment of their RPO obligations. BBMB has further stated that it has a special status as Inter-State Body Corporate under the Punjab re-Organization Act, 1966 whose provisions specifically provide for the power sharing arrangements under Inter-se partner states.

2. After considering the averments made in the petition, petition was admitted and both the respondents i.e. PSPCL and PSTCL filed their respective replies.

3. PSTCL stated in its reply that the evacuation of power by BBMB from its proposed Solar Power Project to its partner state by using PSTCL/PSPCL system is covered under PSERC (Terms and Conditions for Intra-state Open Access) Regulation, 2011 as amended from time to time. As per the said regulations it is required to take permission from SLDC/PSTCL for availing Open Access on STU / PSPCL system by BBMB and accordingly Open Access charges are applicable as per Regulations (Transmission, Wheeling and SLDC Operating charges) applicable as per Tariff Order issued by the Commission for FY 2022-23. As per PSERC (Forecasting, Scheduling, Deviation Settlement and Related matters of Solar and Wind Generation sources) Regulations, 2019 charges under these regulations are also applicable to BBMB. Further, as mentioned by BBMB, the expenditure on the evacuation of power by BBMB from Solar Power Generators to its partner states shall be apportioned amongst the partner states in the agreed ratio. If waiver of open access charges is allowed by the Commission, then the relaxation due to such waiver shall be in turn passed on to all BBMB partner state at the cost of state of Punjab.

PSPCL submitted its reply to the petition stating that the proposed solar power project will be built / owned and operated by a third party and not by BBMB and therefore shall not be governed by Punjab Re-Organization Act, 1966. Therefore, the purpose of the said project would be entirely commercial and shall also be governed by the terms of agreement (Power Purchase Agreement) to be entered into with the ultimate procurers. The power generated from the said solar power project would also be used by the partner states toward fulfilment of their

renewable purchase obligation and consequently benefits the distribution companies and the end consumers of the respective states and the prayer made by BBMB may be considered in light of the benefits ultimately accruing to the consumers in the state of Punjab.

4. After hearing arguments addressed by the parties on 08.12.2022, order was reserved and the parties were allowed to file written submissions in support of their arguments. BBMB submitted its written submission reiterating its earlier stand stated in the petition. BBMB further stated that they are exploring the installation of more Solar/ Hydro Power Project at different locations. BBMB shall persue HPERC and HPSEBL for waiver of the applicable Open Access/ Wheeling Charges etc for evacuation of upcoming 42 MW Baggi Hydro Power Project in Himachal Pradesh. All the partner states including Punjab shall be benefited by waiver of these charges by the State Commission(s), so the argument of PSTCL that the waiver sought vide instant petition would be passed on to all the partner states at the cost of State of Punjab is farfetched.

Observations and Decision of the Commission

The Commission has carefully gone through the submissions made in the petition, replies of PSTCL, PSPCL, rejoinders and arguments made during the hearings. The findings and decision of the Commission are as under:

5. BBMB in its prayer has requested the Commission to exercise its power under Regulation 45 of the PSERC Open Access Regulation, 2011 and accordingly direct PSTCL and PSPCL to waive off the levy of open access (LTA) charges, Wheeling Charges and SLDC Charges for evacuation of power on STU lines of PSPCL/PSTCL from the proposed 10 MW Ground Mounted

Solar Power Project at BBMB, Talwara and upcoming Ground Mounted/floating solar power plants proposed to be installed by BBMB at different locations through solar power developer on BOO basis or otherwise by BBMB through capex Model to make the project(s) commercially viable and in the interest of partner States and in the public interest at large.

6. Regulation 45 of the PSERC Open Access Regulations, 2011 specifies as under:

“45. Powers to Remove Difficulties

If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may by general or special order, direct the State Transmission Utility, State Load Despatch Centre, licensees and the Open Access customers, to take such action, as may appear to the Commission to be necessary or expedient for the purpose of removing difficulties.”

With regard to exercise of Power to Remove Difficulties the Commission has perused judgments of the Hon’ble APTEL, which clearly specifies that this power to remove difficulty is exercisable only to give effect to the provisions of the Statute and not to make any departure which the Statute does not expressly warrant for.

7. The Hon’ble APTEL in its judgment dated 14.12.2012 in Appeal No.137 of 2012 in the matter of Western Electricity Supply Co. Ltd. (Wesco) vs Orissa Electricity Regulatory Commission and others has clearly specified as under:

“36. Argument was placed that the ‘power to remove difficulty’ clause is a wide power which the Commission can exercise at any given situation and at any point of time. Fundamentally, this is not correct. In every modern statute, such clause appears which is exercisable normally by the Executive for removal of difficulty by general or special order. This power to remove difficulty is exercisable only to give effect to the provisions of the Statute and not to make any departure which the Statute does not expressly warrant for. If the law

is clear and ambiguous and can be applied in a given situation, there is no scope to say that this power to remove difficulty clause can be invoked by the Commission to reach a decision which is expressly contrary to the law. Ordinarily, this power is exercised when the operation of a Statute is at a nascent stage. There was no difficulty to give effect to provisions of the Electricity Act and those of the Supply Code, 2004.

37. Again, if the Statute has provided for exercise of inherent power which is different from the 'Power to remove difficulties Clause' and which is a judicial power, then it can be exercised only to advance the cause of justice and to prevent the abuse of the process of law. Further, such inherent power is not at all exercisable when there is specific provision of law to address a remedy. When there is no specific provision in a given situation inherent power can be exercised

38. The Commission said in the impugned order that their order would serve the overall interest of all consumers of the State. It is common knowledge that law cannot be a case-specific, it is generic and the law makers while making the law do not fail to notice of the welfare of the people. Therefore, by distraction from the law welfare of the people is not achieved."

8. Also the Hon'ble APTEL in its judgment dated 24.03.2015 in Appeal No. 55 of 2013 in the matter of BSES Yamuna Power Limited, Delhi vs Central Electricity Regulatory Commission and others clearly specifies as under:

18.3. We have gone through the judgment of Hon'ble Supreme Court, in Madeva Upendra Sinar Vs. Union of India (supra), in which the Hon'ble Supreme Court held that 'power to remove difficulty' may be exercised when there is a difficulty arising in giving effect to the provisions of the Act and not of any extraneous difficulty. This Appellate Tribunal in the case of NTPC Ltd. Vs. Madhya Pradesh State Electricity Board reported in 2007 ELR (APTEL) 7, held that the power comprised in Regulation 13 of 2004 Tariff Regulations is essentially a 'power to relax'. In case, any Regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, the Regulation can be relaxed. The exercise of power under Regulation 13 of 2004 Tariff Regulations is minimized by

the requirement to record the reasons in writing by the Commission before any provision of the Regulations is relaxed. This Appellate Tribunal in the reported case clearly held that there is no doubt that the Commission has the power to relax any provision of the Regulations. Such power has to be exercised only in exceptional cases and where non-exercise of the discretion would cause hardship and injustice to a party or lead to unjust result. Further, it has to be established by the party seeking exercise of 'power to remove difficulties' or 'power to relax' that the circumstances are not created due to act of omission or commission attributable to the party claiming the relaxation.

9. Keeping above in view, the Commission is of the opinion that power to remove difficulties is to be exercised when there is difficulty in effecting the Regulations and not when difficulty is caused due to application of the Regulations. The Commission feels that in the instant case, there is no difficulty in giving effect to the provisions of the PSERC Open Access Regulations, 2011 and the petitioner has sought the relaxation to make its solar power projects commercially viable. The commercial viability of such projects have to be assessed independently by BBMB and the promoting/investing entity. Commercial viability cannot be at the cost of statutory charges. The Commission, therefore, does not intend to relax the PSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2011 to waive off the levy of open access charges for evacuation of power on STU lines of PSPCL/PSTCL from the proposed 10 MW Ground Mounted Solar Power Project at BBMB, Talwara and upcoming Ground Mounted/floating solar power plants. To do so would result in providing exceptional concessions beyond the law and regulations to one entity and thereby also create an avoidable precedent. Since there is no justification to invoke the power of the Commission under Regulation 45 of the PSERC Open Access Regulations 2011, the prayers of the petitioner are denied and the petition is disposed of in light of the above.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 10.01.2023

