

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

Review Petition No. 01 of 2018 in
Petition No. 03 of 2017

Date of Order: 21.05.2018

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjali Chandra, Member

In the matter of: Review Petition under Section 64 of the
Punjab State Electricity Regulatory
Commission (Conduct of Business)
Regulations, 2005, praying for review of the
Order dated 28.02.2018 passed by the
Commission in Petition No. 03 of 2017
titled as Punjab State Power Corporation
Limited V/s The Northern Railways and
another.

AND

In the matter of: Punjab State Power Corporation Limited
(PSPCL), Patiala.

Versus

1. The Northern Railways, (Ambala Division) through its Chief Electrical Distribution Engineer, Baroda House, New Delhi-110001.
2. Punjab State Transmission Corporation Limited (PSTCL), Patiala.

.....Respondents

ORDER

The petition has been filed by PSPCL for review of the Order dated 28.02.2018 passed by the Commission in Petition No.03 of 2017, on the issue of Standby Charges and Fixed Cost.

2. Submissions made by PSPCL in the petition are summarized as under:

- a) PSPCL had filed a Petition No. 3 of 2017 before the Commission under Section 16 of the Electricity Act, 2003, read with regulation 10 of the PSERC (Conduct of Business) Regulations, 2005 and other relevant provisions of Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011, for imposing necessary conditions on the respondent Railway, to be followed by it while getting Open Access in the state of Punjab, to safeguard the interest of the petitioner, in view of the Order dated 05.11.2015 passed by the Central Electricity Regulatory Commission in Petition No. 197/MP/2015 titled as Indian Railways V/s Power Grid Corporation of India Ltd. and others. In the petition the Commission was requested to grant various charges to be recovered from the respondent Railway and also to put various restrictions. Besides other charges/conditions the petitioner had also sought imposing of stand by charges and fixed charges on the respondent Railways.
- b) The Commission vide Order dated 28.02.2018 decided the Petition No. 3 of 2017.
- c) The Commission while passing the above said Order gave findings on various issues raised by the petitioner in its petition and proposal. Perusal of findings of the Commission on the issue of Fixed Cost and Standby Charges would show that there is mis-appreciation of the

facts by the Commission and certain mistakes or errors apparent on the face of record. As such, the petitioner is filing the present review petition before the Commission with a prayer to review its Order dated 28.02.2018 on the issue of Standby Charges and Fixed cost.

d) The petitioner humbly prays for review of the above said Order on the following grounds:

- i) Stand By Charges: That the petitioner had asked for Stand by charges as the respondent Railways would not be a consumer of the petitioner after the STOA and MTOA is allowed to it and it would be a deemed Licensee, taking electricity from alternate sources other than PSPCL. It was submitted before the Commission that there may be instances when no power is wheeled/scheduled on account of outage/shutdown of the generator or due to some interruption in distribution system of the petitioner or in other transmission line or grid. In that eventuality the respondent Railways would take electricity from the petitioner and for that situation the petitioner is entitled to recover charges / stand by charges. So for such situations two types of charges were sought to be recovered i.e. (i) Charges for actual use of power (ii) Charges for stranded Power due to obligation to supply of PSPCL as per Section 42(4) of the Act.
- ii) That the respondent Railways in its reply has agreed to pay temporary tariff for the actual use of electricity but denied its liability to pay any other charges.

- iii) That while deciding the issue Commission noted that such exigencies/overdrawals are to be dealt under “imbalance charges” as mentioned in rule 31 of the Open Access Regulations. The Commission further noted that provision for standby charges as proposed by PSPCL does not exist in the existing Regulations and gave liberty to PSPCL to file a separate petition for consideration of amendment to the Regulations by the Commission.
- iv) That it is submitted here that the Commission lost sight of the fact that in case there is no provision for stand by charges then the PSPCL can also not be put on an obligation to arrange for power to the respondent Railways in case of outage etc. The nature of the need of northern railway is that in case of outage etc. they are bound to have electricity from the PSPCL and PSPCL is also bound to supply the same. The imbalance mechanism is meant for the purpose that if some overdrawal or under drawal is made then recovery can be made as per this mechanism. But there is no obligation on the part of the petitioner to supply electricity to the open access consumers above scheduled capacity. In the present case the Railway is a Licensee and so the petitioner is not under any obligation to supply electricity to the Railway in case of outage. But as already mentioned above the nature of the requirement of the respondent Railways is that in case of outage it

requires electricity and the PSPCL has to make arrangement for the said capacity so it is entitled to recover the stand by charges for stranded capacity.

- v) The Commission has given the liberty to the Petitioner/PSPCL to move appropriate application for amendment of the regulations. PSPCL would move appropriate application for amendment of regulations. However, till such time the regulation is amended, the Commission has inherent powers to put restrictions on the respondent Railways and ask it to pay stand by charges to PSPCL.
- vi) That besides cost of stranded power, the petitioner is also entitled for charges for actual use of power by the respondent Railways. For this, the petitioner had requested to ask the respondent Railways to pay highest temporary tariff as determined by the Commission for the units consumed by it. The Commission noted that Regulation 31(1)(a) of Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011, in case of overdrawal by Open Access Customers, provides for charging of Highest tariff for any permanent consumer category applicable at that point of time. But, the Commission wrongly held that the term "Highest tariff" under the Regulation 31(1)(a) be considered as "Highest Single Part Tariff" as determined for working out of Two Part Tariff, in the Tariff Order for the respective

year. The Commission further noted that it would not be fair to charge fixed charges applicable for the full month for overdrawal even for a single time slot during the month as per Two Part Tariff.

- vii) That the Commission further held that no MMC charges shall be applicable in this case. The Commission lost sight of the fact that the petitioner is bound to arrange for power for full month even if the Railway overdraws only once in a month. It is further submitted that like in the case of CPPs, they are bound to pay fixed charges though they may overdraw only once in a month. The CPPs are bound to pay charges for electricity actually consumed by them and they are also liable to pay per kVA fixed charges as per two part tariff. It is further submitted that while dealing with the issue of fixed charges, the Commission while deciding review Petition No. 6 of 2017 in Petition No. 90 of 2016 decided on 22.02.2018 has held as under:

“...The Commission further notes that in the suggestions and objections received from public and stakeholders, similar objections and suggestions similar to the pleadings made in the petition were received. After careful consideration of the same and response of PSPCL in each such objection/suggestion, the Commission in para 6.3.5 (vii)(c) in the tariff order for PSPCL for MYT control period from 2017-18 to 2019-20 had observed as under:

“CPPs / Co-Gen plants / consumers: The Commission recognizes the role played by

CPPs/Co-Gen plants/consumers in helping the State when it was facing an acute shortage of power. But, is of the view that since the requirement of the load/contract demand for utilization by the CPPs/Co-Gen plants/consumers has to be met by the Utility, it has to tie up the power and keep its capacity reserved, for which it has to commit the fixed costs. Therefore, CPPs/Co-Gen plants/consumers are also liable to pay the Fixed Charges for the same to the Utility.”

- viii) That while charging from respondent Railways for actual power consumption the amount has to be calculated as per two part tariff.
- ix) That it is further submitted that PSPCL has also proposed in Petition No. 3 of 2017 for imposing Fixed Charges @ Rs. 14,83,506.69 per MW per month, calculated on the basis of its total fixed cost liability and accordingly worked out Fixed Cost of Rs. 3.71 crore (approx) per month for 25 MW load of the Railways. It is further submitted that this fixed cost is different from the fixed cost for stranded power as mentioned above.
- x) That Railways have contended that it would no longer be a consumer of PSPCL and therefore there is no rationale for payment of fixed charges as proposed by PSPCL. The Commission observed that, under existing Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011, provision for payment of Fixed Charges on total

demand of open access customers as proposed by PSPCL does not exist. So, liberty was given to the petitioner to file a separate petition containing proposal for charging Fixed Charges for actual demand recorded by open access customers, if any from PSPCL, for consideration of amendment to the Regulations by the Commission.

xi) That the petitioner would move appropriate application for amendment of regulations. But it is submitted here that till the regulations are amended the Commission is competent to ask the respondent Railways to pay fixed charges to the petitioner. The Railway has taken a stand that it would not be consumer of the PSPCL. There is no doubt to the same but it is submitted here that the Railway though has entered into PPA with some generator for supplying power but in case of outage etc. it is dependent upon the PSPCL only and the PSPCL would keep its system ready for that eventuality. So PSPCL is entitled to get Fixed Charges as demanded in the petition.

xii) That while determining two part tariff for the year 2017-2018, the Commission has taken into consideration the fixed cost and accordingly the consumers are liable to pay fixed cost at per kVA load. So, PSPCL is entitled to get fixed cost as per kVA load of the Railway.

xiii) That from the facts mentioned above it is clear that

the Order dated 28.02.2018 has to be reviewed and recalled on the issues as mentioned above. It is, therefore, respectfully prayed that in view of the submissions made above, the Order dated 28.02.2018 passed by the Commission in Petition No. 3 of 2017 may kindly be reviewed and recalled to the extent mentioned above and petition filed by the petitioner may kindly be allowed in toto and the relief claimed in the petition may kindly be granted, in the interest of justice. Any other, relief, order or direction which the Commission may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the petitioner, in the interest of justice.

3. The petition was listed for hearing on admission of the petition on 03.05.2018. During the hearing, the counsel for the petitioner only reiterated its submissions made in the review petition. The Commission vide its Order dated 08.05.2018, ordered as under:

“The petition was taken up for hearing on admission of the petition. After hearing the learned counsel for the petitioner, Order is reserved.”

4. **Commission’s Observations and Findings**

The Commission after considering the submissions made by PSPCL in the petition and hearing the learned counsel of the petitioner during the hearing dated 03.05.2018 observes and decides as under:

a) The petition has been filed by PSPCL for review of the

Commission's Order dated 28.02.2018 in Petition No. 03 of 2017, to the extent of imposition of standby and fixed charges on the Northern Railways while availing open access in the State of Punjab as a deemed licensee. Regulation 64(1) of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 reads as under:

“Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decision/order was passed by the Commission or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision/ order of the Commission.”

- b) The petitioner is again pleading for the imposition of Standby Charges and Fixed Charges regarding which the Commission in its Order dated 28.02.2018 has already clarified that the provision for the same does not exist in the existing Regulations and further, gave liberty to PSPCL to file separate petition(s) for consideration of amendment to the Regulations by the Commission.
- c) The Commission observes that the submissions made by PSPCL in the Review Petition are same as submitted by it earlier in the main petition. The Commission has already considered the same and has decided the matter, as per the existing provisions of the PSERC (Terms and Conditions for Intra-state Open Access)

Regulations, 2011 as amended upto date. No new and important matter or evidence has been produced by the petitioner. Also, PSPCL has not pointed out any mistake or error apparent on the face of record which requires review of the Order.

- d) Further, PSPCL has already filed a Petition No. 16 of 2018 seeking incorporation of Standby Charges in the PSERC (Terms and Conditions for Intra-state Open Access) Regulations, 2011, which is under consideration of the Commission.

Considering the above, the Commission is of the view that the present petition does not qualify for review of the Order dated 28.02.2018 in Petition No. 03 of 2017. As such, the petition is not maintainable and disposed of accordingly.

Sd/-

(Anjuli Chandra)
Member

Sd/-

(S.S. Sarna)
Member

Sd/-

(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated:21.05.2018