

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

**Petition No. 10 of 2018
Date of Order: 04.05.2018**

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

In the matter of: Petition for determination of Additional Surcharge under Section 42 (4) of the Electricity Act, 2003, read with Regulation 27 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011 to be made applicable on the open access consumers availing power from the sources other than Punjab State Power Corporation Limited for the period 01.04.2018 to 30.09.2018.

AND

In the matter of: Punjab State Power Corporation Limited,
Patiala.
.....Petitioner

ORDER

The present Petition has been filed by the Punjab State Power Corporation Limited (PSPCL) under Section 42 (4) of the Electricity Act, 2003, read with Regulation 27 of the PSERC (Terms and Conditions for Intra-state Open Access) Regulations, 2011 (PSERC Open Access Regulations) for determination of Additional Surcharge, to be made applicable on the open access consumers availing power from the sources other than PSPCL for the period from 01.04.2018 to 30.09.2018.

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

- i) PSPCL is having adequate generating capacity available to meet with the entire demand of power of the consumers of PSPCL, including the open access consumers, during the relevant period. Further, on account of sourcing of power by open access consumers from alternate sources (other than PSPCL), the available generation capacity remained stranded during the period from April, 2017 to September, 2017. A similar situation is likely to persist during the upcoming demand period from April, 2018 to September, 2018 and in the event of sourcing of power from alternate sources other than PSPCL, the available generating capacities are likely to remain stranded during this period.
- ii) Para 8.5 of the Tariff Policy, 2016 and Regulation 27 of the Open Access Regulations provide for applicability of Additional Surcharge to be paid by open access consumers. The Commission has notified the Open Access Regulations, in accordance with the provisions of the Electricity Act, 2003 and the Tariff Policy framed there under, so as to compensate the distribution licensee for its stranded generation capacity arising out of the universal supply obligations. The Additional Surcharge is payable under the regulations notwithstanding that only the inter-state transmission system is being used for availing open access and even when the transmission/distribution lines of the licensee are not used.

- iii) The burden of fixed cost is adversely affecting the financial interests of PSPCL, which in turn is adversely affecting the end consumers in the State buying power from PSPCL. As such, it is necessary that Additional Surcharge as provided under Section 42(4) of the Electricity Act, 2003 and the Open Access Regulations be determined and made applicable to open access consumers in the State.
- iv) For the computation of the Additional Surcharge for the period from 01.04.2018 to 30.09.2018, PSPCL has submitted the following data for the corresponding period of previous year i.e. 01.04.2017 to 30.09.2017:
- a) Month-wise available installed/contracted capacity of Punjab from all the sources (Own Thermal & Hydro Generating Stations + Central Sector Allocations + Share from BBMB power stations) and IPPs.
 - b) Summary of Open Access Power availed by open access consumers of PSPCL along with hourly based (month wise) details.
 - c) Summary and details of hourly based (month wise) data for Total Availability/Total Scheduled Power/Total Surrendered Power from Own Thermal, Own Hydro, Central Sector (ISGS+BBMB) and IPPs.
 - d) Details of Annual Fixed Cost (AFC) of Generating Stations from which PSPCL received power during the period from April, 2017 to September, 2017.

- e) Draft Computation of Additional Surcharge for the period 01.04.2018 to 30.09.2018, to be levied on open access consumers.
- v) PSPCL has prayed as under:
- a) Admit the Petition for determination of Additional Surcharge for the period from 01.04.2018 to 30.09.2018 payable by PSPCL's consumers purchasing power from within/outside PSPCL's area of supply/State periphery;
 - b) Hold that the obligation of PSPCL in terms of power purchase commitments has been and continues to be stranded and there is an unavoidable obligation and incidence to bear fixed costs consequent to such commitments;
 - c) Approve the draft Public Notice appended as Annex. J and fix a timeline so that process of determination of the applicable additional surcharge for the Control Period 01.04.2018 to 30.09.2018 can be completed before the next date of its applicability.
 - d) Determine the Additional Surcharge payable by open access consumers for the period from 01.04.2018 to 30.09.2018 on the quantum of power purchase through Open Access using the network of PSPCL on the basis of data submitted by the petitioner.
 - e) Make applicable the Additional Surcharge for the relevant period on the power purchased by open access consumers from within/outside PSPCL's area of supply/ State periphery under Open Access.

3. The Commission vide its Order dated 27.03.2018, ordered as under:

“The Commission vide its Order dated 20.03.2018 in Petition No. 48 of 2017, determined the Additional Surcharge payable by the Open Access Consumers for the period from 01.01.2018 to 31.03.2018. The present Petition filed by PSPCL seeking determination of Additional Surcharge for the period from 01.04.2018 to 30.09.2018 is under process and is likely to take some more time. As such, the Additional Surcharge @ ₹0.83 per kWh as determined by the Commission vide Order dated 20.03.2018 will continue to be levied on the open access power brought by the Open Access Consumers from the sources other than PSPCL, till the decision in present petition. The difference, if any, in the Additional Surcharge ordered to be levied by the Commission (i.e. ₹0.83 per kWh) and the Additional Surcharge to be determined by the Commission in present petition shall be payable/refundable by/to Open Access Consumers.”

4. The public notice was published by PSPCL on 09.03.2018 in the leading newspapers namely, ‘Punjab Kesari’, ‘The Tribune’ and ‘Ajit’, for inviting objections from general public/ stakeholders. The last date for submission of objections/comments was fixed as 21 days from the publication of the notice. No objection/comment has been received from the general public/stakeholders against the said public notice.

5. The Petition was taken up for hearing as well as for public hearing on 04.04.2018. The persons/organizations interested in presenting their views/ suggestions in the matter were invited to participate in the hearing dated 04.04.2018. No one from public appeared in the public hearing except the petitioner. After hearing PSPCL, Order was reserved by the Commission.

6. Findings and Decision

The Commission has carefully gone through the petition. The findings and decision of the Commission is as under:

- i) The Electricity Act, 2003, Tariff Policy, 2016 and PSERC Open Access Regulations provide for payment of Additional Surcharge by open access consumers receiving supply of electricity from a person other than the distribution licensee of his area of supply, based on the fixed cost of stranded power of utility and that arising out of his obligation to supply as under:

Section 42(4) of the Act;

“Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.”

Clause 8.5.4 of Tariff Policy

“The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.”

Regulation 27 of the PSERC (Terms & Conditions for Intra-state Open Access) Regulations, 2011

“27. Additional Surcharge

- 1) An open access consumer, receiving supply of electricity from a person other than the distribution licensee of his area of supply, shall pay to the distribution licensee an additional surcharge on the charges of wheeling, in addition to wheeling charges and cross-subsidy surcharge, to meet out the fixed cost of such distribution licensee arising out of his obligation to supply as provided under sub-section (4) of section 42 of the Act.*
- 2) This additional surcharge shall become applicable only if the obligation of the licensee in terms of power purchase commitments has been and continues to be stranded or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The distribution licensee shall indicate the quantum of such stranded costs and the period over which they would be stranded. The Commission shall scrutinize the statement of calculation of fixed cost submitted by the distribution licensee and obtain objections, if any, and determine the amount of additional surcharge.

*Provided that such additional surcharges shall not be levied in case distribution access is provided to a person who has established a captive generation plant for carrying the electricity to the destination of his own use.**
- 3) The additional surcharge shall be determined by the Commission.*
- 4) The consumers availing Open Access exclusively on interstate transmission system shall also pay the additional surcharge as determined under this Regulation.*
- 5) The consumers availing Open Access through dedicated lines even without involving licensee's transmission and / or distribution system shall be liable to pay same additional surcharge as determined under this Regulation.”*

The Hon'ble Supreme Court of India in its judgment dated 25.04.2014 in Civil Appeal No. 5479 of 2013 under para 25 observed as under:

“25 The issue of open access surcharge is very crucial and implementation of the provision of open access depends on judicious determination of surcharge by the State Commissions. There are two aspects to the concept of surcharge – one, the cross subsidy surcharge i.e. the surcharge meant to take care of the requirements of current levels of cross-subsidy, and the other, the additional surcharge to meet the fixed cost of the distribution licensee arising out of his obligation to supply. The presumption normally is that generally the bulk consumers would avail of open access, who also pay at relatively higher rates. As such, their exit would necessarily have adverse effect on the finances of the existing licensee, primarily on two counts- one, on its ability to cross-subsidise the vulnerable sections of society and the other, in terms of recovery of the fixed cost such licensee might have incurred as part of his obligation to supply electricity to that consumer on demand (stranded costs). The mechanism of surcharge is meant to compensate the licensee for both these aspects”.

ii) The Commission has carefully gone through the data submitted by PSPCL. The Commission observes as under:

a) PSPCL have adequate contracted capacity from various tied up sources, a part of the same is likely to continue to remain stranded during the period, as such the distribution utility is entitled to recover Additional Surcharge from the open access consumers as compensation for the fixed cost of the

stranding power it has contracted to meet its obligation to supply on demand.

- b) PSPCL has worked the Additional Surcharge under Single Part Tariff structure as ₹1.10/kWh for the period 01.04.2018 to 30.09.2018. Further, after factoring-in the impact of Fixed Charges in Two Part Tariff structure approved by the Commission, PSPCL has calculated Additional Surcharge under Two Part Tariff as ₹0.75/kWh.
- c) for the purpose of determining the proportion of demand charges, PSPCL has considered the power factor of the consumers as 0.90, in place of applicable power factor of 0.95 for general industry and 0.98 for Arc Furnaces/PIU, for converting the power drawn by consumers from kVAh to kWh.

The Commission, while determining the kWh energy drawn by consumers, has converted the consumption in kVAh to kWh by applying applicable power factor of 0.95 and 0.98 for general industry and Arc Furnaces/PIU respectively. Further, closure of GNDTP, Bathinda and 2 Units of GGSSTP, Ropar from January 2018 has also been considered while determining the fixed costs applicable to the period 01.04.2018 to 30.09.2018. The Additional Surcharge has accordingly determined by the Commission as ₹0.75 per kWh (Detailed in Annexure-A), to be paid by the Short Term Open Access consumers situated within the area of supply of the licensee, on the Open Access power bought by them from the sources other than PSPCL, for the period from 01.04.2018 to

30.09.2018, subject to the condition that the contracted capacity of PSPCL continues to remain stranded during the period. Further, PSPCL is directed to refund the excess amount of Additional Surcharge charged during the period in terms of Commission's Order dated 27.03.2018 in this petition, to the concerned open access consumers. The petition is disposed of accordingly.

Sd/-

**(Anjuli Chandra)
Member**

Sd/-

**(S.S. Sarna)
Member**

Sd/-

**(Kusumjit Sidhu)
Chairperson**

Chandigarh

Dated: 04.05.2018



Annexure-A

Calculation of Additional Surcharge			
A.	Installed/Contracted Capacity	13759 MW	
B.	Average Availability	9239 MW	
C.	Average Scheduled	6412 MW	
D.	Average Stranded Capacity	2827 MW	
E.	Average Open Access Aailed	5 MW	
F.	Capacity Stranded due to Open Access	5 MW	
G.	Fixed Cost for the available power capacity (excluding STU and distribution costs)	₹4302.26 crore	
H.	Adjustment in Fixed Cost on account of closure of GNDTP and 2 No. units of GGSSTP for the period (as per Table 8.7 of the Tariff Order for FY 2017-18)	GNDTP (364.94/2)	₹182.47 crore
		GGSSTP {488.86/2*(1/3)}	₹81.48 crore
I.	Net Fixed Cost commitment (G-H)	₹4038.31 crore	
J.	Net Average availability after excluding the 880 MW (capacities of retired units of GNDTP and 2 No. units of GGSSTP)	8359 MW	
K.	Fixed Cost per MW available (I/J)	₹0.48 crore	
L.	Fixed Cost of Stranded Capacity on account of Open Access (F*K)	₹2.40 crore	
M.	Open Access energy Scheduled	22 MU	
N.	Additional Surcharge for Single Part Tariff (L/M)	₹1.09 per kWh	
O.	Adjustment of Fixed Charges under Two Part Tariff contributing towards cost of stranded power		
	i) Energy consumed by LS consumers with load more than 1 MW	4471.89 MU	
	ii) Estimated Fixed Charges that would have been recovered if two part tariff had been applicable, from LS consumers with load more than 1 MW	₹310.77 crore	
	iii) Fixed Charges per unit (ii/i)	₹0.69 per kWh	
	iv) Total Fixed Costs of Distribution Licensee for the period (as per Tables 8.6 & 5.26 of the TO for FY 2017-18) {1/2*(Total ARR - Variable Costs – PSTCL Charges)#}	₹8772.95 crore	
	v) Proportion of 'Fixed Cost commitment for power purchase' to the 'Total Fixed Costs of Distribution Licensee' for the period (G/iv)	49.04%	
	vi) Part of the Fixed Charges paid by LS consumers with load more than 1 MW, contributing towards fixed cost of power (iii*v)	₹0.34 per kWh	
P.	Additional Surcharge payable under Two Part Tariff (N-O)	₹0.75 per kWh	

Total ARR for FY 2017-18 (as per TO for FY 2017-18): □ 30407.69 crore

Variable costs (i) Fuel Cost: ₹1622.33 crore

(ii) Power Purchase: ₹10004.60 crore

PSTCL Charges: ₹1234.87 crore