

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

**Petition No. 29 of 2018
Date of Order: 25.09.2018**

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

In the matter of: Petition for the Determination of Additional Surcharge U/S 42 (4) of the Indian Electricity Act-2003 read with Regulation 27 of Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access) Regulation -2011 to be made applicable on to the open access consumers availing power from the sources other than PSPCL for the period 01.10.2018 to 31.03.2019.

AND

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

ORDER

The Petition has been filed by PSPCL 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 01.10.2018 to 31.03.2019.

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

- i) The additional surcharge so determined by the Commission shall remain applicable for the period

01.10.2018 to 31.03.2019.

ii) For the computation of the applicable Additional Surcharge for the period, PSPCL has submitted the following data for the corresponding period of the previous year i.e. 01.10.2017 to 31.03.2018:

- a) Month-wise Available Installed Capacity (in MW) 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) detail.
- c) Summary and Detail of Hourly-based (Month-wise) data of Availability/Entitlement, Scheduled and Surrendered Power from own Thermal, own Hydro, Central Sector (ISGS+BBMB) and IPPs.
- d) Detail of Annual Fixed Cost (AFC) of Generating Stations from which PSPCL received power during October-2017 to March-2018.
- e) Draft Computation of Additional Surcharge for the period to be levied on the open access consumers.
- f) Draft Public Notice with regards to applicable additional surcharge w.e.f 01.10.2018 to 31.03.2019.

iii) From the detail of data attached it is evident that the petitioner is having adequate generating capacities available to meet with the entire demand of power of its consumers 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) some of the available generation capacities remained stranded during the period of October 2017 to March 2018. A similar situation is likely to persist during the upcoming lean demand period of October 2018 to March 2019 and in the event of consumers sourcing power from alternate sources other than PSPCL, the available generating capacities are likely to remain stranded during this period.

- iv) That as per provision 8.5 of the Tariff Policy additional surcharge is payable on the stranded capacity arising out of supply obligations of the distribution licensee under existing power purchase commitments.
- v) Also that the provisions as regards additional surcharge is made in Clause 27 of PSERC Open Access Regulations 2011. The Commission has notified the above referred Open Access Regulations in accordance with the provisions of the Indian Electricity Act 2003 and the National Tariff Policy framed there under so as to compensate the distribution licensee for its stranded generation capacities arising out of its 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 lines of transmission/distribution licensee are not used.
- vi) As the burden of fixed cost is adversely affecting the

financial interests of the Petitioner, which in turn is affecting the end consumers in the State buying power from the Petitioner, as such it is necessary that an additional surcharge as provided under Section 42 (4) of the 2003 Act and the Open Access Regulations of the Commission be determined based on the data submitted above. The petitioner further undertook to submit such further and additional data in this behalf as may be directed by the Commission.

vii) The prayers of the petitioner are as under:

- a) Admit the above Petition.
- b) Hold that the obligation of the Petitioner 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 and fix a timeline so that process of determination of the application additional surcharge for the control period 01.10.2018 to 31.03.2019 can be completed before the next date of its applicability.
- d) Determine the Additional Surcharge payable by open access consumers for the period 1st October-2018 to 31st March-2019 on the quantum of power purchase through open access using the network of the Petitioner on the basis of the data submitted along with the petition.

- e) Make applicable the additional surcharge for the relevant period on the power purchased by open access consumers from within/outside the PSPCL's area of supply/State periphery under open access.
- f) Pass such further and other order(s) as the Commission may deem just and proper in the facts and circumstances of the present case.

3. The Commission vide its Order dated 30.08.2018, ordered as under:

"The petition has been placed before the Commission for admission. After considering the averments made in the petition, the petition is admitted.

The Commission notes that the subject matter in the petition involves the public interests at large. Therefore, PSPCL is directed to issue public notice latest by 30.08.2018, inviting objections / suggestions from Public and all stakeholders in compliance of Regulation 67 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005. Public hearing shall be held on 18.09.2018 in the office complex of the Commission and the petition shall be taken up for hearing on 18.09.2018 at 11.00 A.M."

4. The Commission vide letter dated 28.08.2018, approved the draft Public Notice inviting objections from general public/ stakeholders on the subject cited Petition and directed the petitioner as under:

- i) Details for working out of Adjustment of fixed charges under two part tariff contributing towards cost of stranded power be submitted in the attached Performa and same be also uploaded on the website along with the petition.

- ii) It should be ensured that the Public Notice must appear in press latest by 30.08.2018.

5. The public notice was published by PSPCL on 30.08.2018 in the daily newspapers namely, 'The Tribune', 'Punjab Kesari' and 'Ajit', for inviting objections from general public/ stakeholders. The last date for submission of objections/comments was fixed as 15 days from the publication of the notice. The petitioner's reply dated 31.08.2018 in response to the Commission's letter dated 28.08.2018 was uploaded on the website of PSPCL and the website of the Commission. Further, persons/ organizations interested in presenting their views/suggestions in the matter were also invited to participate in the hearing to be held on 18.09.2018 in the office complex of the Commission.

6. No objection/comment has been received from the general public/stakeholders against the said public notice.

7. The Petition was taken up for hearing as well as for public hearing on 18.09.2018. No one from public appeared in the public hearing except the petitioner. The petitioner vide its memo no. 5634 dated 17.09.2018 submitted the clarifications regarding calculation of capacity charges paid during the period of October 2017 to March 2018 contained in Annexure-H of the petition. After hearing PSPCL, Order was reserved by the Commission.

8. Commission's Observations and Findings

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 (Terms & Conditions for Intra-state Open Access) Regulations, 2011 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:

a) 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.”

b) 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.”

c) 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."*

d) 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 the petitioner. The Commission observes as under:

a) The petitioner has 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 stranded power it has contracted to meet its obligation to supply on

demand.

- b) The petitioner has worked out the Additional Surcharge under Single Part Tariff structure as ₹1.29/kWh for the period 01.10.2018 to 31.03.2019. Further, after factoring-in the impact of Fixed Charges in Two Part Tariff structure approved by the Commission, the petitioner has calculated Additional Surcharge under Two Part Tariff as ₹1.11/kWh. However, in response to the Commission's letter dated 28.08.2018, the petitioner vide its memo no. 5526/TR-5/905 dated 31.08.2018 submitted the revised computation of additional surcharge under Two Part Tariff as ₹0.92/kWh (Annexure-A).
- c) For the purpose of determining the proportion of 'Fixed Cost commitment for power purchase' to the 'Total Fixed Costs of Distribution Licensee' for the period, the petitioner has considered the projected data for FY 2017-18 as approved by the Commission in the Tariff Order for FY 2017-18. However, since, the Commission has revised the fixed costs for FY 2017-18 in the Tariff Order for FY 2018-19, hence, the Commission now finds it more germane to consider the same for working out the adjustment of Fixed Charges under Two Part Tariff contributing towards cost of stranded power.

The Commission has accordingly determined the

Additional Surcharge of ₹0.86 per kWh (Detailed in Annexure-A), to be payable by open access consumers under Regulation 27 of the PSERC (Terms & Conditions for Intra-state Open Access) Regulations, 2011 for the period 01.10.2018 to 31.03.2019, provided the contracted capacity of the petitioner continues to remain stranded during the period.

The petition is disposed of accordingly.

**Sd/-
(Anjuli Chandra)
Member**

**Sd/-
(S.S. Sarna)
Member**

**Sd/-
(Kusumjit Sidhu)
Chairperson**

Chandigarh
Dated: 25.09.2018

Annexure-A

Calculation of Additional Surcharge			
Sr. No.	Particulars	Submitted by PSPCL	Computed by the Commission
A.	Installed/Contracted Capacity	13383 MW	
B.	Average Availability after adjusting the capacities of retired units of GNDTP and GGSSTP	7728 MW	
C.	Average Scheduled	5698 MW	
D.	Average Stranded Capacity	2470 MW	2030 MW
E.	Average Open Access Availed	0.05 MW	
F.	Capacity Stranded due to Open Access	0.05 MW	
G.	Fixed Cost for the available power capacity (excluding STU and distribution costs)	₹4254.20 Cr.	
H.	Adjustment in Fixed Cost on account of closure of GNDTP and GGSSTP for the period (as per Table 8.7 of the Tariff Order for FY 2017-18)	GNDTP (364.94/2= 182.47) GGSSTP {488.86/2*(1/3)=81.48}	(-)₹ 263.95 Cr.
I.	Net Fixed Cost commitment (G-H)	₹3990.25 Cr.	
J.	Fixed Cost per MW available (I/B)	₹0.516 Cr.	
K.	Fixed Cost of Stranded Capacity on account of Open Access (F*J)	₹0.0258 Cr.	
L.	Open Access energy Scheduled	0.20 MU	
M.	Additional Surcharge for Single Part Tariff (K/L)	₹1.29/kWh	
N.	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	4163.73 MU	
	ii) Estimated Fixed Charges that would have been recovered if two part tariff had been applicable for the whole period, from LS consumers with load more than 1 MW	₹317.70 Cr.	
	iii) Fixed Charges per unit (ii/i)	₹0.763/kWh	
	iv) Total Fixed Costs of Distribution Licensee for the period (as per TO for FY 2017-18/ FY 2018-19#) {1/2*(Total ARR - Variable Costs – PSTCL Charges)}	₹8772.95 Cr.	₹7628.43 Cr.
	v) Proportion of 'Fixed Cost commitment for power purchase' to the 'Total Fixed Costs of Distribution Licensee' for the period (G/iv)	48.49%	55.77%
	vi) Part of the Fixed Charges paid by LS consumers with load more than 1 MW, contributing towards fixed cost of power (iii*v)	₹0.37/kWh	₹0.43/kWh
O.	Additional Surcharge payable under Two Part Tariff (M-N)	₹0.92/kWh	₹0.86/kWh

As per Table 3.52, 3.42 and 3.15 of the TO for FY 2018-19

Total ARR for FY 2017-18 (as per TO for FY 2018-19): ₹27973.61 crore

Variable costs (i) Fuel Cost: ₹1590.14 crore

(ii) Power Purchase: ₹9886.55 crore

PSTCL Charges: ₹1240.06 crore