

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO 220-21, SECTOR – 34-A, CHANDIGARH

Petition No. 01 of 2015

Date of Order: 20.05.2015

Present: Smt. Romila Dubey, Chairperson.
Er. Gurinder Jit Singh, Member.

In the matter of: Petition under Section 142 and Sections 23 and 86(1) (a) of Electricity Act, 2003 read with Open Access Regulations and Tariff Order for the year 2014-15.

AND

In the matter of : Siel Chemical Complex, A Unit of Mawana Sugars Limited Regd. Office : 5th Floor, Kirti Mahal, 19, Rajendra Place, New Delhi – 110125 through Shri Surinder Nath Karnail, AGM(Legal), Siel Chemical Complex, Village Khaudili Rajpura, District Patiala-140401.

.....Petitioner

Versus

Punjab State Power Corporation Limited.

.....Respondent

ORDER:

1. The present Petition has been filed by Siel Chemical Complex (unit of Mawana Sugars Ltd) against PSPCL. The Petitioner has submitted that it has a Large Supply industrial connection (continuous process industry Category-IV) having sanctioned load of 38 MW and contract demand of 35 MVA. PSPCL vide its Commercial Circular No. 46 of 2014 dated 04.09.2014 is levying

₹3/- per kVAh over and above the normal tariff fixed by the Commission for the year 2014-2015 w.e.f. 01.10.2014 to 31.03.2015 on the overall power purchased during 18:00 Hrs to 22:00 Hrs, which includes power drawn both through open access as well as from distribution licensee. As per the Tariff Order for FY 2014-15, the Petitioner opted for ToD tariff and gave its consent vide letter dated 09.09.2014. As per the Tariff Order for FY 2014-15, an additional charge of ₹3 per kVAh is applicable on the power drawn from PSPCL only and not on power arranged under open access from IEX, and consequently, the discount of ₹1.50 per kVAh is applicable on power drawn from PSPCL during the hours from 22:00 Hrs to 06:00 Hrs (next day). The additional charge has been worked out by PSPCL on the total consumption including open access power citing limitations in new software developed for kVAh tariff billing for the months of October and November, 2014. The Petitioner requested PSPCL in this regard vide letter dated 27.11.2014 but the PSPCL is continuing to charge excess additional charge on the entire consumption.

The Petitioner has further submitted that the circular issued by PSPCL is against the Tariff Order whereby the PSPCL is entitled to levy additional charge only on the power drawn from PSPCL and not on the open access power. The action of the PSPCL seems to be only to discourage the consumers to avail power through open access, which it cannot deny otherwise under the Act and regulations framed there-under. The action taken by the PSPCL is against the principle of equality as it has discriminated between the consumers who are availing open access and the ones who are not open access consumers. As per Section 86 of the Act, the Hon'ble Commission is empowered to fix tariff only

for the power supplied from the distribution licensee and only wheeling charges and surcharge on the open access power. No tariff fixed by the Commission can be applied on open access power and the same is violative of Section 86 of the Act.

The Petitioner has prayed that the Hon'ble Commission should issue necessary directions to PSPCL under Section 27 of the Act, as under:

- (i) Issue a direction clarifying Commercial Circular No. 46 of 2014 dated 04.09.2014 regarding its application only on PSPCL Power.
 - (ii) Direct to refund/adjust excess amount charged in the preceding bills so far.
 - (iii) Issue appropriate proceedings against PSPCL and try them for wilful disobedience of the regulations and orders passed by the Hon'ble Commission, under Section 142 of the Act.
 - (iv) Pass any such further orders as the Hon'ble Commission may deem fit in the facts and circumstances of the case.
2. The Petition was admitted vide Commission's order dated 27.01.2015. PSPCL was ordered to file reply by 02.03.2015, with a copy to the Petitioner, for filing rejoinder to the reply of PSPCL by 10.03.2015, with a copy to PSPCL. The next date of hearing was fixed for 17.03.2015.
 3. PSPCL vide its letter dated 05.03.2015 filed reply to the Petition and submitted that the Petition is misconceived as in the first instance, ToD tariff is optional for the Petitioner as well as for other Large Supply consumers and even under ToD tariff, the Petitioner is in advantageous position compared to earlier PLEC system of charging the Petitioner for power consumed during

peak load hours. In comparison, ToD tariff is beneficial to the Petitioner as well as other Large Supply consumers. PSPCL in its reply has discussed the method of billing under PLEC system and ToD regime as under:

(a) "Billing under PLEC System:

- (i) Prior to introduction of ToD tariff, Large Supply consumers desiring to run their industry during peak load hours were required to get sanction for the power (kW) to be used.
- (ii) The power consumed during peak load hours in a month was worked out as per formula $(kW \times 3 \times 30 = kWh)$, where 30 was the days in a month and 3 was taken as hours of use every day (as peak load hours period was fixed for 3 hours daily during the period 6 PM to 10 PM).
- (iii) The energy consumed during this period was charged extra @ ₹2.70/kWh upto 65% of contract demand use and @ ₹4.05/kWh between 65% and 90% of contract demand use, as per sanction granted by PSPCL for use during peak load hours.
- (iv) The Petitioner purchasing power through open access was also consuming this very power along with power drawn from PSPCL during peak load hours and paying the respondent as per rates given in Para (iii) above and this was never challenged by the petitioner. For use of power beyond sanctioned limit, penalty @ ₹750/kVA as demand surcharge was leviable.

(b) Billing under ToD tariff:

Large Supply consumers who opted for this tariff, the actual energy consumed during peak load hours (6 PM to 10 PM) recorded by the meter is charged extra @ ₹3/kVAh for power

purchased through open access as well as drawn from PSPCL generation. Under ToD tariff, the petitioner got additional benefits as under:

- (i) The Petitioner can use power during peak load hours up to sanctioned contract demand.
- (ii) No prior sanction is required from PSPCL for use of this power during peak load hours.
- (iii) Actual energy consumed during peak load hours (6 PM to 10 PM) and recorded by the meter is to be charged extra @ ₹3/kVAh and not as per empirical formula ($\text{kW} \times 30 \times 3$) under PLEC system, where sanctioned power for use during peak load hours was considered as fully utilized by the consumers. These extra charges were leviable for full month even if utilized for one day. But now under ToD tariff, ₹3/- per kVAh is only charged when power is actually consumed during peak hours.
- (iv) Demand surcharge @ ₹750/kVA is to be charged only in case Petitioner utilized extra demand during peak hours beyond his full sanctioned contract demand.
- (v) Under ToD tariff, Petitioner is also given rebate @ ₹1.50 per kVAh for power consumed from PSPCL generation during off peak hours of 10 PM to 6 AM, whereas no such rebate is admissible under PLEC system of billing.

PSPCL further submitted that peak load restrictions have been imposed with the approval of Commission to control maximum demand during peak load hours (6 PM to 10 PM) with the coming of load of Domestic and NRS consumers for lighting purposes. The transmission system gets equally over loaded during peak load hours, whether power is drawn from PSPCL generation or

through open access by the Petitioner and charging extra charges @ ₹3/kVAh for overall total power consumed during peak load hours is required to control maximum demand which is required to keep the transmission system in healthy condition and levy of charges is justified.

PSPCL has filed parawise reply to the Petition and has submitted that the additional charge of ₹3/kVAh charged for overall power drawn by the Petitioner from PSPCL generation as well as open access power during peak load hours is justified as both affect the peak demand equally and is required to be controlled to avoid grid failure. Rebate of ₹1.50/kVAh is admissible only on power drawn from PSPCL during off peak hours (10 PM to 6 AM) under ToD tariff. As per principle of equality and commercial principles, the Petitioner is purchasing open access power being cheaper and PSPCL has also allowed rebate @ ₹1.50/ kVAh on power drawn by the Petitioner (as well as other Large Supply consumers opting for ToD tariff) during off peak hours from 10 PM to 6 AM, to encourage consumers to consume more power when surplus power is available for use with PSPCL. The Petitioner has no legal ground to compare power drawn during peak and off peak load hours on the same footing.

PSPCL has also submitted the para wise reply to the grounds of the petition as under:

- (i) The Commercial Circular No. 46/2014 is as per Tariff Order and additional charge levied to the respondent on overall power consumed from PSPCL and open access is correct as per the facts stated above.
- (ii) The plea taken by the Petitioner is wrong and misconceived. The Petitioner was earlier paying peak load

exemption charges on overall power consumed during peak load hours and there is no reason to believe the plea taken by the Petitioner. The Petitioner is at liberty to purchase any quantum of power through open access and no restrictions as such have been placed in CC No. 46/2014 issued by PSPCL.

- (iii) The action of PSPCL is just and equitable and the Petitioner has opted ToD tariff where rebate is given on power drawn from PSPCL generation during off peak hours (10 PM to 06 AM). ToD tariff being beneficial was opted by the Petitioner.
- (iv) The Hon'ble Commission has power to decide the tariff for various categories/sub-categories of consumers viz LS consumers opting ToD tariff and LS consumers opting PLEC system. The respondent PSPCL with the approval of the Commission has declared peak load hours during the period 06.00 PM to 10.00 PM daily and all LS consumers apart from other consumers are covered under instructions to use power during peak load hours. The Commission is competent to levy surcharge on power purchased through open access as both PSPCL power and open access power equally affect the maximum demand of the system during peak load hours and restrictions on its use through levy of charges is in the interest of stability of transmission and power supply to lakhs of DS/NRS consumers, including hospitals and continuous power industries, apart from railway traction.

PSPCL has prayed that the petition be dismissed.

4. The Petitioner filed rejoinder dated 16.03.2015 to the reply of PSPCL. The Petitioner has denied and disputed all the averments and submissions raised by PSPCL, except for what has been specifically and expressly admitted in writing and any omission on the part of the Petitioner to deal with any averments and submissions of PSPCL should not be construed as admission of the same by the Petitioner. The Petitioner has reiterated the contents of the Petition in reply to the contents of PSPCL and has submitted that these may be read as part and parcel of the present rejoinder.

In the rejoinder, the Petitioner has stressed that PSPCL has wrongly levied ₹3/kVAh on the power bought under open access during peak load hours and has reiterated that there is no regulation which permits levy of any charges other than those mentioned in Open Access Regulations, read with Electricity Act, 2003, on the power drawn through open access. The Petitioner has further submitted in the rejoinder that it is also wrong to state on the part of PSPCL that ToD tariff is beneficial only to the Petitioner, whereas the fact is that it is equally beneficial to the PSPCL also as it flattens the load curve of PSPCL and saves the PSPCL from backing down of its thermal plants during night hours. Large Supply consumers are opting for ToD tariff only in distress as operating the industry has become the question of survival for them even without any profit. The Petitioner has further submitted that PSPCL has conveniently not indicated in its reply that LS consumers not opting for ToD tariff will be levied PLEC for three hours only @ ₹1.80/kWh upto 65% of the CD and ₹2.70/kWh above 65% of CD in addition to normal tariff and the same is deposited as fixed charges irrespective of the actual

drawl of power, whereas under ToD tariff ₹3/kVAh is levied for 4 hours. PSPCL has also not brought out in its reply that under ToD tariff, additional charge of ₹3/kVAh is being treated as a part of SoP for power bought under open access and it is attracting 13% Electricity Duty (39 paisa/kVAh), whereas ED is not payable on PLEC, even if they bring power under open access. The Petitioner is consuming power round the clock and has almost uniform consumption pattern with slight adjustment/reduction of load during peak load hours.

It has been submitted that PSPCL has failed to prove with data that with the coming of load of Domestic and NRS consumers for lighting purposes, the transmission and distribution system is so much overloaded in winter months that it requires the imposition of PLEC. The factual position is that the maximum load in the winter months is only about 50% of the peak load in summer and there is no question of system overloading in winter months. PSPCL after filing of the present Petition has realised that they had no authority to take into account the open access power for working out the additional levy of ₹3/kVAh and have thus stopped the rebate which they allowed on night hours units for open access power in the months of October to December, 2014, but stopped from January, 2015. On the one hand, the rebate has been stopped but they still continue to charge ₹3/kVAh on power brought under open access during peak hours.

The Petitioner has submitted that not allowing ToD rebate on open access power but imposing ToD charge on open access power is violative of Section 42 of the Electricity Act, 2003, which provides that the open access has to be provided on a non-discriminatory basis. Further, Section 42 of the Act mandates the

Commission to determine wheeling charges, surcharge, additional surcharge and cross subsidy for open access. There is no provision to determine ToD charges for open access power in the Electricity Act, 2003. Even, the Open Access Regulations, 2011 framed by PSERC have no provision to charge ToD or PLEC on open access power.

The Petitioner has also replied to the parawise comments of PSPCL and has prayed that the Petition be allowed and relief be granted as prayed.

5. The petition was taken up for hearing on 17.03.2015 and vide Commission's order dated 18.03.2015, the next date of hearing was fixed for 07.04.2015, to hear arguments of the parties.
6. PSPCL filed its reply dated 06.04.2015 to the rejoinder of the Petitioner during hearing of Petition on 07.04.2015. Next date of hearing was fixed for 05.05.2015, for hearing the arguments of the parties, vide Commission's order dated 09.04.2015.
7. PSPCL in its reply to the rejoinder of the Petitioner has reiterated that there is no violation of the Electricity Act, 2003 or Open Access Regulations, where the Petitioner himself is not challenging the levy of ₹3/kVAh over and above the normal tariff. The submission that power consumed during peak load hours and brought under open access should not be charged @ ₹3 kVAh is not sustainable due to following:
 - (i) ToD tariff is optional for all Large Supply consumers and the Petitioner has opted for ToD tariff against PLEC system of charging the petitioner earlier for power consumed during peak load hours.
 - (ii) Prior to introduction of ToD tariff, Petitioner has been paying for the power consumed during peak load hours

(whether drawn from PSPCL or through open access). PLEC charges were duly approved by the Commission and Petitioner never challenged it.

- (iii) Power consumed during peak load hours whether drawn from PSPCL or through open access, affects the transmission system of the respondent equally.
- (iv) As per statutory provisions of Section 61 of Electricity Act, 2003, the respondent Corporation is required to run as per commercial principles. The Commission is competent to decide matters relating to Tariff and other allied issues on commercial principles as per statutory provisions of the Act.
- (v) ToD tariff is advantageous to the Petitioner as under PLEC system, allowing of rebate @ ₹1.50/kVAh for power consumed during off peak load hours (10 PM to 6 AM) is not provided. The Petitioner is at liberty to adopt PLEC system of charging or may meet power requirements during peak load hours from alternate source of power available with him.

The plea taken by the Petitioner that power drawn through open access saves the respondent from backing down its thermal plants is wrong, rather power drawn through open access reduces demand on thermal plants and any backing down increases the cost of generation to the respondent PSPCL. PSPCL has denied that power tariff is high in comparison to neighbouring states equitably placed to sources of power generation (thermal-hydro). Rather, the Commission, to give boost to energy consumption, has given rebate @ ₹1.50 per kVAh for power consumed during off peak load hours (10 PM to 6 AM). Still further, the Commission has allowed rebate @ ₹1/kVAh

on consumption during 2014-15, above the average threshold consumption of past 3 years. In case, the Petitioner still feels that PLEC system of charging for power consumed during peak load hours is beneficial, he is at liberty to opt for PLEC system. E.D. is Govt. Levy and is charged on SOP based on actual consumption. Under PLEC system, actual consumption is not worked out as it is based on empirical formula ($\text{kW} \times 3 \times 30$) and this was levied when the meters did not have facility to store energy consumed during different periods of the day. PLEC charging is just flat rate based on kVA demand allowed to be run during peak load hours. It has been reiterated by PSPCL that with the coming of load of domestic, commercial, essential services, continuous process industry, including railways, the demand during peak load hours has to be controlled to avoid break down of the transmission system. In summer, the demand of power increases compared to winter and generation capacity also increases during summer months compared to winter months and problem of maximum demand during peak load hours persists. In all the states, restrictions have been placed on consumption of power during peak load hours, to control the maximum demand.

Rebate on night hour consumption (10 PM to 6 AM) is given only on power consumed from PSPCL and not on power drawn through open access. This is as per principle of equity and commercial principles. The Petitioner is purchasing power through open access during off peak hours being cheaper and there is no restriction for drawl/consumption of this power. Power consumed during peak load hours drawn from PSPCL or through open access is charged @ ₹3/kVAh. There is no violation of Electricity Act, 2003 or Regulations in charging ₹3/kVAh on total

power consumed during peak load hours. PSPCL has further submitted that it is incorrect that by not allowing ToD rebate on open access power but imposing ToD charges on open access power is violation of Section 42 of the Electricity Act, 2003, as there is no discrimination to the Petitioner and all Large Supply consumers are being charged accordingly. ToD only defines Time of the Day whereas tariff was decided by the Commission keeping in view the guiding principles enshrined in the Act. The Petitioner is being charged in equitable manner keeping in view the commercial principles provided in the Act.

The levy of ₹3/kVAh on power consumed during peak load hours is just a surcharge levied, over and above the consumption charges based on total consumption as per Large Supply tariff and there is no violation of the Act. The respondent PSPCL is required to be run on commercial principles as per statutory provisions of the Act. ToD levy of ₹3/kVAh has been approved by the Commission and decided in equitable manner after considering views of the industrial consumers and the Petitioner should not have objected to it.

On parawise reply, the respondent PSPCL has reiterated the earlier reply filed to the Petition and clarifications given in above paras.

8. The Petition was taken up for hearing on 05.05.2015. After hearing the arguments of the parties, further hearing in the matter was closed and the order was reserved. The Petitioner and the respondent PSPCL were ordered to file written submissions by 11.05.2015.
9. In the written submissions, the Petitioner has re-iterated the same grounds as submitted by it earlier in the Petition and the

rejoinder. In addition to this, the Petitioner has quoted the following judgements in support of their claim:

- (i) In the Judgement in case of Sithapuram Power Ltd V/s Transmission Corporation of Andhrapardesh Ltd, 2010, Aptel 105, the Hon'ble APTEL has held in para 51 as under:

“In cost plus regime, the licensee cannot be allowed to recover charges in respect of cost which it has not incurred. Admittedly, the Respondents have not given any facts or figures before the State Commission or before this Tribunal which would justify levy of penal demand charges to recover any additional cost incurred by them in maintaining the necessary infrastructure for meeting a situation caused by the outages of the Appellant-1 power plant. In the absence of a verifiable cost being incurred by the Respondent – 2, the recovery of any charges from the consumer would not constitute a legal act and on the other hand it may constitute enrichment of licensee at the expense of the open access user/scheduled consumer.”

- (ii) In the judgement in case of Sadashiva Sugars Ltd. V/s SLDC Karnatka, the CERC has held that while availing Open Access a consumer is not liable for any charges not mentioned in the Open Access Regulations. It has further been submitted by the Petitioner that the levy of ₹3 per kVAh is not contemplated under Open Access Regulations.
- (iii) In the judgement of SIEL Ltd V/s PSERC, Appeal No. 57 of 2008, the Hon'ble APTEL has decided in para 64 that

PLEC charges are applicable in view of expensive power purchased by PSPCL during peak hours. The Petitioner has further submitted that in view of the matter, the imposition of ₹3 per kVAh is not in consonance with law as it is not purchased from PSPCL but from Open Access.

The Petitioner has, therefore, stated that there is no defence raised by the Respondent PSPCL for contesting the Petition and the same may be allowed in view of the prayers made therein.

10. PSPCL in its written submissions has reiterated the same submissions as submitted earlier in its reply to the Petition and to the rejoinder. It has also been submitted as under:

- (i) The peak load restrictions have been imposed by PSPCL with the approval of the Hon'ble Commission to control maximum demand during peak load hours (06.00 PM to 10.00 PM) with increase of demand of domestic and NRS consumers for lighting purposes and is in fact the measure to control demand during peak load hours mainly to give relief to the transmission system. PLEC is a kind of surcharge which is levied on consumers to cover the cost of the excess transmission system laid to cater to the demand of consumers during peak load hours. The transmission system gets equally overloaded during peak load hours whether power is drawn from PSPCL or through Open Access by the Petitioner and as such there can never be any difference to PSPCL power and open access power for levy of PLEC charges.
- (ii) The plea of the Petitioner that PSPCL is not entitled to charge ₹3 per kVAh on power drawn through Open Access

is not tenable. PSERC also while converting PLEC charges on kVA demand sanctioned for use during peak load hours to per unit charges has also gone in for tariff neutral approach. It is settled law that for extending any benefit to a particular class of consumer, the tariff neutrality has to be achieved within the same class of consumers. In case, the contention of the consumer succeeds, then no power is likely to be drawn from PSPCL during peak load hours due to differential of ₹3 per unit & the entire revenue of ₹345 crores being recovered through PLEC has to be borne by other categories of consumers. The contention of the Petitioner that no further surcharge can be levied on open access power unless notified in Open Access Regulations is not correct as per kVA PLEC being levied earlier, to arrest the peak and also to cover the cost of maintaining higher level of transmission system to allow the peak, has no connection with Open Access Regulations but is a part of ToD tariff. Further, ToD tariff is optional for the Petitioner.

- (iii) In case, the contention of the Petitioner succeeds, then set of consumers who have opted for ToD tariff will not pay PLEC for the power consumed through open access during peak load hours, whereas the other set of consumers who had not opted for ToD tariff will continue to pay PLEC for power brought through open access during peak load hours & thus two set of rules shall be applicable for same category of consumers.
- (iv) In case, the Petitioner's contention succeeds, there may arise a situation when a consumer draws whole of its power during night hours through open access only and

respondent PSPCL shall end up paying such consumers rebate @ ₹1.50 per unit i.e. PSPCL shall pay from its pocket without any recovery from consumers.

The respondent PSPCL has, therefore, prayed that the action of the respondent being just & equitable and Petition being misconceived be dismissed.

11. In view of the submissions/arguments made by the parties, the issue of levy of ₹3/kVAh on power purchased through open access by the Petitioner during peak load hours from 06.00 PM to 10.00 PM, as raised in the present Petition, is discussed and decided as under:-

The submission by PSPCL that there will be loss of revenue to the tune of ₹ 345 crore if the contention of the Petitioner not to charge ₹3 per kVAh on the power purchased through open access during peak load hours from 06.00 PM to 10.00 PM succeeds, is wrong as (i) ToD tariff is applicable from 01.10.2014 to 31.03.2015 only and as such the Large Supply consumers are liable to pay peak load exemption charges for the demand allowed during peak load hours during the period 01.04.2014 to 30.09.2014; (ii) there will be income under PLEC system from those consumers who have not opted for ToD tariff during the period from 01.10.2014 to 31.03.2015 and (iii) there will be additional income as a result of charging of ₹3/kVAh on the power drawn by Large Supply consumers from PSPCL generation. In the 'Trial Balance' for the month of January, 2015, PSPCL has shown income of about ₹224.60 crore from PLEC.

The Petitioner had opted for ToD tariff during FY 2014-15 and PSPCL has levied ₹3/kVAh on power purchased through open access by the Petitioner during peak load hours from 06.00 PM to

10.00 PM. Regulation 10 (2) of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011, states that:

“Subject to the provisions of these Regulations, the licensees, generating stations, captive generating plants and consumers shall be eligible for open access to distribution system of a distribution licensee on payment of the wheeling and other charges as may be determined by the Commission in accordance with Chapter 5 of the these regulations.”

As per Chapter 5 of the ibid regulations, open access consumers are liable to pay Transmission Charges, Scheduling and System Operation Charges, Wheeling Charges, Cross Subsidy Surcharge and Additional Surcharge. There is no provision of ToD charges to be levied upon power purchased through open access by the Petitioner during peak load hours from 06.00 PM to 10.00 PM, in these regulations.

Further, there is no provision in the General Conditions of Tariff approved by the Commission for charging any additional charge/surcharge of ₹3/kVAh on power purchased through open access by the Petitioner during peak load hours from 06.00 PM to 10.00 PM.

Thus, PSPCL has wrongly charged ₹3/kVAh on power purchased through open access by the Petitioner during peak load hours from 06.00 PM to 10.00 PM. PSPCL is directed to refund the amount charged to the Petitioner on this account through the subsequent energy bills. It is also clarified that no rebate is admissible in respect of power purchased by consumers through

open access during off peak hours from 10 PM to 6 AM (next day).

The petition is disposed of accordingly.

Sd/-

(Gurinder Jit Singh)
Member

Chandigarh
Dated: 20.05.2015

Sd/-

(Romila Dubey)
Chairperson