

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

Petition No. 3 of 2015  
Date of Order: 20.05.2015

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

In the matter of : Petition under Regulation 45 of PSERC (Terms and Conditions for Determination of Tariff) Regulations 2005 and Para 23 of the General Conditions of Tariff and Regulation 45 of PSERC (Terms and Conditions for Intra-state Open Access) Regulations 2011 and other relevant rules, regulations and procedures approved by Hon'ble Commission for rendering clarification to PSPCL on applicability of ToD Tariff on Power brought in by the Petitioner under open access and power factor & formula to be taken by PSPCL for converting power under open access in kWh to kVAh etc.

**AND**

In the matter of : Nahar Spinning Mills Limited having its Registered Office at 373, Industrial Area A, Ludhiana, through Shri P.P.Singh, Vice President (Electricals and Utilities).

.....Petitioner

Versus

Punjab State Power Corporation Limited through its Chairman-cum-Managing Director, The Mall, Patiala.

.....Respondent

**ORDER:**

1. The present Petition has been filed by Nahar Spinning Mills Ltd. The Petitioner has submitted that it has a Large Supply connection at Jitwal Kalan, near Malerkotla, in Punjab, with Account No. L38-KK01-00003, having sanctioned connected load

of 25800 kW and sanctioned contract demand (CD) of 18500 kVA. Though the issues raised here in this Petition are of the Jitwal Kalan unit near Malerkotla but the Petitioner is facing similar issues at its other two units also. The Petition has been filed for interpretation and applicability of ToD & kVAh Tariff described in General Conditions of Tariff and determined in Tariff Order for FY 2014-15 under PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 and issuance of suitable directions to PSPCL in this regard. To stress its point, the Petitioner has reproduced/quoted para 7.3.15 of the Tariff Order for FY 2014-15, Schedule of Tariff para SI-3, Regulation 45 of PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 and paras 15 & 23 of General Conditions of Tariff. The Petitioner has submitted that ToD Tariff was adopted by PSPCL vide CC No. 46/2014 dated 04.09.2014. ToD tariff came into force w.e.f. 01.10.2014 and the Petitioner opted for the same vide letter dated 15.09.2014. The Petitioner is also availing power under open access from Indian Energy Exchange and has signed agreement with nodal officer i.e. SE/Open Access, under CE/SLDC, PSTCL.

2. The Petitioner has submitted that ToD Tariff was also made applicable during the year 2013-14 as per para 5.3.8 of the Tariff Order for the year 2013-14 and open access charges were determined in para 6.10 of the said Tariff Order. ToD tariff was adopted by PSPCL vide CC no. 24/2013. However, at that time, the rebate of ₹1/- per unit was allowed only for night consumption during 10 PM of the day to 6 AM of the next day. PSPCL, while implementing these instructions, did not allow this rebate of ₹1/- per unit on the power brought by the Petitioner under open

access. For the current year in question, ToD rebate is applicable on the power consumed during night hours @ ₹1.50 per unit and ToD charge of ₹3/- per unit is applicable on the power consumed during the peak period of 6 PM to 10 PM. It has also been submitted that before the start of second half of the current year, the Petitioner approached PSPCL to confirm that as per last year practice, this ToD rebate and ToD charge will not be applicable on the power brought under open access but no reply was given by PSPCL in this regard. The Petitioner then submitted a communication to PSERC to clarify the matter (with copy to PSPCL). No reply was given by PSPCL in this regard. However, the Commission issued categorical directions to the Petitioner to file the instant Petition.

ToD tariff for this year as well as for last year has been introduced as per the Tariff Orders. The treatment to be given with regard to ToD tariff upon power brought under open access was neither provided last year nor this year in the Tariff Orders issued by the Commission. Even PSPCL did not issue any consequent commercial circulars in this regard. However, PSPCL is interpreting the applicability of ToD tariff for last year & this year differently and has chosen to apply different treatment to power brought under open access by the Petitioner this year as compared to last year. While no ToD rebate was allowed last year on open access power, PSPCL has chosen to include open access power in the consumption eligible for ToD rebate and ToD charge.

The Petitioner has further submitted that even Deputy Chief Engineer/Open Access, PSTCL has issued open access UI/deviation settlement account for the months of October and

November, 2014, in which power purchase from open access for the period 00.00-06.00 hours and 22.00–24.00 hours (period of ToD Rebate) and from 18.00–22.00 hours (period of ToD charge) has been shown separately.

The Open Access Regulations provide for charges payable by the consumers on open access power. There is no provision for giving ToD rebate/claiming ToD charge on the open access power. The open access charges for the year 2014-15 have been determined by the Commission in para 9.10 of the Tariff Order and there is no mention of applicability of the ToD rebate/charge on open access power. Similarly, there is no mention of applicability of ToD rebate/charge on open access power in Electricity Act, 2003. Further, Regulation (18) (2) (g) of the Open Access Regulations states that “During peak load hour restrictions, the open access customers shall restrict their total drawl including open access power to the extent of the peak load exemption allowed.” This provision has also been provided in Short Term Open Access procedure approved by the Commission (para 2.1 (A) (vii) and in para (2) of the Undertaking to be given by the Open Access Consumer for obtaining permission). Further, para 7.3.15 of the Tariff Order for FY 2014-15 provides that consumers opting for ToD tariff will be allowed to consume power up to Contract Demand. In line with this provision, SLDC has amended the approval letter and NOC for open access to this extent. Thus, under the ToD regime, the consumers are allowed to draw power up to Contract Demand during Peak Load Period including power drawn from PSPCL and under open access.

The Petitioner has further submitted that PSPCL's concern that there are transmission and wheeling constraints requiring restrictions on power flow in the system also does not hold good as both PSPCL and PSTCL have certified that their systems can meet the demand. In any case, there can't be any constraint in winter months when the load on PSPCL Distribution and PSTCL Transmission systems reduces by 40 to 50%, compared to paddy period. Moreover, ToD order itself provides for permitting usage of power up to Contract Demand by the consumers and any such restrictions are totally unjustified.

3. It has been submitted by the Petitioner that the Commission introduced kVAh tariff vide para 7.1.5 of the Tariff Order for FY 2014-15. For designing the kVAh tariff, PSPCL had worked out the normative Power Factor for LS (General Industry) as 0.95 and for LS (PIU/Arc Furnace) as 0.98. However, as per CERC and PSERC Open Access Regulations, the open access power schedules and charges are worked out in MW/MWh. As such, the open access power under bilateral/collective transactions is flowing in MWh and has to be converted to MVAh by applying the power factor. Every LS consumer has installed capacitor banks to improve the power factor but the actual power factor being maintained by the consumer varies depending up on the quantity and quality of the capacitor banks. The actual power factor shall vary for each consumer and also on monthly basis. The Tariff Order/General Conditions of Tariff/Open Access Regulations does not provide any clarity as to which Power factor is to be applied for converting MWh quantum of Open Access power to MVAh quantum. Also, there is no provision for treating such power in MWh as equal in MVAh. PSPCL, on its own, simply

treated the quantum of open access power in MWh as per schedules as equal quantum in MVAh without applying the normative or actual power factor for working out the billing of PSPCL power in the bills raised for the months of October and November, 2015. In the bill for the month of December, 2014, PSPCL has calculated the quantum of open access power in kVAh by multiplying the quantum brought in kWh by normative power factor based on CC No. 49/2014 dated 16.10.2014. The consumption and billing has been revised by PSPCL for the months of October and November also by taking this normative power factor and the difference has been adjusted through sundry charges. With this arbitrary conversion, open access power of 4741282 kWh has been treated as 4504218 kVAh i.e. a reduction of 237064 units of open access power and corresponding increase in PSPCL energy consumption for which Petitioner has been billed for ₹13 lakhs approximately. The formula given in CC No. 49 of 2014 clearly states that it is for conversion of kWh tariff to kVAh Tariff and not for the conversion of quantum of energy from kWh to kVAh but PSPCL is using this to financially burden the consumers opting for open access. kVAh tariff was introduced by PSPCL vide CC No. 43 and CC No. 44 of 2014 and Open Access Charges given in CC No. 45 of 2014 but there is no formula given in these circulars. CC No. 49 of 2014 is for rebate of ₹1/- per unit above the threshold consumption and not for open access or introduction of kVAh tariff. CC No. 49 of 2014 gives methodology to work out the target consumption where conversion factor is to be used for converting the kWh consumption into kVAh consumption on the basis of prevailing tariff in last three years, which were in ₹ per kWh. The kVAh

recorded by the meter can be correlated to the kWh by the equation as under:

$$\text{kVAh} = \text{kWh} / \text{Power Factor}$$

PSPCL is amply clear about the conversion factor, power factor and formulae for conversion of tariff and quantum but PSPCL has chosen to adopt its own methodology without informing the consumers in advance and in a biased manner, to put the open access consumers at a loss financially after a period of 3 months. The Petitioner has further submitted that the DLMS Trivector meters installed as per approval of PSPCL display power factor in 0.xxx format, whereas normative power factor is in 0.xx format. The Petitioner has requested for clarification as to which Power Factor (normative or actually achieved by the consumer in the month) is to be applied for converting the open access power in MWh to MVAh and which formula is to be adopted to convert the quantum of power from kWh to kVAh. In case, actual power factor is to be applied, then whether three digit or two digit format is to be taken for applying the actual power factor. Further, if power factor is to be worked out from kWh and kVAh readings of the month, then also 3 or 4 digits need to be taken because of the consumption being in LU/MU per month for the Petitioner and 3 or 4 digits will result in approaching as near to the actual as possible and will be fair to both the parties. That for the balance of convenience to both PSPCL and Consumers, the Petitioner has suggested that actual power factor with three digit format (if PF is to be taken as per meter reading) or 4 digit format (if PF is to be worked out from monthly kVAh and kWh readings) be applied for working out the quantum of open access power in MVAh.

4. It has also been submitted that as per paras 7.6.2 and 7.6.3 of the Tariff Order for FY 2014-15 and as per CC No. 49 of 2014, a rebate of ₹1 per unit is admissible on tariff to all consumers, except Agriculture and Railway Traction for the consumption above the threshold limit/target consumption. However, till date, PSPCL has not informed the threshold consumption to the Petitioner. If it would have been done, the Petitioner would have planned its sourcing of power from PSPCL in advance and it would have helped in achieving the aim/goal for which the rebate was designed i.e. maximising the consumption of PSPCL power, reducing the back down of its thermal plants/surrender of central sector power and PSPCL would have managed its finances in a better way.
5. The Petitioner has prayed that the Commission may kindly issue directions to PSPCL as under:
  1. Not to apply ToD rebate/charges on open access power;
  2. To apply actual power factor with three or four digit format and formula for working out the quantum of open access power in MVAh;
  3. To work out the threshold consumption for eligibility of rebate of ₹1/unit and display it on the bills;
  4. To rectify the bills in light of the above and refund the excess amount recovered from the consumers with penal interest or surcharge applicable to consumers for delayed payments;
  5. Any other order/relief which the Commission may grant in favour of the Petitioner in the facts and circumstances of the instant matter.



6. The petition was admitted vide Commission's order dated 27.01.2015. PSPCL was directed to file reply by 02.03.2015 with a copy to the Petitioner, who was to file 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.
7. PSPCL submitted its reply to the petition vide CE/ARR&TR memo no. 5238-39 dated 09.03.2015. PSPCL submitted that the Petition is misconceived as in the first instance ToD tariff is optional for the Petitioner as well as other Large Supply consumers and even under ToD tariff, the Petitioner is in an 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 has elaborated the method of billing under PLEC and ToD regime.
  - (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 of the 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 and @ ₹4.05/kWh between 65% and 90% of contract demand as per sanction granted by PSPCL 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:

Under ToD tariff for Large Supply consumers who opted for this tariff, the actual energy consumed during peak load hours (6 PM to 10PM) 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 (6PM to 10 PM) and recorded by the meter is to be charged extra @ ₹3/kVAh and not as per empirical formula ( $kW \times 30 \times 3$ ) under PLEC system where sanctioned power for use during peak load hours was considered as fully utilized by the consumers. The extra charges were leviable for full month even if utilized for one day. But now under ToD tariff, ₹3/- per kVAh is only charged during day 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 load hours beyond its 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.

The peak load restrictions have been imposed by PSPCL 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/- per kVAh for overall total power consumed during peak load hours is required to control maximum demand which is required to keep transmission system in healthy condition and levy of charges is justified.

PSPCL has filed parawise reply to the Petition and has submitted that rebate @ ₹1.50 per kVAh is admissible only on power drawn from PSPCL during off peak hours of 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 allowed rebate @ ₹1.50 per kVAh in order to encourage drawl of power by the Petitioner (as well as other Large Supply consumers opting ToD tariff) during off peak hours of 10 PM to 6 AM when surplus power is available for use with PSPCL. The Petitioner has no legal ground to compare power drawn during peak load and off peak hours on the same footing.

The Petitioner has no ground to challenge its levy being just and appropriate. The Petitioner has himself opted to be charged as per ToD tariff.

Power from PSPCL and open access equally affect the maximum demand on the system during peak load hours and restriction on its use through levy of charges is in the interest of stability of transmission system and to facilitate power supply to lakhs of DS/NRS consumers including Hospitals, continuous power industries, apart from electric traction trains.

PSPCL has further submitted that it is ready for issue of monthly bills on the basis of recorded monthly power factor. In order to resolve this dispute, PSPCL has already started converting the open access units in MWh into MVAh by application of recorded monthly power factor. During the month of February, 2015, the billing has been made by PSPCL on the basis of this method as requested in the petition by the Petitioner. PSPCL is also ready to make suitable adjustments pertaining to bills of October and November, 2014, in the bills being issued during March, 2015.

PSPCL has further submitted that the suggestion that actual power factor be considered with 4 digit format instead of 2 digit format may lead to unnecessary disputes in future. However, the Commission may issue any instructions, if felt necessary, which shall be abided by PSPCL.

PSPCL further submitted that updation of billing software for calculation of threshold limit/target is under process.

With regard to charging of ₹3 per kVAh on power purchased through open access, PSPCL has also submitted as below:

- (i) The circular CC No. 46/2014 is as per Tariff Order and additional charge levied on overall power consumed from

PSPCL and open access is correct as per the facts given in the preceding paras.

- (ii) The plea taken by the Petitioner is wrong and misconceived. The Petitioner was earlier also paying PLEC 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 amount 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 for ToD tariff where rebate is given on power drawn from PSPCL generation during off peak hours (10.00 PM to 06.00 AM). ToD tariff as being beneficial was opted by the Petitioner.
- (iv) The Hon'ble Commission has power to decide tariff for various categories/sub-categories of consumers viz Large Supply consumers opting ToD tariff and Large Supply consumers opting PLEC system. PSPCL with the approval of the Commission has declared peak load hours during the period 06.00 PM to 10.00 PM and all Large Supply consumers apart from other consumers (MS) are covered under restrictions 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 on the system during peak load hours and restriction on its use through levy of charges is in the interest of stability of transmission system and power supply to lakhs of DS/NRS

consumers including hospitals, continuous power industries apart from electric traction trains.

PSPCL has prayed that the petition be dismissed.

8. The Petition was taken up for hearing on 17.03.2015. The Petitioner filed rejoinder to the reply of PSPCL during hearing of the petition. The Commission vide order dated 18.03.2015, fixed the next date of hearing as 07.04.2015, to hear the arguments of the parties.
9. The Petitioner in the rejoinder has denied and disputed all the averments made by the PSPCL in its reply, save and except for what has been expressly admitted to herein after and any omission on the part of the Petitioner should not be construed as an admission of the same by the Petitioner.

The Petitioner has submitted that it totally relies upon the averments made therein in the Petition and has reiterated the same to be read as part and parcel of the rejoinder. The Petitioner has submitted that reply of PSPCL (paras 1 to 3) is vague, evasive and does not address the issues raised in the Petition on merit.

The Petitioner has submitted that, in fact, nowhere in its Petition the levy of ₹3 per kVAh over and above the normal tariff on the power consumed from PSPCL has been challenged, but has only requested for levying this ToD charge on power bought in by the Petitioner under open access, as per scheme of ToD tariff approved by the Commission. The Petitioner has further mentioned 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, as it flattens the load curve of PSPCL and saves the PSPCL from

backing down of its thermal plants during night hours. The Petitioner and other 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 concealed the fact that LS consumers not availing ToD are levied PLEC of ₹1.80 per kVAh upto 65% of CD and ₹2.70 per kVAh above 65% of CD for three hours only during the period October to March. PSPCL has also not brought out in its reply that for those who opt for ToD, the ToD charge is being treated as a part of SoP and for power brought under open access, it is attracting 13% Electricity Duty (39 paisa/kVAh), whereas for those who do not opt for ToD, ED is not payable on PLEC, even if they bring power under open access.

The Petitioner is consuming power round the clock and has a 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 when ToD is applicable.

The Petitioner has pointed out in the rejoinder that it has not been explained that under which order/rule/regulation, PSPCL has allowed ToD rebate on open access power brought in during night hours (off peak hours) in the months of October and December, 2014 and under which rule/regulations, the rebate

has been withdrawn from January, 2015 onwards. Further, it is not clear 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 open access has to be provided on a non-discriminatory basis.

Section 42 of the Electricity Act, 2003 mandates the Commission to determine wheeling charges, surcharge, additional surcharge and cross subsidy surcharge 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.

In its parawise reply, the Petitioner has submitted in the rejoinder that PSPCL has failed to give reference to the provisions of the Tariff Order for FY 2014-15 or Open Access Regulations under which it is charging ₹3/kVAh on open access power brought in during peak load hours and further making it a part of SOP for levy of ED. As per the scheme of Electricity Act, 2003 and specifically provided in para 23 of General Conditions of Tariff issued by the Commission, the principle of equity and commercial principles for interpretation of tariff are not to be inferred/decided by the Distribution Licensee but by the Appropriate Commission. It has also not been explained as to how and under which Regulations, PSPCL allowed rebate of ₹1.50/kVAh on open access power for the months of October to December, 2014 and disallowed this rebate thereafter.

The power drawn during peak and non peak hours by the Petitioner, whether under open access or from the Respondent, has to be considered equally under ToD tariff as ToD has been



made applicable under the same commercial circular and decided by the Commission in the Tariff Order as a package. Open access power brought in during peak and non peak hours has to be treated similarly i.e. if ToD charge is to be levied for peak hours, then ToD rebate also has to be given for night hours, as no distinction has been made between open access power and PSPCL power in the Tariff Order or the commercial circular. No data relating to October to March viz-à-viz March to October has been given in support of the contention. PSPCL is making vague statement to justify the levy of ₹3/kVAh on open access power. It may be true that some additional load will come on the transmission and distribution system during peak load hours but the system is capable of taking the additional load during winter and PSPCL has the capacity to meet the demand. Further, the permission to use load upto Contract Demand on 24 hours basis to consumers opting for ToD also supports the contention of the Petitioner.

The Petitioner has further submitted that market rate differential of the power during peak and non peak hours for term ahead market prevailing at the Power Exchange as well as bilateral trade also does not justify the ToD charge of ₹3/- per kVAh and it should be much less so that the tariff reflects cost of supply. The Petitioner has quoted extracts from Market Monitoring Report for the month of December, 2014 issued by CERC.

The Petitioner has further submitted that PSPCL has conceded that for converting the open access power in kWh to kVAh, the use of normative power factor was an error committed by the PSPCL. Further, PSPCL has also accepted that it will be using actual power factor during the month maintained by the

consumer for the conversion. The Petitioner has submitted that PSPCL be directed to refund the amount charged in excess due to this wilful error along with interest charges. As per Section 62(6) of the Act, PSPCL has to refund such amount with interest and the Commission may be pleased to order accordingly.

The power factor is available in the new DLMS meters upto four decimal points. If it is applied as such, there will be correct application and there will be a win win position for both PSPCL and the Petitioner. If it is rounded upto two decimal points, then either of the parties will be in the profit and other will be a loser. It will, therefore, be appropriate if the power factor is applied upto four decimal points.

It has also been submitted that PSPCL has not yet complied with the orders regarding rebate of ₹1 per unit on consumption beyond threshold limit passed by the Commission which shows that the orders are not at all being taken seriously by the PSPCL.

The Petitioner has prayed to allow the instant Petition and grant the reliefs to the Petitioner as prayed for.

10. 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.
11. PSPCL reiterated the reply earlier filed by it to the Petition filed by the Petitioner. PSPCL in its reply to the rejoinder submitted that there is no violation of 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 challenge by the Petitioner that power consumed during peak load hours

and brought under open access should not be charged @ ₹3/kVAh is not sustainable as per following:

- (i) ToD tariff is optional for all Large Supply consumers and 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 the 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, rebate @ ₹1.50/kVAh for power consumed during off peak 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.

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 as well to the respondent PSPCL. PSPCL has denied that power tariff is high in comparison to neighboring 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 hours (10 PM to 6 AM). Still further, the Commission has allowed rebate @ ₹1/kVAh on consumption during FY 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. PSPCL has reiterated 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 maximum demand.

Rebate on night 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. The power consumed during peak load hours drawn from PSPCL or through open access is charged ₹3 per kVAh as explained above. There is no violation of Electricity Act, 2003 or regulations for charging ₹3 per 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 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 Day whereas tariff was decided by the Commission keeping in view the guiding principles enshrined in the Act. Further, 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 hour 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 run on commercial principles as per statutory provisions of the Act. PSPCL has further submitted that as explained above, ToD levy of ₹3/kVAh on power consumed during peak load hours is just a surcharge duly approved by the Commission and decided in equitable manner after considering

the views of the industrial consumers and the Petitioner should not have objected to it.

On para wise reply, the respondent PSPCL reiterated the earlier reply filed to the Petition and clarifications given in above paras. PSPCL has clarified in its parawise reply that the rebate of ₹1.50/kVAh or ₹1/kVAh was given inadvertently to some of the open access consumers as there is no regulation issued by PSERC in this regard. This inadvertently rebate given has now been charged by PSPCL to the respective consumers.

PSPCL has prayed that its action to charge the Petitioner as per tariff decided by the Commission, being just and equitable and Petition being misconceived, be dismissed.

12. The Petitioner filed counter reply dated 25.04.2015 (received on 30.04.2015) to the rejoinder filed by PSPCL. The Petitioner has denied each and every content of the reply to the rejoinder except the averments specifically admitted hereinafter. The Petitioner has submitted that PSPCL has not brought out any new argument in its counter reply to the rejoinder and simply reiterated the earlier arguments which have already been replied by the Petitioner in its rejoinder.

In reply to the main issues, the Petitioner has submitted that PSPCL has failed to quote any provision of Electricity Act, 2003 and/or the PSERC Open Access Regulations empowering it to levy ToD charge of ₹3/unit on open access power. The Tariff Order passed by PSERC and PSPCL commercial instructions nowhere indicate that ToD charge/rebate will be applicable on open access power. PSPCL is wrongly and mischievously equating the PLEC with ToD charge to justify the levy of ToD charge on open access power and is trying to make two unequals

as equals without quoting any authority, regulation or section of the Act. Section 61 is relating to power of appropriate Commission and PSPCL is trying to usurp the functions of the Commission by deciding the commercial principles of its own. ToD tariff is more beneficial to PSPCL than to the consumer as it gets better load curve as well as retains part of the savings also. The points raised in the concluding para of the main issues by PSPCL are without conviction and mischievously worded.

In parawise reply, the Petitioner has submitted that PSPCL has accepted that peak load is brought on the grid by domestic, commercial, essential services, railways etc. and not by LS consumers. Despite this, to control the load, LS industries are made to either stop or pay additional charges. Further, the Petitioner has reiterated that during peak load hours in winter, there is no transmission constraints for supplying power to the consumers and Petitioner has never been refused permission for peak load even in summer except that load is curtailed due to shortage of power. The Petitioner has denied the fact that all states in India levy PLEC.

In reply to other paras, the Petitioner has reiterated the same reply as already given in its rejoinder that PSPCL has no authority under any law to decide what is surcharge and what is just like a surcharge, when the Hon'ble Commission in its Tariff Order has not declared it a surcharge for the purpose of open access transactions.

13. 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.

14. The Petitioner has submitted written arguments vide its letter dated 11.05.2015. The same grounds have been reiterated by the Petitioner in the submissions as already submitted in the Petition and the rejoinder, except that it has been submitted by the Petitioner that PSPCL in its reply to the rejoinder has categorically mentioned that the ToD is being charged as it amounts to 'JUST A CHARGE', which is totally unwarranted and unsustainable in the eyes of the law. The term 'JUST A SURCHARGE' is nowhere defined in the Electricity Act 2003. That even otherwise, terming the ToD charges to be 'JUST A SURCHARGE' is an afterthought of the PSPCL in order to cover up its misdeeds, as there cannot be levy of Electricity Duty on a surcharge. As per provisions of the Act, Electricity Duty can be levied on the tariff component and not upon surcharge.
15. PSPCL vide its memo dated 11.05.2015 (received on 12.05.2015) has filed the written arguments. In addition to the submissions made by PSPCL in its replies to the main petition and rejoinder, it has been submitted by PSPCL as under:
  - (i) For converting the open access power (being recorded in kWh) into kVAh, the actual power factor (being recorded up to four decimal places) during the month maintained by the consumer may be used for the conversion. PSPCL submitted that all over India, the power factor with rounding upto two decimal places is being applied. This suggestion that actual power factor be considered with 4 digit format instead of 2 digit rounded format may lead to unnecessary disputes in future as some other consumers may come with



the plea that 6 digit format may be considered. Accordingly, in order to maintain uniformity, the 2 decimal digit format (rounded) is the right approach. The contention of the Petitioner that this method incurs loss to it is not correct as at times the power factor recorded has any figure more than 5 (i.e. 0.956), then the power factor taken for calculation will be 0.96, which will benefit the consumer and as such rounding to the desired decimal is standard practice with loss at times and gain at other times to either party which is averaged out in the long run & as such there is neither any loss nor any benefit to either party.

- (ii) Regarding rebate of ₹1 per unit on consumption beyond threshold limit, PSPCL submitted that the software is ready and the rebate will be given in the bills issued after 7<sup>th</sup> June, 2015.
- (iii) 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.
- (iv) 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 charged on kVA demand sanctioned for use during peak load hours to per unit charges has gone in for tariff neutral approach. It is settled law that for extending any benefit to a

particular class of consumers, 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 category of consumers. The contention of the consumer that no further surcharge can be levied on open access power unless notified in Open Access Regulations is not correct, as PLEC charges per kVA being levied earlier is to arrest the peak and also to cover the cost of maintaining higher level of transmission system to allow the peak and as such has no connection with Open Access Regulations but is part of ToD tariff. Further this tariff is optional to the Petitioner.

- (v) In case, the contention of the consumer succeeds, then the set of consumers who have opted for ToD tariff will not pay PLEC charges on the power consumed from open access during peak load hours whereas the other set of consumers who had not opted for ToD tariff will continue to pay PLEC charges for power consumed from open access during peak load hours & thus two set of rules shall be applicable for same category of consumers.
- (vi) In case the Petitioner's contentions succeeds, there may arise a situation when a consumer draws whole of its power during night hours from open access only and respondent PSPCL shall end up paying such consumers @ ₹1.50 per unit i.e. PSPCL shall pay from its pocket without any recovery from such consumers.

16. In view of the submissions/arguments made by the parties, three main issues raised by the Petitioner before the Commission, are discussed and decided as under:-

**(i) ToD charge on Open Access Power:**

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 per 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 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, 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 per 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 through open access by the Petitioner/open access consumers during off peak hours from 10.00 PM to 06.00 AM (next day).

**(ii) To apply actual power factor with three or four digit format to work out Open Access Power in kVAh.**

PSPCL has submitted that it has already started issuing monthly energy bills from February, 2015 onwards on the basis of recorded monthly actual power factor. PSPCL has also submitted that it is ready to make adjustments pertaining to the bills of

October, 2014 and November, 2014, in the bills to be issued in March, 2015. PSPCL has further submitted that using 4 digit format instead of two digit format may lead to unnecessary disputes in future and if, the Commission consider the plea of the Petitioner, PSPCL shall abide by it.

PSPCL is calculating power factor upto 2 decimal figures for all intents and purposes. As such, PSPCL shall amend the bills of the consumers on the basis of average power factor (rounded upto 2 (two) decimal figures) worked out as the ratio of active energy (in kWh) to total energy (in kVAh) supplied to the consumer during the billing period.

**(iii) To work out the threshold consumption for eligibility of rebate of ₹1 per unit.**

The Commission in the Tariff Order for FY 2014-15 approved rebate of ₹1/kWh (or kVAh) on the category wise tariffs for all categories, except street lighting and AP categories, on consumption exceeding threshold limit during the financial year. PSPCL in its reply dated 09.03.2015 to the Petition had submitted that the updation of billing software for calculation of threshold limit/target is under process. PSPCL in the meeting held on 10.03.2015 with regard to implementation of Tariff Order for FY 2014-15 had intimated that the software for allowing the rebate as per orders of the Commission has been developed and rebate will be given in the consumer bills to be issued for March, 2015. However, PSPCL in the written arguments submitted that the software is ready and the rebate will be given in the bills to be issued after 7<sup>th</sup> June, 2015. The Commission observes that PSPCL is willing to allow this rebate to the consumers but it has taken more than 8 months to develop the software for this

purpose. This delay should have been avoided by PSPCL by taking timely action in the interest of the consumers. PSPCL is directed to complete the job of allowing admissible rebate to the consumers in the immediate billing cycle after issuance of this Order. Compliance report will be submitted to the Commission within two months of the issue of the Order.

The above orders of the Commission shall apply to all similarly placed consumers.

The Petition is disposed of accordingly.

**Sd/-**  
**(Gurinder Jit Singh)**  
**Member**

**Sd/-**  
**(Romila Dubey)**  
**Chairperson**

Chandigarh

Dated: 20.05.2015