

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

Petition No. 47 of 2015

Date of Order: 03.02.2016

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

In the matter of : Petition under Regulation 45 of Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) Regulation, 2011 and Para 15 of Procedure for intra-State Short Term Open Access of SLDC/PSTCL for directing the Transmission Licensee/SLDC to exempt penalty on the power drawn above the admissible drawl and up to contract demand for curtailment of bilateral schedules under Force Majeure condition and removal of other difficulties in Open Access arising in consequence to Amendment No. 5 of PSERC Open Access Regulations, 2011 and PSPCL's Commercial Circular No. 29 of 2015.

AND

In the matter of : Open Access Users Association, 2nd Floor, D 21 Corporate Park, Sector 21, Dwarka, New Delhi - 110075

.....Petitioner

Versus

- 1) Punjab State Power Corporation Limited,
The Mall, Patiala.
- 2) Punjab State Transmission Corporation Ltd.,
The Mall, Patiala.

.....Respondents

ORDER:

The present petition has been filed by Open Access Users Association under Regulation 45 of Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) Regulations, 2011 and Para 15 of Procedure for intra-State Short Term Open Access of SLDC/PSTCL, challenging Commercial Circular No. 29 of 2015, issued by PSPCL on 22.07.2015.

- 2) The submissions made by Open Access Users Association (OAUA) in the Petition are summarized as under:
 - i) Punjab State Electricity Regulatory Commission notified PSERC (Terms and Conditions for intra-State Open Access) Regulations, 2011 (Open Access Regulations, 2011) vide notification dated 01.07.2011, and also approved the intra-State Short Term Open Access Procedure framed by PSTCL/SLDC. On a Petition (No. 16 of 2013) filed by PSPCL, the Commission decided in its Order dated 01.06.2015 to incorporate the amendment proposed by PSPCL in Open Access Regulations, 2011. Accordingly, an amendment (5th amendment) in the Open Access Regulations, 2011 was notified by the Commission.
 - ii) Some Open Access consumers approached the Commission

and PSPCL for clarifying the following :

- a. Penalty for violation of admissible drawl.
 - b. Value of power factor for conversion of open access schedule in MW to MVA for working out the admissible drawl.
 - c. Consequences of revision in already approved open access schedules by Nodal Regional Load Dispatch Centre (NRLDC) due to system constraints in inter-state transmission system/sudden revision in ATC/TTC etc.
- iii) For the implementation of 5th amendment in Open Access Regulations, 2011, PSPCL issued commercial circular 29 of 2015, on 22.07.2015, clarifying points (a) & (b) of above para. The Petitioner submitted that except for levy of demand surcharge for violation of admissible drawl, the other instructions in the said circular are not as per the Open Access Regulations, 2011 and as per the provisions of the Act. The matter having huge financial implications has been decided without issuing mandatory public notice, inviting comments and holding public hearing of the stakeholders. Further, for implementation of the 5th Amendment, open access procedure should have been amended with the approval of the Commission.
- iv) Aggrieved by the impugned CC 29 of 2015, the Petitioner has filed the present Petition, challenging the wrongful findings of CC 29 of 2015 and removal of difficulties of the Open Access Consumers of the State.
- v) The 'Grounds of the Petition' as per the Petitioner have been

summarized in the following paras.

vi) Variation in admissible drawl due to curtailment in approved schedule by Nodal RLDC under Force Majeure conditions in the bilateral inter-state open access transactions:

a) In case of inter-state/inter-regional bilateral schedules, heavy congestions are being observed on inter-state transmission corridors, particularly of the links of Northern Region with Western and Eastern Regions. Even after such open access bilateral transactions are approved by nodal RLDC on 3/2/1 month advance reservation basis or otherwise and put on the web site, forced outages of inter-state transmission links/lines do happen and National Load Dispatch Centre (NLDC), on every occurrence of such outage, revises the Total/Available Transmission Capacity, resulting in curtailment of approved bilateral schedules. As per Regulation 15 of CERC Open Access Regulations, 2008, such curtailments of bilateral short term open access transactions are permitted. The Regulation further provides that STOA will be curtailed first amongst STOA, MTOA and LTOA and bilateral transactions will be curtailed first followed by collective transactions. These curtailments may be uniform or uneven for the 96 time blocks or duration of anticipated congestion, depending on the margin.

b) PSREC Open Access Regulations, 2011 provide that inter-state short term open access transactions shall be governed by CERC Open Access Regulations. Accordingly, the bilateral schedule of Open Access

customers of PSPCL for inter-state open access also gets curtailed as under:

- If the curtailment is uniform for the day, 5th amendment in Open Access Regulations, 2011 is implementable.
- If the curtailment is not uniform, then the consumer will not be able to stick to the admissible drawl as per 5th amendment, as he will have to change the drawl from PSPCL after every 15 minutes time block, depending on curtailment, which is next to impossible.

c) Perusal of the Order in Petition No. 16 of 2013 reveals that PSPCL made submissions before the Commission that the proposed amendment in Open Access Regulations, 2011 will not affect the bilateral transactions. In this regard, paras 22(iv) and 22(x) of the Order have been reproduced as under:

“22(iv) The impact of proposed amendment will be only to the consumers who will be drawing power through Exchanges. The consumer drawing power through bilateral agreements will have no impact.

22(x) Open Access Consumers can anticipate the drawl from PSPCL by properly planning their bid in the Exchange and the problems raised in the objections will not exist if the Open Access consumers make bilateral agreements for their requirement.”

d) As per the final order on Petition and 5th amendment issued in consequence, in case of situation as mentioned above,

the consumer having arranged the bilateral power as per Open Access Regulations, 2011, in advance, will be penalized due to Force Majeure conditions which are beyond his control.

- e) The case of curtailments due to forced reduction of approved bilateral schedule by Nodal Regional Load Dispatch Centre due to congestion of transmission corridor or outage of interstate/regional links/lines also has to be covered in the PSERC Open Access Regulations, 2011 appropriately, providing that the Open Access consumers shall be allowed to draw full power up to the Contract Demand from PSPCL.
- vii) Admissible Drawl is applicable for the day i.e. all the 96 time blocks:

- a) Regulation 28 (3) of PSERC Open Access Regulations, 2011 now introduced provides that the quantum of drawl of electricity by an Open Access consumer from the distribution licensee in any time block of a day shall be limited to the admissible drawl (in kVA) in such time block wherein the schedule for drawl from open access is maximum. Regulation 28(3) of PSERC Open Access Regulations, 2011, reads as under:

“28 (3) The quantum of drawl of electricity by an Open Access Consumer from the distribution licensee during any time block of a day shall not exceed the admissible drawl of electricity by the Open Access Consumer from the distribution licensee in such time block wherein the schedule for Open Access drawl is the maximum.”

As per this provision, the admissible drawl is for the day i.e. for 96 time blocks. Then, this admissible drawl will be applicable for Peak Load Hours (PLH) also instead of load permitted during PLH.

viii) Surcharge/Penalty for violation during Peak/Non Peak hours and under TOD Regime.

(a) The paras 3(i) and 3(ii) of CC 29 of 2015 dated 22.07.2015 are defective and PSPCL is assuming powers to levy penalties on its own without authority. As per present regulations and Commission's directions, demand violations and peak load violations are assessed and penalty for demand surcharge and penalty for peak load violations are imposed independently, but the circular says these are concurrent and will be levied simultaneously. As per 5th amendment to Open Access Regulations, 2011, the admissible drawl will be applicable for all the 96 times blocks, including peak period.

(b) Those who opt for ToD in ToD tariff regime have been permitted to quit Peak Load Restrictions regime by the Commission and allowed to avail load up to Contract Demand. Such consumers are not covered under PLEC and there is no provision in regulations to levy penalty for peak load violations on those who opt for ToD. As such consumers will be violating CD in case they exceed their load beyond CD permitted in ToD. In addition to ₹3/- per unit on actual drawl in kVAh during ToD charge period, such consumers should be required to pay Demand Surcharge only for violation of Contract Demand on 24 hours basis. It

has been submitted by Open Access Users Association that CC No. 29 of 2015 issued by PSPCL needs to be amended accordingly.

ix) Usage of Different Power Factor (PF) for different purposes-
Need to adopt uniform PF.

a) PSPCL has specified:

- To apply power factor of 0.9 for working out permitted quantum (in MW) on the Contract Demand in kVA for the purpose of granting NOC/Standing clearance/ permission for Open Access.
- Usage of actual power factor attained by the industry during the month for working out the energy scheduled by Power Exchange in kWh to kVAh, for working out the power consumption from PSPCL, for raising monthly bills, as per Commission order dated 20.05.2013, in Petition No. 3 of 2015.
- To adopt power factor of 0.9 for allowing maximum load (in kW) to be used during Peak Load Hour restrictions on the sanctioned Contract Demand as per policy of Peak Load Restrictions approved by the Commission.
- Power Factor of 0.98 is being used for Power Intensive Industries and 0.95 for General Industries for working out the tariff in kVAh as per the study report of PSPCL for kVAh tariff, accepted by the Commission. These power factors are also being used for fixing open access charges (e.g. Cross subsidy Surcharge) in Tariff orders.

- b) The Commission and PSPCL has acknowledged that the normative power factor for LS industry has improved to 0.95/0.98 from earlier 0.90, which was based on the mechanical Trivector Meters and was being adopted for the last about 10 years. Prior to these 10 years, this grid normative power factor was 0.88.
- c) With the introduction of electronic energy meters, monitoring of demand in kVA instead of kW, power factor based rebate/surcharge etc, consumers have improved the power factor of the system by installing capacitor banks, after incurring huge expenditure. Now, with the introduction of kVAh tariff, almost all of the LS and MS consumers have further invested and are incurring maintenance expenditure to maintain power factor near to unity for ultimate benefit. This has also helped PSPCL to achieve better voltage profile and reduction in system losses/outages. The figures of PSPCL in reduction in damage to transformers and in grid losses over the years also support this.
- d) Open Access Users Association has prayed that present grid normative power factor of 0.90 being used by PSPCL for the last ten years be improved to normative power factor of 0.98 for PIU and 0.95 for General Industry. These figures are based on the study conducted in FY 2013-14 when kWh tariff was applicable and now with the introduction of kVAh tariff, there has been improvement in power factor of every consumer. These should be reviewed every year. These grid normative power factors should be used for grant of peak load exemptions and grant of NOC for open access

power etc. PSPCL and PSTCL be directed to amend their instructions accordingly.

x) Curtailement in Contract Demand due to application of CC 29 of 2015.

- a) The action of PSPCL of using 0.90 as power factor for conversion of load/demand in kW to kVA as per CC 29 of 2015 virtually amounts to denying the rightful entitlement of sanctioned Contract Demand. An example has been given in the Petition by Open Access Users Association in support of its submission.
- b) The situation will be addressed if actual power factor is used for converting open access power in MW to MVA on daily basis.
- c) As per CC 29 of 2015, violation of admissible drawl is to be worked out from readings of ABT meters by SLDC. Since the data is to be analyzed after down loaded data of ABT meter is sent by DS office to SLDC at end of month, there will be no difficulty in usage of actual power factor and software algorithm can be structured that way.

xi) Usage of 0.90 as Power Factor.

- a) PSPCL vide its CC 29 dated 22.07.2015 has considered the usage of power factor as 0.90 to convert load/contract demand from MW to MVA. Para 5 of CC 29 of 2015 reads as:

“Power factor of 0.90 shall be considered to convert load/contract demand from MW to MVA.”

In case, such power factor is implemented, it will

impose a penalty on the theoretical figures of admissible drawl in spite of actual figures being available.

- b) Both the DLMS and ABT meters are recording the actual 30 minute/15 minute data of kVA, kW, kVAh and kWh. Therefore, when there is already availability of actual data, then such use of presumptive/theoretical/normative data, instead of using the actual data is improper in determining the levy of penalty, and should be set aside.
- xii) Treatment of banked power for outage of grid system of the Licensee.
- a) Under collective transactions, if in case there arise a fault in the feeding substation/line, the open access power purchased by a consumer during the period of fault is considered as power banked with PSPCL, and as per para 8 of Procedure for Intra-State Short Term Open Access issued by Punjab State Transmission Corporation Limited, that banked power can be utilized by Open Access consumer within fifteen (15) days from the date of fault in such substation/feeder, with the approval of PSPCL, in the allotted time slot.
 - b) Whereas, prior to Commission Order dated 01.06.2015, with reference to Petition No. 16 of 2013, Open Access consumers were not purchasing power in that time slot, so as to ensure utilization of such banked power in the allotted time and power used in such slot was adjusted against the banked power.

- c) With the 5th amendment in PSERC Open Access Regulations, 2011, there is no clarity in the order dated 01.06.2015/CC 29 of 2015 to the effect that whenever PSPCL allows Open Access consumer to use such power, then that power is to be considered as scheduled open access power or the power of PSPCL to determine the admissible drawl for that day. The order dated 01.06.2015 as well as CC 29 of 2015 do not provide clarity as to whether the slot for which open access power is banked shall be excluded for the purpose of calculation of admissible drawl for that day. Since it is difficult to adjust the unutilized power in the allotted time schedule in view of the amended regulations and non utilization is due to Force Majeure conditions of PSPCL and PSTCL, such unutilized power be adjusted as utilized and consumption from PSPCL be reduced accordingly.
- xiii) Effective date of CC 29 of 2015 and amendment of Procedure for Short Term Open Access.
- a) CC 29 of 2015 has been issued on 22.07.2015, but made effective from 03.06.2015 i.e. after a delay of 50 days. Representations on the issue of methodology to work out MVA from MW were made by many affected consumers to the Commission, but the issue was not resolved and many consumers used actual/normative PF (0.98/0.95) for deciding the quantum of open access power and now all such consumers will suffer on this account. These issues should have been resolved before issue of said notification by the Commission. The retrospective implementation of CC

29 of 2015 will put the open access consumers to great financial loss as the clarifications can only be taken care of in future. Therefore, the implementation of CC 29 of 2015 should be prospective.

- b) PSTCL has issued Procedure for intra-State Short Term Open Access with the approval of the Commission in compliance to Open Access Regulations, 2011. For proper implementation of 5th amendment in Open Access Regulations, 2011, the best course should have been revision of open access procedure with the approval of the Commission, which would have provided clarity to consumers on all these issues. It has been requested that PSPCL and PSTCL be directed to revise the Open Access Procedure immediately in line with the decisions on the issues raised in this Petition.

xiv) Open Access Users Association prayed as under:

- a) To amend and bring the regulations and policy on Peak Load Hours Restrictions and Exemptions in consonance with each other for proper implementation of PSERC (Terms and Conditions for intra-State Open Access) (5th Amendment) Regulations, 2015, read with order on ToD.
- b) To provide for a uniform normative Power Factor of 0.95/0.98 for PIU/General LS industrial consumers for grant of Peak Load Exemption and NOC for Open Access and usage of actual power factor for converting open access power in MW to MVA for determining the daily admissible drawl of an Open Access consumer as per the practice of working out open access energy in MWh to MVAh.

- c) To provide in the Open Access Regulations, 2011 for drawl of power by Open Access consumers up to the Contract Demand, under Force Majeure conditions of curtailment of approved bilateral schedules by RLDC, due to outage of transmission corridors or forced outage of inter-state links/lines.
 - d) To decide on the treatment of banked power due to outage of transmission/distribution system of PSPCL and PSTCL.
 - e) To order immediate stay on the implementation of CC 29 of 2015 issued by PSPCL till decision of this Petition and then issue fresh Commercial Circular.
 - f) To direct PSPCL to use actual data instead of normative data while calculating/determining the levy of penalty.
 - g) To direct PSTCL to amend the short term open access procedure in line with the 5th amendment, covering all aspects.
 - h) To pass such other order/(s) as it may deem fit and necessary in the interest of justice.
- 3) The Petition and Interlocutory Application (IA) were admitted by the Commission vide its order dated 11.08.2015. PSPCL and PSTCL were directed to file the reply to the Petition and IA by 25.08.2015. The next date of hearing was fixed for 02.09.2015.
- 4) PSTCL vide its letter dated 31.08.2015 filed reply to the Petition and IA, and submitted that the matter relates to imposition of penalty on power drawn above the admissible drawl and upto contract demand for curtailment of bilateral schedule under Force Majeure conditions and removal of other difficulties in open

access arising in consequence to 5th amendment in PSERC Open Access Regulations, 2011 and PSPCL CC 29 of 2015. PSTCL/SLDC does not levy any penalty as mentioned in the Petition. The same is levied by PSPCL as per their CC 29 of 2015. PSPCL is also the first and the prime respondent in this case. All other difficulties mentioned in the Petition also relate to PSPCL only. PSTCL has offered no comments in this case as there is no implication involved, financial or otherwise to PSTCL/SLDC.

- 5) PSPCL vide its memo no. 5500 dated 31.08.2015 prayed for grant of atleast 2 weeks time for submission of reply to the Petition and IA.
- 6) The Commission vide its order dated 02.09.2015 directed PSPCL to file the reply to the Petition and IA by 15.09.2015, with copy to the Petitioner. The next date of hearing was fixed for 22.09.2015.
- 7) PSPCL vide its letter dated 11.09.2015 filed the reply, which is summarized as under:
 - i) It is true that Commercial Circular 29 of 2015 was issued on 27.07.2015 for implementation of Commission's Order dated 01.06.2015 and 5th amendment in Open Access Regulations, 2011. This circular was issued after in-depth deliberations with higher authorities and other concerned departments of PSPCL, like PP & R. It has been denied by PSPCL that CC 29 of 2015 was issued without applying any mind.
 - ii) a) The main objective of 5th amendment in Open Access Regulations, 2011 was to discourage the open access consumers for over drawl of power beyond schedules,

causing unbalancing/overloading the power system of PSPCL. Such consumers are to be dealt with instructions in CC 29 of 2015 dated 27.07.2015, which was issued in line with 5th amendment in Open Access Regulations, 2011. There is no intention to penalize the open access consumers under Force Majeure conditions.

- b) Under Section 45 of the Open Access Regulations, 2011, the Commission has full powers for curtailment due to forced reduction of approved bilateral schedule by Nodal Regional Load Dispatch Center due to congestion of transmission corridor or outage of inter-state/regional links/lines etc, to be covered in PSERC Open Access Regulations, 2011, for drawl of full power up to the contract demand from PSPCL system.
- iii) a) Paras 3(i) & 3(ii) of CC 29 of 2015 regarding levying of penalties on open access consumers for violation in contract demand and peak load violations are not defective, because as per CC 29 of 2015, these penalties should be charged simultaneously and not independently as mentioned in the Petition. It is worth to mention that peak load hours and off peak load hours are two different segments of the day. For the safety of transmission network, PSPCL is required to control demand during peak load hours to avoid collapse of transmission network, as well as controlling demand as per entitlement of open access consumers during the day and issues are interrelated.
- b) Even during the period ToD tariff is applicable, the consumer has the option to be governed either under ToD tariff or under

peak load hours restrictions and in the later case, a consumer is allowed to use permitted demand after paying PLEC.

It has been denied by PSPCL that the consumers who opt for ToD tariff are not liable to observe peak load instructions, as controlling maximum demand is the necessity for the safety of the network.

Extra charge of ₹3 per kVAh for drawl during peak load hours does not give liberty to the consumer to consume demand higher than the sanctioned contract demand, even if he is covered under ToD tariff.

- iv) While issuing CC 29 of 2015, normative power factor of 0.90 has been considered for conversion of open access power in MW to MVA according to guidelines of the Commission regarding short term open access consumers vide which procedure has been laid down for intra-State short term open access by the office of Chief Engineer /SO&C (Open Access), wherein it is mentioned at Sr. No. 2.1(A)(ii) that Short Term Open Access shall be permissible to a consumer having demand of one MW and above, connected at 11 kV or above. However, all generating plants are to be allowed open access for wheeling of power further, for consumers of distributions licensee, the demand in MW shall be computed based on Sanctioned contract demand and power factor as 0.90.
- v) a) It has been denied by PSPCL that using 0.90 as power factor for conversion of load/demand in kW to kVA as per CC 29 of 2015 virtually amounts to denying the rightful entitlement of sanctioned contact demand, because consumer having 4.5

MW sanctioned load will have sanctioned contract demand of 4.545 MVA at 0.99 power factor, but consumer has been granted 5 MVA contract demand with power factor of 0.90. So, for conversion of MW power purchased through open access, power factor of 0.90 is taken as a level playing field.

If the sanctioned contract demand of consumer is 4.545 MVA with 0.99 power factor, instead of 5 MVA, then no point of curtailment of power arises. That is why the open access contract demand has been converted from MW to MVA by considering normative power factor of 0.90.

- b) If power factor for converting open access power in MW to MVA is considered on daily basis, then the open access contract demand of the consumers will keep on changing on daily basis and lot of complications will arise for SCADA system of PSPCL and PSTCL to control the load flow and power and its scheduling. It would be impossible for PSPCL and PSTCL to maintain the values as bench-marks for power generation, transmission and distribution systems, because the power factor of the consumers may keep on changing on daily basis and there will no standardized control for the load shedding. Further, it would not be possible to maintain the reserved capacity for admissible drawl of open access consumers on the basis of/considering the daily power factor. So, the system may also collapse in some cases.
- vi) a) The power factor of 0.90 has been used for sanction of contract demand of all LS industrial consumers. For example, for a connected load of 1260 kW, the maximum contract demand which can be sanctioned will be 1400 kVA. In case,

contract demands have been sanctioned with 0.90 power factor, comparison of admissible drawl has to be worked out by taking power factor of 0.9 and this procedure is correct, otherwise it will result in to disparity.

- b) It is correct that DLMS and ABT meters give actual 30 minutes average demand. But for billing purposes and as per tariff of LS industrial consumers, the highest average maximum demand of half hourly demands is taken into account. Further, for open access consumers, the demand surcharge is to be levied only once in a billing month, even though open access consumer may violate the admissible drawl many times during the month. The purpose of amendment of regulation 28 of Open Access Regulations, 2011 is to regulate the drawl of power from PSPCL in a systematic way, as abrupt changes in demand by open access consumers during peak load hours, are forcing PSPCL to switch off DS & NRS category feeders, causing inconvenience to these consumes, apart from revenue loss to PSPCL. The purpose of amendment notification issued on 01.06.2015 shall be totally defeated, in case the demand put forth by the Open Access Consumers Association is accepted.

- vii) The Petitioner has only given provisions of treatment of banked power as per regulations and has tried to take shelter under such conditions without giving any such examples of banked power having been utilized later or having not been purchased such power during breakdowns of the system. Such hypothetical explanations are not relevant to the

challenge made by the Petitioner in the present Petition. PSPCL submitted that open access consumers should regulate their power drawl in a systematic way for which amendment notification of dated 01.06.2015 has been issued by the Commission.

Drawl of power through open access and its control is entirely in the hands of the Petitioner and keeping the drawl of power from PSPCL as per schedule entails no demand surcharge. The Petitioner is trying to exploit the laid down procedure for his pecuniary gains only, at the cost of system stability and inconvenience to lacs of DS & NRS consumers of the State and same needs to be discouraged.

- viii) a) CC 29 of 2015 was issued after deliberations with different offices of PSPCL like PPR and higher authorities. The circular is applicable from the date of issue of notification on 01.06.2015, which is legally correct, as before issue of notification on 01.06.2015, the Commission had wider discussion with the stakeholders in case of Petition No. 16 of 2013 and they were aware of the amendment beforehand. The advice given by the respondent in the matter of petition no. 16 of 2013 was not feasible of acceptance as the amendment vide notification dated 01.06.2015 was issued after discussions with the stakeholders and suggesting revision of open access procedure now is an after-thought only.
- b) The circular issued by PSPCL is in line with the amended Open Access Regulations, 2011 and it is clear, so far its implementation is concerned.

- c) In case power factor of 0.95/0.98 is to be used for working out open access power in MW to MVA and violation of schedule of power as suggested, the contract demands already sanctioned by PSPCL shall have to be again worked out for such erring consumers and the procedure suggested is not practical.
- d) PSPCL has no objection to provide relief to open access consumers under Force Majeure conditions after such conditions are detailed and approved by the Commission.
- e) The issue is not directly related to the problem of levy of surcharge for violation as the control of drawl of power through open access is not in the hands of PSPCL. Further, such outages are not common/frequent.
- f) The demand is not possible of acceptance as respondent is trying to gain, least caring for the inconvenience to lacs of DS & NRS consumers and revenue loss to PSPCL.
- g) The use of power factor of 0.9 has been explained and demand is not feasible of acceptance.
- h) The circular already issued by PSPCL is clear, unambiguous and Petitioner is trying to create confusion for its pecuniary gains only.
- i) kVA contract demand of the LS consumers is worked out by taking normative power factor of 0.9 and this sanctioned CD is the base for working out admissible drawl from PSPCL system by open access consumers.

Moreover, as per para 10.2 of the Tariff Order for FY 2015-16, all consumers with load exceeding 100 kW (except Public

Lighting & AP High-tech/ High-density farming), MS/BS consumers and DS/NRS consumers with load exceeding 50 kW but up to 100 kW shall declare maximum demand in kVA, which shall not exceed 100% of sanctioned load in kW and converted into kVA by using 0.90 power factor.

Further, as per General Conditions of Tariff for FY 2015-16, para 18.5, sub para– (ii), Note– 1, 0.90 power factor is being used for MS and LS category consumers to convert kWh consumption into kVAh consumption for billing purposes. Accordingly, as per Schedule of Tariff for FY 2015-16, clause SIII, power factor surcharge/incentive is being levied/paid for power factor below 0.90.

Moreover, while granting the entitlement to different types of consumers seeking open access power under different conditions, e.g. open access involving intra-State transmission system, open access without involving intra-State transmission system, open access on first come first served basis, open access in advance, day ahead open access etc., as per procedure laid down for intra-State Short Term Open Access (para 6.4), PSPCL does not know about power factor to be maintained by the open access consumers at the time of drawl of power from PSPCL. Therefore, normative power factor i.e. 0.90, as approved by the Commission has been used in CC 29 of 2015.

- 8) During hearing of the Petition on 23.09.2015, Open Access Users Association sought time to file counter reply to the reply of PSPCL. The Commission vide its order dated 24.09.2015 directed the Open Access Users Association to file the counter reply by

14.10.2015 and supply a copy of the same directly to PSPCL. The next date of hearing was fixed for 20.10.2015.

- 9) Open Access Users Association filed counter reply vide its letter dated 12.10.2015, to the reply of PSPCL, which is summarized as under:
- i) The Open Access Users Association and other Large Supply consumers of PSPCL are opting for open access only under duress as survival of industry is the challenge and almost all of them are operating the industry at loss, as there is no other option for them. In view of high power tariff and other exorbitant charges of PSPCL, open access has to be availed and save on the production cost to the extent possible so as to remain competitive in the national and international market.
 - ii) PSPCL is consistently denying the data regarding open access sought by the Commission during hearing of Petition No. 16 of 2013 available with them now and only making sweeping statements without substantiating them on record.
 - iii) CC 29 of 2015 was issued on 22.07.2015 and made effective retrospectively from 03.06.2015. The Petitioner further submitted that it should be noted that this CC 29 of 2015, having very wide financial and commercial implications for open access consumers has been issued without consultations with the stake-holders i.e. without issuing any public notice and without holding public hearing, mandatorily required for such policy decisions, affecting a large number of consumers. PSPCL may have conducted in house consultations, but it is not a matter of the Petition. How a consumer availing open access can implement the orders contained in CC 29 of 2015

issued on 22.07.2015 retrospectively from 03.06.2015. He is bound to be penalized for the violations of CD in the process, which in fact he has not violated as per his perception and understanding of the 5th Amendment of PSERC Open Access Regulations, 2011.

- iv) PSPCL has stated that there is no intention to penalize the consumers under Force Majeure Conditions. However, the reply is silent as to how the variation in admissible drawl (as defined in 5th Amendment) occurring due to revision of approved bilateral schedule by Nodal RLDC as brought out in the Petition will be dealt by PSPCL. If the intent is certainly to exempt the OA consumers from penal provisions in case of such curtailment of bilateral open access schedule, PSPCL needs to spell out the proposed amendment in the Regulations and CC 29 of 2015.

As per Regulation 15 (2) of CERC Open Access Regulations 2008, curtailment occurs one day before or on the same day of scheduling power, but the consumers has already paid all the charges to Nodal RLDC for such bilateral schedule on advance basis and always intended to draw full power up to its contract demand by proper mix of open access schedule and admissible drawl schedule. However, due to sudden revision of schedule on day ahead/on the spot, OA consumer draws power in excess of admissible drawl from PSPCL. Now, PSPCL has issued CC 29 of 2015 issued on 22.07.2015, to be made effective from 03.06.2015, in which this situation is not addressed. It clearly shows that the basic intent behind such applicability of CC 29 of 2015 is to penalize and discourage the

open access consumers from procuring power under bilateral arrangements.

- v) It is true that the Commission has full powers under Regulation 45 of PSERC Open Access Regulations, 2011, for removal of difficulties and for that matter, allowing drawl of power (admissible drawl) up to contract demand in case of curtailment of bilateral schedule of open access power by Nodal RLDC in case of congestion/overloading of lines etc. It has been reiterated by Open Access Users Association that for covering such curtailment of contract demand under Force Majeure conditions, the open access consumers should be allowed to draw full power up to its contract demand, even if the consumer gets revised schedule of zero power in some time blocks and that no penalty should be levied in such time slots for drawl of additional power, in addition to the revised entitlement/admissible drawl. As such, for this purpose, PSERC Open Access Regulations, 2011 may be amended to cover such eventuality and in the meanwhile, the Commission should exempt bilateral transactions from the ambit of 5th amendment in Open Access Regulations, 2011 and CC 29 of 2015 issued by PSPCL.
- vi) As per Tariff Order for FY 2015-16, issued by the Commission, the Commission has already defined ToD regime and PLEC regime separately into two different segments and conclusively, these are independent of each other. It has been reiterated by the Petitioner that by opting for ToD regime, consumer has quit PLEC regime for 6 months, as clearly laid down in the Tariff Order and also provided in the Commercial

Circular issued consequently by PSPCL. For those opting for PLEC, conditions of Peak Load Policy approved by the Commission, will be applicable, while for those opting for ToD, terms and conditions of relevant para of Tariff Order will be applicable (since there is no other regulation or policy for ToD separately approved by the Commission). It is wrong that such consumers opting for ToD are covered under ToD as well as PLEC and shall be levied the penalty for violation of contract demand as well as PLEC simultaneously. In this regard, paras 3 (i) & (ii) of CC 29 of 2015 are in contradiction to Tariff Order for FY 2015-16. Therefore, for consumers opting for ToD, only Demand Surcharge for violation of CD or admissible drawl for the day should be levied and no peak load violation is to be levied.

- vii) PSPCL has acknowledged that different power factors are being used as pointed out by the Petitioner and these are as per Regulations and Procedures approved by the Commission. Petitioner has only requested for bringing uniformity in these Regulations and Procedures based on earlier kWh regime and update/amend these to align these with the now introduced kVAh tariff regime as per the latest ground realities.

There is no justification in granting Peak Load Exemption in kW when Industry is following kVA system for tariff, voltage level of connectivity and demand violations and it needs to be approved in kVA. Usage of 0.90 power factor for grant of permitted load for open access provided in Procedure was proposed by PSPCL and approved by the Commission in 2011, when kWh tariff was in vogue and there was no concept

of admissible draws for open access. Now, it needs to be relooked in view of changed scenario.

The Commission has already ordered in Petition No. 3 of 2015 for converting open access power in kWh to kVAh at actual average power factor upto 2 decimal points, in para 16(ii), at page no. 28 of the order dated 20.05.2015, which was also agreed upon by PSPCL in its replies. Usage of actual power factor of around 0.99 of individual consumer for converting open access energy in kWh to kVAh and usage of uniform power factor of 0.90 for converting open access power in kW to kVA is discriminatory for open access consumers and violative of provisions of Electricity Act , 2003, which has cast a duty on the Commission to provide non discriminatory open access. Equity and justice demands that one figure be used for these twin purposes as both relate to open access.

Generation is to be scheduled on MW basis as per IEGC, Punjab also has to schedule power on MW basis. However, IEGC and SGC both provide for monitoring the flow of reactive energy and penalize the entities which draw reactive power when voltage is below 97% of nominal voltage or inject reactive power in the grid when voltage is above 103% of nominal voltage. In Punjab, generators are not being monitored for reactive power injections or draws and all stress is on LS industrial consumers for managing the reactive compensation to the grid.

Lacs of DS, NRS and Agriculture consumers do not care about reactive energy requirement of the system and are not installing the required capacitors and their financial liability,

including, even to some extent, the liability of PSPCL, also has been transferred to industrial consumers to improve power factor of grid by incurring huge expenditure and they need incentives for improving the power factor of the grid from 0.9 to 0.98.

- viii) By using power factor of 0.99, there shall be no curtailment of power. There shall be curtailment of power even if such power factor of 0.99 is used, but in such a case, the entitlement of an open access consumer shall be more, in case PSPCL uses power factor of 0.99 as compared to power factor of 0.90.

PSPCL has failed to give examples of consumers' load and demand pattern in support of its claim that there will be no curtailment.

When PSPCL was short of power in 2009, it encouraged consumers to bring power under open access and now it is discouraging when it is declaring itself surplus. Arbitrary increase in open access charges set aside by APTEL is pending before the Hon'ble Supreme Court. Peak load charge of ₹ 3/- was collected on open access power from consumers without any justification and are yet to be returned.

While calculating admissible drawl, a power factor of 0.95/0.98 or actual power factor of the day of each consumer should be considered, as in such a case, the entitlement of an open access consumer shall be more.

- ix) The apprehensions expressed by PSPCL are imaginary, unfounded and only a desperate attempt to justify the contents of CC 29 of 2015. To implement CC 29 of 2015, PSPCL has to

calculate the admissible drawl and actual drawl for every 30 minutes time block from the data recorded in DLMS Trivector Meters, considering the open access power schedule in each 30 minutes time block, against schedules of 15 minute time blocks. This vast exercise for all of about 430 open access consumers for 30 days of the month and 48 time blocks of each day cannot be done manually. Consequently, this will be done through software usage and software can take care of the actual power factor based on average kVA and kW for each 30 minutes time block already available in the downloaded data. When the smart meters (ABT and DLMS) installed by PSPCL can give and software can use the actual power factor on real time basis, then why a theoretical figure is proposed to be used, which will only distort the data.

PSPCL has agreed that DLMS and ABT meters give actual 30 minutes demand. Whereas, ABT meters give kVA and kW data, in DLMS meters, kW, kVA and power factor are available, from which the actual demand of open access power and PSPCL power using actual power factor with the help of the software can be calculated.

The Petitioner has suggested that PSPCL may be directed by the Commission to present one copy of the full downloaded data of the DLMS meter of any one of the consumers, to the Commission and to the Petitioner, before final arguments.

When actual parameters can be calculated, then why PSPCL is insisting on the theoretical calculations, is not understandable. No law allows to bill and put penalties on the consumers on theoretical basis.

It is also wrong that PSPCL/PSTCL will not be able to monitor bench marks or SLDC will face complications in SCADA system or there will be danger of system collapse. PSPCL needs to put strict proof to demonstrate its statement in this regard. PSPCL had earlier also, during the proceedings of Petition No. 16 of 2013, failed to give any data to support similar assertion in the petition as recorded by the Commission in paras 24 and 26 of the order dated 01.06.2015. Instead of making sweeping statement in this regard, PSPCL should have submitted calculations being made by it for reserved capacity and benchmark parameters for every 15 minutes block as stated in its reply for the period, before and after the 5th amendment in Open Access Regulations, 2011, based on the open access schedule. Actual usage by each industrial consumer can't be predicted by sitting in control room. Only estimates can be derived based on historical data and current trends, for which softwares are available and keeping in view the diversity of demand of agriculture and domestic consumers, the estimates are bound to vary with actual and real time monitoring.

The petitioner has submitted that the data of IEX Schedule (Open Access Power) in LU and PSPCL Schedule in LU for 1st and 15th of each month reveals that PSPCL's presentation before the Commission is not based on facts. The variation in PSPCL's schedules is not dependent on open access power as the variation in minimum and maximum 15 minutes schedules remains in the same range before and after 03.06.2015 (date of issue of 5th amendment in Open Access

Regulations, 2011), whereas the open access has reduced to large extent. Therefore, the system management argument submitted earlier and now is not factual.

- x) The contract demand once sanctioned becomes binding compared with other parameters. Thereafter, only CD be kept in view for the conduct of the consumer as the load in kW is only a theoretical figure. If PSPCL's argument and calculations given in its reply to the Petition are accepted, then a consumer having 2240 kW load is allowed contract demand of 2490 kVA using 0.9 power factor, then at 0.99 power factor, he will be using at the maximum only 2263 kVA demand and 227 kVA demand will be surplus. However, if he has load of 2490 kW and wants to remain connected at 11 kV, he will be allowed CD of 2499 kVA, and if now a theoretical power factor of 0.9 is used to calculate his admissible drawl in kVA, he can use only 2249 kW load and 250 kW of connected load will remain unutilized. This will be true for all those who have got their demand as per connected load with 100% power factor. The best suited solution for such a situation is to use actual power factor for all purposes to save the industry from collapse.
- xi) The Petitioner has denied that abrupt demands by open access consumers during peak load hours are forcing PSPCL to switch off DS & NRS category feeders, thereby causing inconvenience to such consumers and also causing revenue loss to PSPCL.

During Peak Load Hours, when there is maximum demand of DS and NRS consumers, the sanctioned contract demand of an LS OA consumer has already been curtailed through

imposition of PLEC or ToD charge, to balance the demand or load. Moreover, PSPCL charges an extra ₹ 3/- per unit on actual drawl in kVAh during ToD charge/winter period and PLEC during non ToD/summer period, whereas DS and NRS consumers mostly use power during PLH at normal tariff.

LS industrial consumers, some of which are using open access, are being made to suffer since long time, due to these lacs of DS and NRS consumers, who bring their load on grid mainly in these peak load hours. Few thousands of LS industrial consumers are compelled to run for 21/20 hours to facilitate uninterrupted supply to lacs of DS and NRS consumers for 3/4 hours of peak period. These LS consumers are also being made to subsidize these lacs of DS and Agriculture consumers, through lower tariffs since the inception of PSEB/PSPCL. Weekly off days and reduction in approved peak load were being imposed some time back on LS industry, to facilitate power cut free power to these lacs of consumers. LS consumers have minimum Aggregate Technical and Commercial losses, but are loaded with average grid losses, while fixing tariff, to keep the tariffs of these categories lower.

Power drawl by open access consumers during peak load hours will not cause inconvenience to the consumers of DS & NRS categories, leading to switching off of feeders of such categories of consumers. It has been denied by the Petitioner that such drawl of power by open access consumers during peak load hours has caused revenue loss to PSPCL, because of the very fact that there has already been a curtailment of sanctioned CD of such open access consumers and such

consumers are already paying an additional charge of ₹ 3/- per unit or PLEC. Both DS and NRS consumers use power for consumptive purpose, whereas LS consumers use power for productive purposes, and thus need encouragement rather than discouragement.

- xii) The reply of PSPCL is evasive on the issue of banking of power as to how the banked power shall be treated and made available to the open access consumers. PSPCL by not giving explicit explanation or solution, is trying to keep the issue open to its advantage. The Open Access Users Association has requested the Commission to decide whether the open access procedure needs to be amended or not, in view of 5th amendment in Open Access Regulations, 2011, or it is to be placed in archives section of PSPCL/SLDC.
- xiii) PSPCL has no objection in providing relief to OA consumers under Force Majeure conditions after such conditions are detailed and approved by the Commission.
- xiv) The consultations made with stake holders during hearing of Petition No. 16 of 2013 were on some other draft, whereas the actual notification has different wording.
- xv) The issues raised in the Petition are of vital importance, having financial implications for the open access consumers, therefore, CC 29 of 2015 needs to be implemented prospectively and not retrospectively.
- xvi) PSPCL is trying to take shelter behind DS and NRS consumers to deny the open access consumers their rightful due and earning unjust enrichment at the cost of such

consumers. The reference made to the Tariff Order, Schedule of Tariff and Open Access Procedure in the reply of PSPCL have been already replied in the preceeding paras.

10. On the date of hearing on 20.10.2015, the matter was argued on behalf of the parties at some length. After hearing the parties, the Commission advised them to hold a meeting and file proposal by 03.11.2015, suggesting solution to the problems faced by the parties, as brought out during the arguments, for consideration of the Commission. The parties agreed to do so.
11. Open Access Users Association filed record of discussions held in the meeting between the representatives of Open Access Users Association and PSPCL, on 06.11.2015, vide letter dated NIL, received through email dated 09.11.2015, which has been summarized as under:

- i) Purchase of Power under Short term open access under bilateral arrangement :

PSPCL has made submission before the Commission as per order dated 01.06.2015 in Petition No. 16 of 2013 that the proposed amendment (No. 5) will not affect the bilateral transactions. In this regard, paras 22 (iv) and 22 (x) of the ibid order have been reproduced as under:

“22 (iv) - The impact of proposed amendment will be only to the consumers who will be drawing power through Exchanges. The consumer drawing power through bilateral agreements will have no impact.

22 (x) – Open Access Consumers can anticipate the drawl from PSPCL by properly planning their bid in the Exchange

and the problems raised in the objections will not exist if the Open Access consumers make bilateral agreements for their requirement.”

Bilateral purchase of power is affected when there is curtailment of already approved schedule by NRLDC. Since it is a Force Majeure situation, no penalty should be imposed on the open access consumers.

PSPCL representative agreed that it is a Force Majeure, but some compensation should be given to PSPCL for giving power at that time.

It was pointed out by OAU that whenever there is shut down/breakdown on service line/transmission system or grid substation(s) serving the consumer, no compensation is being given by PSPCL to the consumer. Similar is the situation whenever there is distribution/transmission system constraint or tripping of generating projects and all such situations should be treated as Force Majeure conditions and no compensation/penalty should be imposed. OAU submitted that PSPCL is to give its proposal in furtherance to above submission, and they can comment on this matter only after having a proposal.

ii) Selection of 0.90 Power Factor according to commercial circular

- a) CC 29/2015 in view of 5th amendment in Open Access Regulations, 2011:

PSERC/PSPCL implemented kVA based tariff for industries in place of kW based tariff to encourage consumers to maintain

high power factor, which is beneficial to PSPCL, as it improves the voltage profile of the grid system and resultantly reduces T&D losses of the utility with investments made solely by the consumers.

Para No. 3 titled “Consumer friendly measures” of the PSERC Press release dated 22nd August, 2014 in the matter of Tariff Order for FY 2014-15 for PSPCL & PSTCL has been reproduced by OAU as under:

“Introduction of kVAh Tariff

kVAh tariff has been introduced for large supply, medium supply, bulk supply, railway traction, DS (load more than 100 kW) and NRS (load more than 100 kW) categories of consumers with effect from 01.04.2014. The introduction of kVAh tariff will motivate the consumers of these categories to have higher power factor, which would in turn help in improving the system parameters and reduce technical losses. In the kVAh tariff regime, all categories of consumers will be compensated linearly for improvement in their power factor.”

- b) PSPCL in its submissions dated 19th February, 2015 in the matter of ARR for FY 2015-16, to the Commission had also agreed that impact of kVAh tariff on revenue will be 0.47%.
- c) A consumer having contract demand of 2490 kVA, maintaining a power factor of 0.99, can run 2465 kW load and no penalty is imposed on the consumer, when drawing power from PSPCL. When the consumer brings open access power of 2464 kW through open access to run the same load, then the demand at

0.90 power factor works out to 2739 kVA, attracting penalty on 249 kVA, against the sanctioned contract demand of 2490 kVA. To avoid penalty, the consumer shall have to curtail the demand upto his sanctioned CD of 2490 kVA and he will not be able to use the open access powerfully i.e. he will maintain 2240 kW load instead of 2465 kW load at 0.99 Power Factor.

- d) In Petition No. 3 of 2015, the Commission has already ordered to convert open access kWh to kVAh (for working out the PSPCL consumption) using actual power factor of the month, considering 2 digit format, which was the demand of PSPCL.
- e) In this case also, the above order is applicable as in both the cases power drawn is in kW.
- f) When the actual demand (VA) and the actual power (W) are available in the meter (both ABT and DLMS meters have the recording facility for these parameters), there is no justification to calculate the demand artificially and theoretically by adopting 0.90 Power Factor.
- g) A calculation sheet showing half hourly averages of actual running demand through open access using actual PF for 16.08.2015, has been given to the Committee by Open Access Users Association. The committee agreed that it is true data, but no comments were given.

iii) Banking of Power due to outage of PSPCL system:

Whenever there is shut down on transmission line/grid sub-station from PSPCL side, the consumer cannot use the scheduled open access power for that period and the banked power is allowed to be drawn by PSPCL for the same period

on any other day. However, due to 5th amendment/CC 29 of 2015, consumer cannot bid in the Power Exchange properly on that day. Open Access Users Association gave following proposals in this regard:

- kVA demand surcharge should not be imposed for that day.
- The un-utilized power of open access during that shut down/break down period be deducted from PSPCL consumption.

iv) Curtailment of demand due to CC 29/2015 :

Open Access Users Association has enclosed the calculation sheet, where it has been shown that the consumer demand is curtailed due to implementation of Commercial Circular 29 of 2015.

v) Penalty for peak load violation and demand surcharge for exceeding sanctioned contract demand to be charged together from ToD consumers:

Para 3 (ii) of CC 29 of 2015 covering the period of 1st October to 31st March (next year) provides as under:

“.....In addition an Open Access Consumer shall also pay penalty for Peak Load violation at the rates approved by the Commission and as provided in the instructions issued by PSPCL, if his demand exceeds the Sanctioned Contract Demand.”

During the above period, consumer is covered under ToD tariff and has quit the PLEC regime of 3 hours. As per the Open Access Agreement, consumer can use load upto contract

demand during peak ToD period of 4 hours by paying ToD charge and fixed peak load charges are not applicable. So any violation, during this period is not to be treated as peak load violation but only demand violation and demand surcharge should be applicable. This para of CC 29 of 2015 needs to be rectified accordingly.

vi) To use kVA for all the cases:

After introduction of kVA based tariff, there is a need to grant peak load exemptions for the 6 months of non ToD period in kVA and present practice of granting PLE in kW needs to be dispensed with. In view of general improvement in the power factor of the grid system as per study submitted by PSPCL for adopting kVA based tariff, normative power factor being used for grant of open access permission be also revised to 0.98 for power intensive and 0.95 for general industry.

vii) Date of effectiveness of CC 29 of 2015:

CC 29 of 2015 was issued on 22.07.2015 and made effective from 03.06.2015 retrospectively. Open Access Users Association has prayed that PSPCL should make the date of applicability of CC 29 of 2015 as the date of its issue, so that no penalty is levied on open access consumers drawing power on and from 02.06.2015 to 22.07.2015. No consumer can imagine the intentions of PSPCL as to which power factor is proposed to be used. PSPCL explained that the date of applicability has to be date of 5th amendment issued by the Commission and requested for taking up the matter with the Commission.

- viii) Open Access Users Association also requested that there is abnormal time drift in DLMS meters installed for 66 kV consumers and consumptions will vary widely in DLMS and ABT meters, particularly in the start and end of half hour time blocks of ToD. Display of only DLMS meters is available to consumers and ToD is followed as per DLMS meters. Penalty for violation needs to be worked out from one meter due to difference of time between ABT meter and DLMS meter, so that the consumer can control load effectively while using the open access power.
12. The Petition was taken up for hearing on 10.11.2015 and the Commission vide its order dated 13.11.2015 observed and ordered as under:-

“After hearing the arguments on behalf of the parties on 20.10.2015, the Commission had advised them vide Order dated 23.10.2015 to hold a meeting and file a proposal by 03.11.2015 suggesting solution to the problems faced by the parties as brought out during the arguments for the consideration of the Commission. The petitioner filed through email dated 09.11.2015 record of the discussions in the meeting held on 06.11.2015 between the petitioner (OAU) and respondent (PSPCL). CE/ARR & TR vide memo no. 5898 dated 09.11.2015 has also submitted that a meeting was held on 06.11.2015 in the chamber of C.E./PP & R with the members of Open Access Users Association who have submitted a proposal which is under consideration of the higher authorities of PSPCL. PSPCL prayed for time of two weeks for submission of proposal/comments.

In view of above, the petition shall be taken up for hearing on 24.11.2015 at 11.30 AM.”

13. The Petition was taken up for hearing on 02.12.2015 and the Commission vide its order dated 02.12.2015 observed and ordered as under:-

“The Commission had directed parties vide orders dated 23.10.2015 and 13.11.2015 to hold a meeting to discuss the issues and file a proposal suggesting solutions to the problems faced by the parties. PSPCL has prayed vide memo No. 5082 dated 01.12.2015 for time of two weeks for filing the proposal. PSPCL shall file the proposal by 11.12.2015 and ensure to supply a copy of the same to the petitioner who may file its comments on or before 15.12.2015. The petition shall be taken up for hearing on 15.12.2015 at 11.30 AM.”

14. The Petition was taken up for hearing on 17.12.2015 and the Commission vide its order dated 18.12.2015 observed and ordered as under:-

“PSPCL was directed vide Order dated 02.12.2015 to file the proposal by 11.12.2015 and ensure to supply a copy of the same to the petitioner who may file comments by 15.12.2015. PSPCL again prayed for more time vide Chief Engineer/ARR & TR memo no. 5250 dated 15.12.2015. PSPCL is directed to file reply by 21.12.2015 with copy to the petitioner. The petition shall be taken up for hearing on 22.12.2015 at 3.30 P.M.”

15. PSPCL vide its letter dated 22.12.2015 filed its proposal in the matter of above Petition as directed by the Commission. The comments of PSPCL on the issues raised by Open Access Users

Association, as submitted by PSPCL, are summarized as under:

i) Purchase of Power under STOA under Bilateral Agreement

In case of curtailment of already approved schedule by NRLDC, open access consumer starts over drawl of power from PSPCL, for which PSPCL has to arrange additional power all of a sudden, for which PSPCL need to be compensated as per over drawl provisions of Open Access Regulations, 2011.

ii) Selection of Power Factor of 0.9.

The normative power factor of 0.9 is used as per General Conditions of Tariff, Supply Code and Grid Code. Therefore, following a different value of power factor only for the purpose of open access would not be justified. However, the Commission may review value of power factor to be considered as such for any category of consumers and his sanctioned CD be reworked on the basis of the new normative value of the power factor thus considered.

iii) Banking of Power :

The banking of power and its compensation be worked out as per relevant clause of the Open Access Regulations, 2011.

iv) Peak Load & Demand Violation Charges.

a) The applicability of demand surcharge for drawing power more than CD or admissible/actual drawl for the day shall be applicable throughout the year.

b) All Open Access consumers need to compensate PSPCL for all such violations carried out during the month on daily basis and suitable charges shall be levied.

v) Date of implementation of CC 29/2015.

CC 29/2015 was issued in line with the spirit of the directive issued by the Commission vide 5th amendment dated 01.06.2015 in Open Access Regulations, 2011, which has come into force from the date of publication in the official Gazette of the State.

16. The Open Access Users Association filed counter reply to the reply of PSPCL vide its letter dated 04.01.2016, which is summarized as under:-

i) Purchase of power under STOA under bilateral arrangement:

The open Access consumer had arranged the required power keeping in view the 5th amendment in Open Access Regulations, 2011. Curtailment is by Nodal RLDC on which the consumer/PSPCL has no control. Open Access Consumer has already paid the open access charges, application money, NOC charges and scheduling charges for injecting state, Nodal RLDC and drawing state. It has suffered financially for the curtailed quantum. It is a Force Majeure condition and no penalty needs to be imposed on the helpless consumers. The proposal of PSPCL is against the spirit of its own submissions as per 22(iv) and 22 (x) of the Order of the Commission dated 1.06.2015 in Petition No 16 of 2013. Charges for over drawl in Open Access Regulations, 2011 are punitive as these are frequency based UI charges as notified by CERC or the highest tariff of PSPCL for any category, whichever is higher, whereas PSPCL will be paying only frequency based charges for UI. The punitive UI charges may be made applicable for

willful defaulters, but can't be made applicable for Force Majeure conditions.

OAUUA prayed as under:

- a) No demand surcharge may be levied for variation in admissible drawl due to curtailment of approved schedule by Nodal RLDC due to system constraints.
- b) For power drawn for the curtailed quantum, normal frequency based UI charges may be recovered from the open access consumer.

ii) Selection of power factor of 0.90

While reiterating the provisions of Schedule of Tariff for taking power factor as 0.90, PSPCL has requested the Commission to decide the value of PF to be taken for any category of the consumers and has also stated that CD of each consumer of that category be reworked as per normative PF to be taken.

The present Petition is with regard to one category of LS consumers (General/Power Intensive) availing open access. CD for such consumers is sanctioned by PSPCL at the time of release of connection, based on connected load stated in the test report as per the then prevailing instructions and thereafter only CD is kept in view without any reference to connected load. Consumer has already paid service connection charges based on the contract demand sanctioned or the actual cost of the line, whichever is higher. Therefore, there is no question of reworking the CD at this stage.

PSPCL is using actual power factor for converting open access energy in kWh to kVAh for billing purposes and justice

demands that same PF be used for converting kW to kVA as well. When actual power factor is available, how can consumers be punished for a theoretical value of power factor. This can easily be achieved by suitable change in software as basic data is available in DLMS as well as ABT meters and the working has been demonstrated to PSPCL during the meeting of 06.12.2015.

Regarding revisiting the normative power factor fixation, the Commission may take appropriate view after consulting all stake holders as open access customers are only about 200 at present, whereas LS consumers are about 6000.

iii) Banking of Power due to outage of PSPCL system:

Whenever there is planned or unplanned shut down from PSPCL side on transmission line/grid substation connected to the open access consumer premises, the consumer cannot use the scheduled open access power for that period and the power is treated as banked with PSPCL. Open Access Regulations, 2011 allow the banked power to be drawn by the consumer in a period on any other day within 15 days, with the approval of PSPCL, treating as OA power. Earlier, there was no problem in availing such power in the designated time slot as consumer was not submitting bid for open access in that slot.

Due to 5th amendment in Open Access Regulations, 2011/ CC 29/2015, there is difficulty in availing such banked power on the day and time specified by PSPCL. For example, if there is shutdown from 9.00 to 13.00 hours on 2nd day of a month, PSPCL allows the drawl of power in the same time slot 9.00 to

13.00 hours on say, 13th day of the month. To avail banked open access during from 9.00 to 13.00 hours, the consumer will have to submit bid on the 13th day in two separate time block of 0.00 to 9.00 and 13.00 to 24.00 hours, in two bids in the Power Exchange instead of one bid in the time block of 0.00 to 24.00 hours. If both the bids mature, then consumer gets OA power for all the 24 hours and there is no violation of CD. Now, if one bid out of the two say 13.00 to 24.00 hours, does not mature, then either the consumer will have to keep his factory shut for 13.00 to 24.00 hours or will face penalty of demand surcharge for exceeding his admissible drawl during these hours. Admissible drawl will be fixed, based on the quantum of OA power during 0.00 to 13.00 hours and drawl of excess power above the admissible drawl during 13.00 to 24.00 hours will be treated as violation. However, in case, the power so banked is not drawn, the OA consumer will get UI, averaging to only about 20-30 paise per unit for the banked power. Such power is treated as PSPCL power in the bills and consumer has to pay full tariff to PSPCL, though he has already paid all the open access charges, losses and cost of power to Power Exchange. After paying about ₹ 6 per unit as open access cost and ₹ 6.15 per unit to PSPCL, consumer gets only about 25 paise per unit, though he is not at fault and the reason for surrender is outage of PSPCL system.

The consumers are also being discriminated and put to loss by PSPCL while allowing drawl of open access banked power. The power surrendered during 15 minutes block at the beginning and end is not treated as banked and compulsorily

treated as UI. Suppose the grid trips from 9.18 hours to 12.43 hours and local officers of PSPCL have certified the tripping of grid for the period, still PSPCL allows drawl of power only for the power banked from 9.30 to 13.30 hours and power for 12 minutes at the start and for 13 minutes at the end of tripping period (total 25 minutes) is treated as unaccountable in the banking and consumer gets only 25 paise per unit for the surrender under UI, though the consumer is not at all at fault.

The quantum of un-utilized power of open access during the period of shutdown/breakdown of PSPCL system be worked out on prorata basis and deducted from monthly consumption of the consumer while preparing the bill. If the outage of grid is certified from 9.18 hours to 12.43 hours i.e. for 205 minutes, then power unutilized (say X) be worked out from the quantum scheduled from 9.15 hours to 12.45 hours (210 minutes)(Say Y) as under:-

$$X=Y * 205/210.$$

Accordingly, provision of banking for outage of PSPCL system be deleted from the regulations.

iv) Penalty for peak load violation and demand surcharge to be charged together from TOD consumers:

During hearing of the Petition in the Commission as well as during the meeting on 06.11.2015, PSPCL had agreed that the demand surcharge of ₹750/kVA is excessive in case of violations in one or two blocks of half hours each, out of 1440 blocks in a month. Such one or two violations are not intentional but due to failure of equipment or may be due to

error of judgment on the part of the labour. The penalty of demand surcharge may be reviewed for one and two defaults in a month and full penalty may be made applicable for 3 and more defaults.

v) Date of effectiveness of CC 29 of 2015

CC 29 of 2015 was issued on 22.07.2015 and made effective from 03.06.2015 retrospectively. OAU has prayed that the date of applicability of CC 29 of 2015 should be the date of its issue, so that OA consumers drawing power on and from 02.06.2015 to 22.07.2015 are not unnecessary penalized. No consumer can imagine the intentions of PSPCL to use 0.90 as power factor, while the Commission has already issued orders of using actual power factor for conversion of OA power in kWh to kVAh as per orders in case of petition no. 3 of 2015.

PSPCL has not given any reasonable justifications in its letter dated 23.12.2015 for denial of all the submissions made against it in the written submission filed on 12.10.2015 by the Open Access Users Association. Other submissions of the Petition have been reiterated by OAU for appropriate consideration of the Commission for grant of relief as prayed for.

17. The Commission vide its order dated 15.01.2016 observed and ordered as under:-

“PSPCL had filed a proposal vide C.E./ARR & TR memo No.5305 dated 21.12.2015 in compliance with Orders dated 23.10.2015, 13.11.2015, 02.12.2015 and 18.12.2015. During last hearing held on 22.12.2015, the petitioner Association sought time to file its response to the proposal of PSPCL. The petitioner was directed

to file the same by 04.01.2016 with copy to PSPCL and PSTCL. The petition was listed for hearing on 06.01.2016 which was re-listed for 13.01.2016 vide No.10319/21 dated 05.01.2016. The petitioner Association has filed counter-reply dated 04.01.2016 to the PSPCL reply (proposal) dated 21.12.2015.

After hearing the petitioner and PSPCL, the Commission observed that issues involved have not been properly comprehended / appreciated by the parties in the light of the relevant Regulations of Commission applicable in the case and meeting shall be held with the staff of the Commission on 19.01.2016 at 2.30 P.M. to comprehend the issues.

The petition shall be taken up for further hearing on 27.01.2016 at 11.30 A.M.”

18. On the date of hearing of the Petition on 27.01.2016, the parties were heard by the Commission at length. Hearing of the matter was closed, and Order was reserved.

19. Findings and Decision:

After going through the submissions made by Open Access Users Association, PSPCL, PSTCL and deliberations held in the meeting with the staff of the Commission with PSPCL and OAU representatives, the Commission has observed and decided as under:-

- i. Variation in Admissible drawl due to curtailment in approved schedule by Nodal RLDC under Force Majeure conditions in the bilateral Inter-state Open Access transactions:**

The Petitioner submitted that the inter-State/inter-Regional

approved bilateral schedules, are sometimes curtailed by NRLDC due to transmission constraints and such curtailments are usually not notified in advance. In some cases, these curtailments are uneven for different time blocks which make the implementation of 5th amendment to Open Access Regulations, 2011 almost impossible. The Petitioner thus prayed that in such cases, the Open Access consumers should be allowed to draw full power from PSPCL up to contract demand.

PSPCL submitted that it has no objection if Open Access consumers are provided relief as may be decided by the Commission in such conditions. However, PSPCL in its rejoinder argued that in case of curtailment of already approved schedule by NRLDC, the Open Access consumers start over drawl of power from PSPCL, for which it has to arrange additional power at a short notice, resulting in financial loss to the licensee, for which PSPCL needs to be compensated as per over drawl provisions of Open Access Regulations, 2011. The Petitioner in its counter reply agreed that only UI charges may be recovered for the power drawn during such periods since PSPCL shall be paying only UI charges for any over-drawl during this period. This argument of the Petitioner is devoid of any merit since in case any system stability is compromised due to such over-drawl, severe penalties can be imposed by system operator. The system security cannot be allowed to be compromised just because there is provision for UI charges/charges for Deviation for over drawl, in the CERC Regulations. However, both the parties agreed that curtailment of already approved schedule by NRLDC due to transmission constraints are beyond the control of the

Users/Open Access consumers and PSPCL needs to be compensated for such over drawl.

The revision in drawl schedule due to bottleneck in evacuation of power due to any constraint has been dealt with in regulation 11.5 of State Grid Code. The relevant clause is reproduced as under:

“11.5 Revision in injection/drawal schedule on real time basis

During the day of operation, the injection/drawal schedule may be revised by SLDC under following conditions:

- (i) Revision of schedules of SGS shall be governed by SGC.*
- (ii) NRLDC may revise the schedule of drawal from Northern Region and consequently SLDC shall enforce the revisions within Punjab.*
- (iii) In case of forced outage of a unit of any SGS, SLDC may revise the generation/drawal schedule on the basis of revised declared capability by the affected SGS/Distribution Licensee.*
- (iv) In case of bottleneck in evacuation of power due to any constraint, SLDC may revise the generation/drawal schedule on the basis of revised declared capability by the affected SGS/Distribution Licensee.***
- (v) In consideration to clause 6.5 (16) of IEGC, the revised schedules in case of above contingencies (Regulation 11.5 (iii) & 11.5 (iv)) will become effective from the 4th time block, counting from the time block in which the revision is advised by the generator or in which the***

bottleneck in evacuation of power has taken place to be the first one. The revised declared capability will also become effective from the 4th time block. Also, during the first, second and third time blocks of such an event, the scheduled generation of the station will be deemed to have been revised to be equal to actual generation and also the scheduled drawals of the beneficiaries / Distribution Licensees will be deemed to have been revised to be equal to their actual drawals.

(vi) In case of any Grid Disturbance, Scheduled Generation of all the Generating Stations and Scheduled Drawal of all the Beneficiaries / Distribution Licensees shall be deemed to have been revised to be equal to their Actual Generation/ Drawal for all the time blocks affected by the Grid Disturbance. Certification of Grid Disturbance and its duration shall be done by SLDC.

(vii) -----

(viii)-----

(ix) -----

(x) -----

(xi) If, at any point of time, SLDC observes that there is need for revision of the schedules in the interest of better system operation, it may do so on its own and in such cases, the revised schedules shall become effective from the 4th time block, counting the time block in which the revised schedule is issued by SLDC to be the first one.

(xii) -----

(xiii)-----

(xiv) *Generation schedules and drawal schedules issued/revised by SLDC shall become effective from designated time **block irrespective of communication success.***

(xv) -----

(xvi) -----

(xvii) -----

(xviii) -----

(xix) -----

(xx) -----

(xxi) -----

Thus, as per State Grid Code, in case the already approved bilateral schedule of an Open Access consumer is curtailed by NRLDC/SLDC due to system constraints, the revised drawl schedule shall become effective from 4th time block, counting the time block in which such bottleneck in evacuation of power has taken place to be the first one. Accordingly, the Open Access consumers are required to adjust its drawl from PSPCL during this period.

During hearing, PSPCL and SLDC officers admitted that sometimes the intimation for such curtailments are not received in time.

Keeping in view the practical difficulties being faced both by PSPCL/SLDC/Open Access consumers, the Commission

decides that in case the Open Access consumer over draws power above the admissible drawl for the day after 4th time block, then such consumer shall be charged as per regulation 31(1)(a) of the Open Access Regulations, 2011, for the excess power drawn from PSPCL during the period of curtailment. The certification of such an event along with duration of curtailment shall be done by SLDC.

However, before proceeding to second issue, we would like to direct both the Open Access consumers as well SLDC to fulfill their obligations as per Open Access Regulations, 2011 and the Electricity Act, 2003, particularly regarding setting up and operating round the clock control room and efficient communication system. As per para 2.2(iii) of the Procedure for intra-State Short Term Open Access, the consumers availing Open Access are required to set up round the clock control room at their premises with telephone/mobile/fax/e-mail facilities. SLDC is also required to establish an efficient communication system for speedy delivery of information to the Users/Open Access consumers.

ii. Selection of power factor 0.90 for conversion of Open Access Schedule in MW to MVA for working out the admissible drawl:

The Petitioner pointed out that different power factors are being used for different purposes and there is need to adopt uniform power factor. A normative value of 0.90 power factor is used while sanctioning the maximum contract demand of the consumers as per clause 10 of the General Conditions of Tariff and to convert

load of some appliances in kVA into kW as per regulation 4.5.3 of the Supply Code. Power factor of 0.90 is also used while sanctioning peak load hours exemption in kW and also while permitting quantum of open access power in kW. However, for actual billing or levy of penalty, actual recorded power factor is being used, e.g. while levying penalty for contract demand violation and peak load hours violation, the actual recorded power in kW is taken and while preparing open access energy account in kVAh during the month, actual average power factor during the month is used. So, the instructions and the practice is to use normative value of power factor of 0.90 while sanctioning contract demand or peak load hours exemption etc., but to use actual value of power factor recorded for preparing bills or imposing any penalty. **The Commission, therefore, decides that actual value of average power factor achieved by the Open Access customer during the billing period be used by PSPCL for working out the admissible drawl from PSPCL in kVA, during the day.** Since surcharge for violation of admissible drawl is to be levied on the basis of data downloading report, so there will not be any difficulty in implementation of these instructions.

iii. Banking of power due to outage of PSPCL system:

The Petitioner submitted that as per para 8 of Procedure for intra-State Short Term Open Access issued by PSTCL with the approval of the Commission, in case an Open Access consumer is unable to draw the scheduled energy due to unscheduled cut or failure of transmission/distribution system of the licensee, the power injected is treated as banked power, which the Open Access customer can use within 15 days. The Petitioner

submitted that there is no clarity as to whether such power is to be considered as scheduled open access power or the power of PSPCL to determine the admissible drawl for that day. However, in the counter-reply, the Petitioner brought out that difficulty is being faced in availing such banked power since PSPCL decides the time slot and the day for utilization of such banked power by Open Access consumer. PSPCL officers admitted this fact during hearing. We may refer to regulation 31(1)(c), which provides as under:

“31 Imbalance Charge

The entitlement at the drawl point for any 15 minute time block shall be worked out after considering the Transmission and Distribution losses as determined by the Commission in the Tariff Order for that year.

1) *Open Access customer*

c) *Non drawl of scheduled power due to unscheduled power cut or failure of transmission/distribution system:*

If an Open Access customer is unable to draw the scheduled energy due to unscheduled cut or failure of transmission/distribution system of the licensee, the power injected will be treated as banked power and the Open Access customer will be allowed to draw the same within a period of 15 days with an advance notice of 48 hours to the licensee. The power will in no case be drawn during peak load hours, unless banked during peak load hours. In case the Open Access customer is unable to draw the banked power, then he will be paid by the licensee as per (b) above.”

The regulations are very clear that an Open Access customer can draw the banked power within 15 days with an advance notice of 48 hours to the licensee. As notice is to given to the licensee by the Open Access consumer, so it is for the Open Access customer to choose the day and the time slot within the stipulated period of 15 days and not the licensee. The only restriction is that banked power will not be drawn during peak load hours unless such power has been banked during peak load hours. **The Commission, therefore, directs PSPCL to follow regulation 31(1)(c) strictly in the sense that in case an open access customer is unable to draw the scheduled energy due to reasons mentioned in regulation 31(1)(c) of the Open Access Regulations, 2011, such banked power shall be allowed to be drawn by an Open Access customer within a period of 15 days with an advance notice of 48 hours to the licensee, by the Open Access customer .**

iv. Penalty of peak load violation and demand surcharge to be charged together from ToD Consumers.

The Petitioner's contention is that the penalties imposed as per para 3 of Commercial Circular 29 of 2015 issued by PSPCL are not in accordance with Open Access Regulations, 2011 and need to be amended accordingly. The Petitioner while agreeing for levy of demand surcharge, has raised objections to the levy of both demand surcharge and peak load hours violation penalty simultaneously. The Petitioner also objected to levy of penalty for peak load hours violations during the period of 1st October to 31st March, when the ToD Tariff is applicable. During this period, the

contention of the Petitioner is that once a consumer opts for ToD tariff regime, he opts out of PLEC system.

The Commission observes that the penalties imposed vide Commercial Circular 29 of 2015 are in furtherance to the implementation of 5th amendment to Open Access Regulations, 2011, notified by the Commission. During 1st October to 31st March, for consumer who opts for ToD tariff, PLEC are not applicable and the consumer can use power (both Open Access and licensee) up to its sanctioned contract demand. In case, where PLH exemption has not been availed by the consumer and PLEC has not been charged, there is no occasion for levy of peak load hours violation charges. **Thus, penalty for peak load hours violation is not applicable for those consumers who have opted for ToD tariff during the period 1st October to 31st March. However, in case, the consumer exceeds his sanctioned contract demand during this period, demand surcharge should be payable.**

During 1st April to 30th September, when PLH restrictions/exemption limit has been sanctioned to an Open Access consumer after payment of PLEC, then such consumer is required to keep its drawl both within the sanctioned PLH exemption limit as well as within the admissible drawl/sanctioned contract demand. Each violation shall be treated separately and penalties, as applicable, for each violation shall be levied.

However, the Commission observes that the penalties imposed vide Commercial Circular 29 of 2015 for ensuring implementation of 5th amendment to Open Access

Regulations, 2011, need to be further fine tuned, so that each day violation is taken care of, otherwise the purpose of carrying out 5th amendment to Open Access Regulations, 2011 will be defeated. PSPCL is directed to submit proposal to the Commission on the above lines, within 3 weeks from the date of issue of this Order. Till revised scheme is approved by the Commission, the instructions as contained in Commercial Circular 29 of 2015 shall continue, except charging of penalty for violation of PLH restrictions from those consumers who have opted for ToD tariff during the period 1st October to 31st March, as explained above.

v. Date of effectiveness of CC 29 of 2015:

After the issue of Commission's order dated 01.06.2015 in case of Petition no.16 of 2013 and 5th amendment in the Open Access Regulations, 2011, the Commission received representations from many industrial consumers/ associations seeking certain clarifications with regard to implementation of the order of the Commission dated 01.06.2015, in case of Petition no.16 of 2013. As the issues raised by these consumers/associations were already being dealt by PSPCL at various stages of grant of open access and billing, these consumers/associations were advised to approach PSPCL for seeking any clarification in the matter. Copies of these representations were also sent to PSPCL for information and necessary action. These consumers/ associations were also advised to file a petition with the Commission, if any relief/amendment in regulations was required. As a consequence of the representations from industrial consumers/associations, PSPCL issued CC 29 of 2015 to clarify the issues on which there

were representations from industrial consumers/associations. There is nothing new in CC 29 of 2015, only clarifications based on the already approved regulations/instructions by the Commission, have been issued by PSPCL through CC 29 of 2015. **The Commission, therefore, finds no merit in the submissions of the Petitioner for implementing CC 29 of 2015 issued by PSPCL prospectively.**

The petition is disposed of accordingly.

Sd/-
(Gurinder Jit Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 03.02.2016