

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

Petition No. 76 of 2015
Date of Order:03.02.2016

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

In the matter of : Petition under Section 142, 146 and 149 of the Electricity Act, 2003 read with Chapter XI of PSERC (Conduct of Business) Regulations, 2005 (as amended up to date) and other relevant rules and regulations as framed by this Commission, for taking necessary action against the respondent and other guilty officials of the respondents, for issuing memo no. 4983/87/DB-36 dated 08.12.2015 and memo no. 5006/13/DB-36 dated 17.12.2015 for levying PLEC (Peak Load Exemption Charges) as per PR Circular No. 5 of 2013 from the consumers who have opted for ToD Tariff and brought Open Access Power during 06.00 PM to 10.00 PM, for the period October-2014 to March-2015 and October-2015 onward, in violation of Tariff Orders passed by this Commission for FY 2014-15 and FY 2015-

16 and Order dated 20.05.2015 passed by this Commission in Petition No. 3 of 2015 and provisions of Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011.

AND

- In the matter of:
1. Garg Acrylics Ltd., Kanganwal Road, V.P.O. Jugiana, G.T. Road, Ludhiana through its authorized signatory Shri Suneel Sharma.
 2. Sportking India Ltd., Village Kanech, Near Sahnewal, G.T. Road, Ludhiana through its authorized signatory Shri Suneel Sharma, G.M. Engineering
 3. Sharmanjit Yarns Pvt. Ltd., Lakhawal Road, Kohara, Ludhiana through its authorized signatory Shri Ramesh Kumar Singh S/o Shri Ram Ashish Singh, Chief Engineer of the Company
 4. S.T. Cottex Exports Pvt. Ltd., Village Iraq, Machhiwara, Ludhiana, through its authorized signatory Shri Ram Khelawan Verma S/o Shri Babu Lal Verma, General Manager-Engineering of the Company
 5. Kaur Sain Spinners Ltd., Village Arrincha, P.O.Doraha, Tehsil Payal, District Ludhiana through its authorized signatory Shri Pradeep Kumar Patra S/o Shri Bishnu Charan Patra, G.M. (Engg.) of the Company.

6. Mittal Spinning Mills, Village Rohla, Chandigarh Road, Samrala, District Ludhiana through its authorized signatory Shri Pradeep Kuamr Patra S/o Shri Bishnu Charan Patra, G.M. (Engg.) of the Company.
7. Ahuja Cotspin Pvt. Ltd., Plot No. 25, Street No. 9, Kirpal Nagar, Ludhiana, through its authrozed signatory Shri Subrat Panda S/o Shri Ganga Dhar Panda, Vice President of the Company.
8. Arisudana Industries Limited, B-XXIX-143, Giaspura Road, G.T. Road, Ludhiana, through its authorized signatory Shri Ramesh Kumar Singh
9. Happy Forging Ltd., B-XXIX-2254/1, Opposite Hindustan Tyres, Kanganwal Road, P.O. Jugiana, Ludhiana through its authorized signatory, Shri Ramesh Kumar Singh

.....Petitioners

Versus

1. Punjab State Power Corporation Limited through its Managing Director, The Mall, Patiala.
2. Engineer-in-Chief/Commercial, PSPCL, The Mall, Patiala.
3. Deputy Chief Engineer/Billing, PSPCL, The Mall, Patiala.

.....Respondents

ORDER

The present Petition has been filed by Garg Acrylics Ltd. and others, who are having separate factories in the State of Punjab and are having separate electric connections. The Petitioners are having common cause of action as the Respondents and officials of Respondent No 1, have violated the Tariff Orders passed by the Commission for FY 2014-15 and FY 2015-16 by issuing memo no. 4938 dated 08.12.2015 and memo no. 5006 dated 17.12.2015 for levying Peak Load Exemption Charges (PLEC) as per PR Circular No. 5 of 2013 on the consumers (including Petitioners), who have opted for ToD tariff and brought open access power during 06.00PM to 10.00 PM, for the period from October, 2014 to March, 2015 and October, 2015 onwards. As the Petitioners are having common cause, so they have filed the present common petition before the Commission.

The submissions made by the Petitioners are summarized as under:

- (i) The Commission introduced ToD Tariff first time in the Tariff Order for FY 2013-2014. Para 5.3 of the ibid Tariff order deals with ToD Tariff and accordingly ToD Tariff was introduced for the period from October to March i.e. for six months. Relevant part of the Tariff Order has been reproduced as under:

“.....In the above circumstances, the Commission holds that there is sufficient justification for introduction of ToD Tariff for the

Large Supply industry and the Act also allows charging differential tariff.

The Commission, therefore, approves the proposal of PSPCL for introduction of Time of Day (ToD) Tariff for six months (October to March) of the year, during off peak hours from 22:00 hrs to 06:00 hrs for Large Supply industrial category, and approves rebate of ₹ 1/unit on the normal tariff for this category. There will not be any change in the duration of peak load hours restrictions which will not be for more than 3 hours in the evening between 18:00 hours to 22:00 hours and will continue to be governed as per existing instructions.

The Commission also directs PSPCL to submit a detailed report about the financial and technical impact of introducing ToD Tariff by 01.03.2014.”

- (ii) The Para 5.4 of the Tariff Order for FY 2013-2014 deals with Peak Load Exemption Charges. Para 5.4.6 of the Tariff Order for FY 2013-14 has been reproduced as under:

“5.4.6 The Commission further notes that Time of Day (ToD) Tariff has been approved in para 5.3 above, wherein a loss of ₹ 129.00 crore has been projected by PSPCL. PSPCL has further estimated that this loss gets reduced to ₹ 108 crore in case demand during off peak increases by 10%. The Commission observes that the benefit of ₹ 108

crore shall accrue to Large Supply industry only and the loss to PSPCL should be compensated by increasing the Peak Load Exemption Charges. The PSPCL has intimated an amount of ₹ 180 crore on account of PLEC during the year 2012-13. Therefore, an increase of 60% of the existing PLEC will cover the loss of ₹ 108 crore instead of 100% increase demanded by PSPCL.

Further, keeping in view the potential of shifting of Large Supply industrial load more than 10% from day to night hours, the Commission approves an increase of only 50% of the existing Peak Load Exemption Charges. The Commission also directs PSPCL to submit a detailed report about the results obtained with the increased Peak Load Exemption Charges by 01.03.2014”

On the basis of para 5.4.6 of the Tariff Order for FY 2013-2014, PSPCL issued PR Circular No. 5 of 2013. This circular was applicable only for FY 2013-14 and was not applicable thereafter.

- (iii) In FY 2014-15, the Commission introduced ToD Tariff for various categories of industrial consumers, who opted for ToD Tariff. ToD tariff was introduced for full day, though for six months only i.e. from October, 2014 to March, 2015. There were two tariffs i.e. one for those who opted for ToD tariff and the other for those who did not opt for ToD Tariff. For LS Industrial Category

Consumers, who opted for ToD tariff, following tariff was approved for FY 2014-15:

Period	Time Period	Tariff
October, 2014 to March, 2015	06.00 AM to 06.00 PM	Normal Tariff for FY 2014-15.
	06.00 PM to 10.00 PM	Normal tariff for FY 2014-15 Plus ₹ 3.00 per kVAh.
	10.00 PM to 06.00 AM	Normal tariff for FY 2014-15 minus ₹ 1.50 per kVAh.

For those Large Supply Industrial Consumers, who did not opt for ToD Tariff, following tariff was approved:

Period	Time Period	Tariff
October, 2014 to March, 2015	06.00 AM to 06.00 PM	Normal Tariff for FY 2014-15.
	06.00 PM to 10.00 PM	Normal tariff for FY 2014-15 Plus PLEC during peak load hours as existed prior to FY 2013-14.
	10.00 PM to 06.00 AM	Normal tariff for FY 2014-15.

PLEC was applicable only on the consumers who had not opted for ToD Tariff and on the consumers who had opted for ToD tariff, no PLEC was applicable.

- (iv) The Commission passed Tariff Order for FY 2015-16 and approved ToD tariff for various categories of industrial consumers, who opt for ToD tariff.

Only difference in the ToD tariff for FY 2014-15 and for FY 2015-16 was that in FY 2014-15, rebate was ₹1.50 per kVAh during 10.00 PM to 06.00 AM and in the FY 2015-16, it was reduced to ₹ 1.00 per kVAh. For FY 2015-16, ToD tariff was introduced for full day, though for six months only i.e. from October, 2014 to March, 2015. There were two tariffs i.e. one for those who opt for ToD tariff and the other for those do not opt for ToD tariff.

PLEC was applicable only on the consumers who have not opted for ToD tariff, and on the consumers, who have opted for ToD tariff, no PLEC was applicable.

- (v) The Petitioners purchase power from PSPCL and also under open access. All the Petitioners have opted for ToD tariff during FY 2014-15 and also in FY 2015-16. The Petitioners purchased power during 06.00 PM to 10.00 PM under open access during October, 2014 to March, 2015 and are also purchasing open access power during the period starting from October, 2015, when ToD tariff is applicable.
- (vi) In the Tariff Orders for FY 2013-14, 2014-15 and 2015-16, the Commission separately dealt with charges to be recovered from the consumers who purchase power under open access. Relevant parts of the Tariff Orders have been attached with the Petition.

- (vii) For the power purchased under open access by the Petitioners and other similarly situated consumers during 6.00 PM to 10.00 PM for the period from October, 2014 to March, 2015, PSPCL started charging ₹ 3 per unit, as PSPCL was charging from the consumers taking power from PSPCL and who opted for ToD tariff.
- (viii) Nahar Spinning Mills Limited filed a Petition (No. 3 of 2015) before the Commission, challenging the charging of ₹ 3 per unit, by PSPCL from the consumers for the power purchased under open access during 06.00 PM to 10.00 PM, besides other issues. The Commission after hearing the parties, allowed Petition No. 3 of 2015, by passing Order dated 20.5.2015 and on the issue of charging of ₹ 3 per unit / ToD tariff on open access power, held that PSPCL is wrongly charging ₹ 3 per unit on the power purchased under open access during Peak Load Hours. The relevant part of the Order passed by the Commission in Petition No. 3 of 2015 has been reproduced by the Petitioners as under:

“.....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).....”

- (ix) The Commission held that this order would be applicable to all similarly placed consumers. As such, the above said order was also applicable on the Petitioners who are purchasing power under open access during 06.00 PM to 10.00 PM and have also opted for ToD tariff. In the month of November, 2015, the Petitioners received bills for the electricity consumed in the month of October, 2015, and to the surprise of the Petitioners, the Respondents charged peak load hours charges at

the rate of ₹ 3 per unit for the electricity purchased under open access during 06.00 PM to 10.00 PM . This was in violation of the Order dated 20.5.2015 passed by the Commission in Petition No. 3 of 2015, and accordingly, some of the Petitioners filed a petition (No. 68 of 2015) before the Commission under section 142 and 146 of the Electricity Act, 2003.

- (x) Nahar Spinning Mills Ltd. also filed a Petition (No. 63 of 2015) before the Commission for compliance of the Order dated 20.5.2015 passed by the Commission in Petition No. 3 of 2015. On the date of hearing of this petition on 17.12.2015, PSPCL filed a letter dated 10.12.2015, wherein it was mentioned that competent authority has decided to implement the Orders of the Commission against Petition No. 1 of 2015 and Petition No. 3 of 2015 and amount already charged from 01.10.2014 to 31.3.2015 on account of purchase of open access power during peak load hours by Open Access customers, who have opted for ToD Tariff would be refunded and such charges may not be levied during FY 2015-16. Petition No. 63 of 2015 and Petition No. 68 of 2015 were disposed of accordingly by the Commission.
- (xi) It also came to the knowledge of the Petitioners that PSPCL has issued this letter on the basis of memo no. 4983/87/DB-36 dated 08.12.2015, issued by Dy. Chief Engineer/ Billing, PSPCL,

Patiala , wherein it was mentioned that it has been decided to levy Peak Load Exemption Charges as per PR Circular No. 05/2013, to the consumers, who opted for ToD tariff and brought open access power during Peak Load Hours (06.00 PM to 10.00 PM) for the period from October, 2014 to March, 2015 and from October, 2015 onwards. PSPCL further issued memo no. 5006/13/DB-36 dated 17.12.2015 on the same issue and directed to raise demand on the basis of PR Circular No. 5 of 2013. It also came to the knowledge of the Petitioners that PSPCL was going to issue bills with these charges immediately.

The above said letters dated 08.12.2015 and 17.12.2015 issued by PSPCL are totally wrong, illegal, against the Tariff Orders for FY 2014-15 and 2015-16 and Order dated 20.05.2015 issued by the Commission in Petition No. 3 of 2015 and also against the provisions of Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011.

- (xii) As per Tariff Orders for FY 2014-15 and 2015-16, once a consumer has chosen ToD tariff, then it has to pay as per ToD tariff and is not liable to pay any PLEC. The Petitioners have already opted for ToD tariff, and as such, are not liable to pay any PLEC. PLEC charges could be recovered from

those consumers, who have not opted for ToD tariff. As such, the impugned letter is totally illegal.

- (xiii) Even for the consumers, who have opted for ToD tariff on the power purchased under open access, charges could be recovered as per charges approved in the Tariff Order. In ToD tariff, it has been mentioned that ₹ 3 per kVAh would be charged to the consumers during 06.00 PM. to 10.00 PM and on that basis, PSPCL issued bills to the consumers, who have purchased power under open access. The Commission held in Petition No. 3 of 2015 that the said demand was totally wrong and illegal. The Commission held that PSPCL can recover charges as per Chapter 5 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) Regulations, 2011. Relevant part of the order has been reproduced as under:

“.....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.”

- (xiv) PSPCL has no right to recover any amount beyond what has been approved by the Commission, as per Chapter 5 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) Regulations, 2011, and there is no mention of PLEC in Chapter 5. Further as per Tariff Orders for FY 2014-15 and 2015-16, PSPCL cannot recover any PLEC from the consumers who have opted for ToD tariff. As such, the impugned letters dated 08.12.2015 and 17.12.2015 are totally wrong and illegal. If PSPCL had any intention to charge PLEC on open access consumption during ToD tariff, then they were required to approach the Commission for necessary amendment in Open Access Regulations and Tariff Order. The impugned letters are totally wrong and illegal.
- (xiv) As per section 142 and 146 of the Electricity Act, 2003, only the Commission has power to decide a complaint and take necessary action. As such, the Petitioner has filed the present petition/ complaint before the Commission.
- (xv) The Petitioners apprehend that in case stay is not granted against the Respondents, then they would issue bills as per letter dated 8.12.2015, raising the illegal demand of PLEC from the consumers who have purchased power under open access during 06.00 PM to 10.00 PM and this would cause great hardship to the Petitioners.

- (xvi) The Petitioners prayed for relief as under:
- (i) Necessary action against the Respondents and other guilty officials of the Respondent No. 1 under Section 142, 146 and 149 of the Electricity Act, 2003, read with Chapter XI of PSERC (Conduct of Business) Regulations, 2005 (as amended up to date) and other relevant rules and regulations as framed by the Commission, may be taken for violating Tariff Orders passed by the Commission for FY 2014-15 and 2015-16 and Order dated 20.05.2015 passed by the Commission in Petition No 3 of 2015 and provisions of Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) Regulations, 2011, by issuing memo no. 4938/87/DB-36 dated 08.12.2015 and memo no. 5006/13/DB-36 dated 17.12.2015 for levying PLEC (Peak Load Exemption Charges) as per PR Circular No. 5 of 2013 on the consumers who have opted for ToD tariff and brought open access power during 06.00 PM to 10.00 PM, for the period from October, 2014 to March, 2015 and from October, 2015 onwards.
 - (ii) PSPCL may be directed to immediately withdraw memo no. 4938/87/DB-36 dated 8.12.2015 and memo no. 5006/13/DB-36 dated 17.12.2015 for levying PLEC (Peak

Load Exemption Charges) as per PR Circular No. 5 of 2013 on the consumers, who have opted for ToD tariff and brought open access power during Peak Load Hours, or the said letters may be quashed by the Commission.

(iii) PSPCL may be restrained from issuing any bill on the basis of memo no. 4938/87/DB-36 dated 08.12.2015 and memo no. 5006/13/DB-36 dated 17.12.2015, and further if any bill has been issued, then, its operation may be stayed.

(iv) Any other relief or order which the Commission may deem fit and proper in the facts and circumstances of the case.

2. The Petitioners also filed Interlocutory Application (I.A) in the matter for granting ex-parte stay against the impugned letters. The submissions made by the Petitioners in the I.A. are summarized as under:

(i) Memo no. 4938/87/DB-36 dated 08.12.2015 and memo no. 5006/16/DB-36 dated 17.12.2015 for levying PLEC (Peak Load exemption Charges) as per PR Circular No 5 of 2013 from the consumers who have opted for ToD tariff and brought open access power during 06.00 PM to 10.00 PM, for the period from October, 2014 to March, 2015 and October, 2015 onwards, have been issued by PSPCL, in violation of the Tariff Orders issued by the Commission for FY 2014-15 and FY 2015-16

and Order dated 20.05.2015 passed by the Commission in Petition No. 3 of 2015 and provisions of Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) Regulations, 2011. The Petitioners have filed the accompanied Petition before the Commission and challenged the above said impugned letters.

- (ii) The respondents are going to issue bills on the basis of the above said letters, and in case the bills are issued, the Petitioners would suffer a great loss. Prima Facie case and balance of convenience are also in favour of the Petitioners.
- (iii) The impugned letters and any demand issued on the basis of the said letters would be totally wrong and illegal. The Petitioners are therefore entitled to get ex-parte interim stay of the impugned letters and any demand raised by relying upon the said letters, from the Commission. In case, ex-parte interim stay is not granted, the respondents would issue the bills and that would cause irreparable loss to the Petitioners.
- (iv) In the Interlocutory Application, Petitioners prayed as under:

The present application may kindly be allowed and ex-parte interim stay may kindly be granted against the above said impugned letters and the respondents may be restrained from issuing any bills, asking the Petitioners to pay Peak load

Exemption Charges (PLEC) on the electricity purchased under open access during 06.00 PM to 10.00 PM in the ToD period i.e. from October, 2014 to March, 2015 and from October, 2015 onwards, on the basis of the above said impugned letters, during the pendency of the present Petition, before the Commission, in the interest of justice.

3. After going through the contents of the Petition and Interlocutory Application in the Petition, the Commission vide its Order dated 22.12.2015 granted stay. The operative part of the Order is reproduced below :

“

The Commission heard the petitioners / applicants. The Commission notes that PSPCL filed memo No. 5214 dated 10.12.2015 in Petition No. 63 of 2015 two days after issuing of letter No. 4983/87 dated 08.12.2015 but contents of the same were not disclosed by PSPCL in its letter dated 10.12.2015. On the basis of submissions made in letter dated 10.12.2015, Petition No. 63 of 2015 filed under Section 142 of the Electricity Act,2003 was disposed of. This is a serious and deliberate lapse on the part of PSPCL. The Commission finds that the prima-facie case and balance of convenience lies in favour of the petitioners. Accordingly, the operation of instructions issued vide memo No. 4983/87 dated 08.12.2015 and vide memo No. 5006/13 dated 17.12.2015 is stayed till next date of hearing of the

petition i.e. 19.01.2016 to the extent of levying of charges as prescribed in PR Circular No. 05/2013 from the petitioner and all other similarly placed consumers who have opted for ToD Tariff and brought Open Access power during peak load hours for the period from October, 2014 to March, 2015 and from October, 2015 onwards. It is further clarified that even if bills have been issued, the PLEC charges included, if any, shall not be charged.

The compliance of the orders of the Commission passed in Petition No. 1 of 2015 and Petition No. 3 of 2015 filed by SIEL Complex and Nahar Spinning Mills respectively and Review Petition No. 3 and 4 of 2015 filed by PSPCL shall be made in letter and spirit without levying any PLEC charges as per PR Circular No. 05/2013.

With this IA No. 10 of 2015 filed in Petition No. 76 of 2015 is disposed of.

The petition is admitted. PSPCL is directed to file reply by 12.01.2016 with copy to the petitioners. The petition shall be taken up for hearing on 19.01.2016 at 11.30 A.M.”

4. PSPCL filed its reply to the Petition on 19.01.2016, vide letter dated 18.01.2016, which is summarized as under:
 - (i) Time of Day tariff was first introduced during FY 2013-14 and the extracts of paras 5.3.1, 5.3.2, 5.3.4, 5.3.6 and 5.3.7 of the Tariff Order for FY 2013-14 have been reproduced by the Petitioners as under:-

“5.3.1 Time of Day (ToD) tariff is a tariff structure in which different rates are applicable for use of electricity at different times of the day. There are certain times in a day when the demand for electricity is at its peak. During these times, the utility has to purchase power at a very high cost, much higher than the price paid by the consumers. Time of Day tariff is implemented to reduce consumption of electricity during peak hours. To achieve this objective, electricity is made expensive during peak hours so that consumers use less electricity during these hours. Electricity charges during off peak hours are also reduced as an incentive for people to use more electricity during the off peak hours.

5.3.2 Section 62 (3) of the Electricity Act, 2003 lays down as under:

“The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

5.3.4 The provision of the Tariff Policy (8.4 Definition of tariff components and their

applicability) envisages explicitly the emphasis on the ToD Tariff. The provision says that:

“Two-part tariffs featuring separate fixed and variable charges and Time differentiated tariff shall be introduced on priority for large consumers (say, consumers with demand exceeding 1 MW) within one year. This would also help in flattening the peak and implementing various energy conservation measures.”

5.3.6 The consumers have welcomed the initiative of PSPCL for introduction of Time of Day Tariff. The consumers have desired that instead of Peak Load Exemption charges, ToD should be introduced, which will contain Normal Tariff, Peak Load Tariff and Non Peak Load Tariff.

5.3.7 The Commission notes that the Time of Day (ToD) Tariff which is widely accepted Demand Side Management measure has already been implemented in majority of the States. In some other States like Haryana and Himachal Pradesh, ToD tariffs have not been notified but Peak Load Exemption Charges (PLEC), which are a form of ToD tariffs have been notified where additional tariff during peak load hours is applicable. Such type of ToD Tariff also exists in Punjab. The Commission further notes that in the initial stages, ToD tariffs were notified for limited consumer categories, typically for HT industrial and thereafter

progressively extended to bring other consumer categories in the fold of ToD tariffs.”

- (ii) The commission, therefore, approved ToD tariff for FY 2013-14. The operative part of the Order of the Commission approving ToD tariff, as contained in para 5.3.8 of the Tariff Order for FY 2013-14 has been reproduced by PSPCL as under:

“5.3.8.....The Commission, therefore, approves the proposal of PSPCL for introduction of Time of Day (ToD) Tariff for six months (October to March) of the year, during off peak hours from 22:00 hrs to 06:00 hrs for Large Supply industrial category, and approves rebate of ₹ 1/unit on the normal tariff for this category. There will not be any change in the duration of peak load hours restrictions which will not be for more than 3 hours in the evening between 18:00 hours to 22:00 hours and will continue to be governed as per existing instructions.....”

- (iii) The Commission revised the Peak Load Exemption Charges during FY 2013-14 in the Tariff Order for FY 2013-14. Para 5.4.5 of the Tariff Order for FY 2013-14 has been reproduced by PSPCL as under:

“5.4.5 The Commission finds sufficient reasons to restrict the load/demand during peak load hours to save the grid failure and peak load hour

restrictions is one of the mechanisms to achieve the same. The Commission observes that the increase in Peak Load Exemption Charges affects maximum to the continuous process industry. The general industry (other than continuous) can avoid the Peak Load Exemption Charges by not running during peak load period, whereas if a continuous process industry is not allowed to run during peak load hours, lot of material get wasted which might cost much more than the increased Peak Load Exemption Charges. Charging of Peak Load Exemption Charges from AP consumers is not justified as the supply is given only 6 to 8 hours per day as compared to 24 hours to other categories of consumers. The tariff for NRS consumers is already higher than Large Supply industrial consumers. Also, the Domestic Consumers consuming more than a specific limit are charged higher tariff.

The Commission further notes that the computation of $\pm 20\%$ of average cost of supply for the industrial consumers is after taking into account the peak load exemption charges. As such, no indirect cross subsidy is imposed.....”

The Commission approved an increase of 50% of the existing Peak Load Exemption Charges.

- (iv) In view of the persistent demand from Large Supply industrial category consumers in general for extension in the period of ToD tariff to whole

year, the Commission analyzed the issue and observed that in view of the surplus power available with PSPCL during April and May of the year also and the declarations of PSTCL and PSPCL that the power available including surplus power can flow through transmission system and sub-transmission system of PSTCL and PSPCL, the time period of ToD tariff could be extended to 31st May, 2014. It was also observed that this will help in utilization of surplus power and also flattening of the load curve during the period. The Commission in its Order dated 28.02.2014, accordingly decided to extend the period of ToD tariff to 31.05.2014.

- (v) The Commission continued Time of Day tariff during FY 2014-15. PSPCL has reproduced para 7.3.1. of the Tariff Order for FY 2014-15 in its reply.

PSPCL further submitted that in para 7.3.6 of the Tariff for FY 2014-15, the Commission noted that Peak Load Exemption Charges are a form of ToD tariff.

- (vi) In view of the persistent demand of consumers, the scope of Time of Day tariff was further studied and the Commission prepared a detailed staff paper in the matter, which was put up for public objection under the title 'Replacement of Peak Load Exemption Charges with Time of Day Tariff'.

PSPCL submitted the initial proposal of ToD tariff for FY 2014-15 as under:-

For all LS consumers other than Continuous Process Industry & PIU.	Existing tariff + ₹3.00/unit.
For all PIU & Continuous Process Industry consumers.	Existing tariff + ₹4.00/unit.

PSPCL further submitted in its reply that the consumers did not raise any objection regarding applicability of ToD tariff only on PSPCL power.

It has further been submitted by PSPCL that the Commission was of the view that surplus power of PSPCL shall be utilized. PSPCL in its reply has reproduced part of para 7.3.14 of the Tariff Order for FY 2014-15, as under:

“7.3.14..... The Commission is of the view that with the implementation of the proposal contained in the staff paper, the Large Supply and Medium Supply industrial consumers will shift their operations to off peak hours, resulting in reduction in consumption during peak hours and normal hours and increase in consumption during off peak hours. The consumption during off peak hours may increase further, due to cheaper power available during this period. Further, PSPCL will be in a position to release more load/connections as a result of shifting of load. All this may give fillip to the industry, more employment opportunities, more

revenue to the State Govt. etc. This may also result in increase in revenue of the utility.”

- (vii) ToD tariff was approved by the Commission for FY 2014-15 under para 7.3.15 of the Tariff Order, for Large Supply industrial category and Medium Supply industrial category of consumers.

PSPCL has submitted that as per ToD structure given in para 7.3.15 of the Tariff Order for FY 2014-15, for use of electricity during peak hours during Non ToD period i.e. from 1st April to 30th September, PLEC charges are leviable, and during ToD period i.e. from 1st October to 31th March, ToD tariff is applicable.

- (viii) There is sudden increase of open access power during peak load hours during this year because the consumers are trying to avail maximum benefit of not paying any peak load hours charges on open access power

- (ix) Regulation 18(2)(g) of the PSERC Open Access Regulations, 2011, states as under:

“During peak load hours restrictions, the open access customers shall restrict their total drawl including open access power to the extent of the peak load exemption allowed.”

As per provision of this regulation, which came into effect from the year 2011, the open access consumers were getting PLEC approved, for use of electricity during peak load hours, which

included open access power, and paying PLEC accordingly.

ToD tariff, which is optional for consumers, has not replaced the PSERC Open Access Regulations, 2011, which are enforceable and valid even after introduction of ToD tariff.

- (x) (a) Regulation 26(1) of PSERC Open Access Regulations, 2011, states as under:

“If open access facility is availed of by a subsidising consumer of a distribution licensee of the State, then such consumer, in addition to transmission and/or wheeling charges, shall pay cross subsidy surcharge determined by the Commission.....”

- (b) As per Regulation 26(2) of PSERC Open Access Regulations, 2011, the cross subsidy surcharge for various categories of consumers is worked out as under

$S=T-C$, where,

S is the cross subsidy surcharge

T is the average per unit realization from the relevant category of consumers

C is the combined average cost of supply of distribution licensee.

The revenue realization from LS consumers includes revenue from PLEC and if neither PLEC nor ToD tariff is charged on open access consumers, opting for ToD tariff during peak load hours, the cross subsidy surcharge paid by

these open access LS consumers shall only partially subsidize the cross subsidy element.

In situation, wherein those open access consumers who have opted for ToD tariff shall pay neither PLEC nor ToD tariff on open access power during peak load hours compared to other open access consumers who have not opted for ToD tariff and pay PLEC on open access power shall disturb the revenue neutrality of the Tariff Order.

PLEC need to be recovered from open access consumers on the open access power purchased during peak load hours and these charges cannot be recovered from other consumers in any other form, like additional surcharge, for no fault of theirs.

- (xi) The revenue realization from LS consumers includes revenue from PLEC and if neither PLEC nor ToD tariff is charged on open access consumers opting for ToD tariff during peak load hours, the cross subsidy surcharge paid by these open access LS consumers shall only partially subsidize the cross subsidy element. Following data to describe cross subsidy level for LS Consumers for FY 2014-15 and FY 2015-16 has been given by the Petitioner:

(As per Tariff Order for FY 2014-15)

Energy Sales (MU)	Revised Tariff (paise/unit)	Revenue (₹ crore)	PLEC+ MMC etc. (₹ crore)	Non tariff Income (₹ crore)	Impact of High voltage rebate, extension of ToD period and (APTEL) order (₹ crore)	Total Revenue (₹ crore)	Realisation (paise/unit)	Cross subsidy levels (%)
10172	646	6571.11	378.87	153.54	149.38	6954.14	683.66	16.21%

(As per Tariff Order FY 2015-16)

Energy Sales (MU)	Revised Tariff (paise/unit)	Revenue (₹ crore)	PLEC+ MMC (₹ crore)	Non tariff income (₹ crore)	Impact of High voltage rebate, TOD tariff and TOD rebate for adjusting PLEC (₹ crore)	Total Revenue (₹ crore)	Realisation (paise/unit)	Cross subsidy levels (%)
12245	646	7910.27	492.5	273.67	265.95	8410.49	686.85	14.89%

(xii) As per Regulation 31(1)(a) of Open Access Regulations, 2011, PLEC have also been considered by the Commission along with the tariff to be paid by an Open Access consumer for over drawl in excess of the scheduled entitlement.

(xiii) Based on the above submissions, PSPCL has concluded as under:

(a) All the LS consumers have to pay either PLEC or ToD tariff for the power consumed during peak load hours since PLEC or ToD tariff serve the same purpose and are a commercial mechanism with different nomenclature to charge higher tariff for power consumed during peak load hours.

(b) In case of Open Access consumers, these consumers are being charged PLEC on total

power consumed during peak load hours including open access power as per Regulation 18(2)(g) of Open Access Regulations, 2011, and they have been paying the same since these regulations have come into force.

- (c) The Commission vide orders passed in Petitions No.1 of 2015, Petition No.3 of 2015 and Review Petition No.4 of 2015 has decided that ToD tariff is applicable only on PSPCL power.
- (d) Therefore, on the open access power during peak load hours, PLEC has been charged instead of ToD tariff as per Regulation 18.2(g) of Open Access Regulations, 2011 and as per prevailing practice during previous years.
- (e) To levy PLEC or ToD on the Open Access consumers that get all their power from PSPCL during peak load hours and not levying the same on Open Access consumers, who consume only partially from PSPCL, is in violation of section 62 (3) of the Electricity Act, 2003.
- (f) Not levying either PLEC or ToD on open access power shall unjustifiably enrich the Open Access consumers at the cost of other PSPCL consumers. In this case, the consumer is buying almost total power from

open access during peak load hours in the months of Oct., Nov. and Dec., 2015.

- (g) The calculations for the cross subsidy surcharge include the PLEC/ToD tariff which shall need revision, if neither PLEC nor ToD is charged.
- (h) Those LS consumers who draw total power from PSPCL during peak load hours subsidise fully by paying either PLEC or ToD, whereas open access consumers not paying either PLEC or ToD on open access power during peak load hours shall be partially subsidizing. Therefore, to bring them on par, a separate rate of cross subsidy surcharge for this category shall have to be specified.
- (i) This shall virtually amount to altering the revenue neutrality of the Tariff Order and charging different tariff to same category of consumers. Therefore, the Open Access consumers if availing ToD tariff should either not inject or draw any open access power during peak load hours or pay either PLEC or ToD tariff to maintain non discrimination with other consumers and maintain revenue neutrality of the Tariff Orders.
- (j) These consumers are also availing the benefit of load up to CD without paying any extra charge for the open access power during peak load hours.

5. The para wise reply to the Petition submitted by PSPCL is summarized as under:

- (i) The charges to be recovered from open access consumers are mentioned in Tariff Orders of relevant years but these charges are not mentioned in ToD Tariff Orders.
- (ii) Complying with the orders of the Commission, ₹ 3 per kVAh charged on open access power has been refunded to the consumers.
- (iii) The levy of PLEC charges as per memo no. 4983 dated 08.12.2015 is fully justified as per clause 18(2)(g) of Open Access Regulations, 2011, sprit of section 62 (3) the Electricity Act, 2003 and Tariff Orders.
- (iv) PR Circular was issued in compliance to the Commission's Order dated 11.04.2013 in case of Petition No.17 of 2013 .
- (v) The plea of the consumer that he should neither pay PLEC nor ToD tariff is totally unjustified and is against section 62 (3) of the Electricity Act, 2003, Regulation 18.(2)(g) of Open Access Regulations, 2011, provisions of Tariff Orders for FY 2013-14, 2014-15 and FY 2015-16 and various other provisions of the Open Access Regulations, 2011. If the consumer has not obtained any approval from PSPCL for peak load exemption and is paying ToD tariff on PSPCL consumption, then

why is he consuming open access power during peak load hours.

Consumers should only use PSPCL power during peak load hours for which he is paying ToD charges and the Commission has ordered that ToD tariff is applicable only for PSPCL power.

- (vi) The consumer is trying to mislead the Commission and has invented a noble way of increasing his business profit by manipulating and reducing his electricity bill.

The Open Access consumers who are generally big business houses want to enrich at the cost of other LS and other categories of consumers.

- (vii) PSPCL prayed as under:

- (a) To fix the cross subsidy surcharge for Open Access consumers opting for ToD tariff at the same level as per charges (PLEC+ Cross Subsidy) paid by non ToD Open Access consumers during peak load hours or to allow PSPCL to charge PLEC on open access power during peak load hours for consumers who have opted for ToD tariff as per memo no. 4983 dated 08.12.2015 so that PSPCL is able to realize the revenue approved in the Tariff Orders for FY 2014-15 and FY 2015-16.

- (b) Alternatively, such Open Access consumers be directed not to schedule open access power

during peak load hours and consume only PSPCL power during peak load hours.

In case of non-compliance, penalty should be levied.

(c) Restrain such Open Access consumers not to misinterpret and misguide the Commission regarding various provisions of Open Access Regulations, 2011, Electricity Act, 2003 and provisions of Tariff Orders issued by the Commission. They should be reframed from illegal enrichment by escaping paying of PLEC on open access power during peak load hours at the cost of other consumers of the State.

6. The commission vide its order dated 20.01.2016 observed and ordered as under:

“The petition was admitted vide Order dated 22.12.2015 and PSPCL was directed to file reply by 12.01.2016 with copy to the petitioner. PSPCL has filed reply vide C.E./ARR & TR memo No. 5550 dated 18.01.2016 during hearing. The Ld. Counsel for the petitioner submits that he intends to file rejoinder to the reply of PSPCL and further submits that he shall do so by 22.01.2016 and a copy shall be supplied to PSPCL. The petitioner shall file the rejoinder by 22.01.2016 with copy to PSPCL.

The petition shall be taken up for hearing on 27.01.2016 at 11.30 A.M. The stay granted vide Order dated 22.12.2015 shall remain in operation till next date of hearing.”

7. The Petitioners submitted rejoinder to the reply of PSPCL vide letter dated 22.01.2016, summarized as under:

(i) The contents of para 7.3.6 of the Tariff Order for FY 2014-15 as reproduced by PSPCL are not complete and they have reproduced a part of a line and trying to misinterpret the same. This para has to be read as a whole. Part of the contents as noted in this para, from where the respondent has picked a part of the line, have been reproduced as under:-

“7.3.6..... ToD tariffs have not been notified but Peak Load Exemption Charges (PLEC) which are a form of ToD tariffs have been notified where additional tariff during peak load hours is applicable....”

(ii) The Petitioners availed electricity under open access, as admissible under the provisions of Open Access Regulations, 2011 (as amended upto date). The question of availing maximum benefit is immaterial because the Petitioner is making admissible drawl only.

(iii) The bare perusal of para 7.3.15(i)(b)(i) of the Tariff Order for FY 2014-15 would show that for ToD tariff there are no peak load hours and so no question arises seeking exemption or restricting consumption of electricity under open access. Para 7.3.15(i)(b)(ii) shows that peak load hours are

applicable only to those consumers who have not opted for ToD tariff. As such, regulation 18(2)(g) of Open Access Regulations, 2011, has no applicability on the consumers who have opted for ToD tariff.

- (iv) The Commission has already calculated cross subsidy surcharge as per regulation 26(2) of the Open Access Regulations, 2011, in the Tariff Order for FY 2015-16 and this calculation was not challenged by PSPCL before the APTEL. Now, in the guise of PLEC, PSPCL cannot review the Tariff Order passed by the Commission.
- (v) ToD tariff was first introduced in FY 2013-14 and thereafter the respondent filed ARR petitions for FY 2014-15 and FY 2015-16 and no such plea was taken by the respondent at the time of filing/processing of ARR. PSPCL cannot on their own recover Peak Load Exemption Charges from the Petitioners, when the rules and regulations and Tariff Order issued by the Commission nowhere authorize PSPCL to charge any such amount from the consumers opting for ToD tariff.
- (vi) Regulation 31(1)(a) of the Open Access Regulations, 2011 is applicable only to those Open Access consumers who are not the consumers of PSPCL. It deals with over drawl and in the present case there is no overdrawl as the Petitioners are taking electricity under open access as admissible under Open Access Regulations, 2011.

(vii) In reply to conclusions drawn by PSPCL, the Petitioners submitted as under:

(a) PSPCL is misinterpreting regulation 18(2)(g) of the Open Access Regulations, 2011. As per this regulation, during peak load hours restrictions, the open access customers shall restrict their total drawl including open access power to the extent of the peak load exemption allowed. This regulation nowhere says that an Open Access consumer is liable to pay PLEC. It only restricts the admissible drawl during Peak Load Hours. In ToD period i.e. from October to March, there are two tariffs, one is for consumers opting for ToD tariff and second for consumers not opting for ToD tariff. In ToD tariff, no Peak Load Hours or PLEC have been mentioned and there is no need to seek any exemption from PSPCL. Whereas, in the tariff for the consumers not opting for ToD tariff, Peak Load Hours and PLEC have been mentioned in the Tariff Order and consumers have to seek exemption from PSPCL. From this, it is very much clear that a consumer who has opted for ToD tariff is not liable to pay any Peak Load Exemption Charges.

(b) The Commission has held that no rebate is admissible in respect of power purchased through open access by the Open Access

consumers during 10.00 PM to 06.00 AM. The Petitioners are not claiming any rebate on the open access power taken during 10.00 PM to 06.00 AM.

(c) The Commission has passed Tariff Orders for respective years and PSPCL can recover charges as per Tariff Orders only. If PSPCL had any objection regarding Tariff determined, then it could have filed an appeal before the Appellate Authority or move appropriate petition before the Commission. But PSPCL has no power to recover PLEC illegally, at its own, as the Petitioners have chosen ToD Tariff.

(d) The Commission has held in Petition No. 3 of 2015 as under:-

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

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

As per Chapter 5 of the ibid regulations, open access consumers are liable to pay

Transmission Charges, Scheduling and System Operation Charges, Wheeling Charges, Cross Subsidy Surcharge and Additional Surcharge. There is no provision of ToD charges to be levied upon power purchased through open access by the Petitioner during peak load hours, in these regulations.....”.

In the Open Access Regulations, 2011, there is no provision for charging Peak Load Exemption Charges also from the consumers availing power under open access, who have opted for ToD tariff. It has further been submitted that the Commission after considering all the facts passed Tariff Order for respective years and determined the charges to be recovered from Open Access consumers and as per information of the Petitioners, the same have not been challenged by PSPCL by filing any appeal.

(e) The Commission has already passed the Order in Petition No. 3 of 2015, where PSPCL has taken a plea of suffering revenue losses. The ToD tariff was introduced in FY 2013-14 and PSPCL is filing ARR for every year, but has not taken any such plea for challenging the Tariff determined by the Commission.

8. The para wise reply submitted by the Petitioners in the rejoinder is summarized as under:

- (a) The Commission while deciding Petition No. 3 of 2015 has held that PSPCL is wrongly charging ₹ 3 per unit on the power purchased under open access during peak load hours and directed PSPCL to refund the amount so charged. But instead of refunding the amount, PSPCL again started charging this amount from the consumers taking electricity under open access during the month of October, 2015. The Petitioners filed petitions before the Commission and interim stay was granted and only thereafter PSPCL filed memo no. 5214 dated 10.12.2015 in Petition No. 63 of 2015 submitting that PSPCL has decided to implement the Orders of the Commission passed in Petition No. 1 of 2015, Petition No. 3 of 2015 and Review Petition Nos. 3 and 4 of 2015. PSPCL has concealed the fact from the Commission that they are planning to charge Peak Load Exemption Charges to the Open Access consumers, who have opted for ToD tariff, though PSPCL could not legally recover any PLEC from the Petitioners.
- (b) Bare perusal of the order passed by the Commission in Petition No. 17 of 2013 would show that the said Petition was disposed of in terms of Order of the Commission passed in Tariff Order dated 10.04.2013 for FY 2013-14. So this could be applicable for FY 2013-14 only and has no validity thereafter. These charges are for those consumers

who applied for Peak Load Exemption during FY 2013-14. The Petitioners have not applied for any Peak Load Exemption during the period from October, 2014 to March, 2015 and from October, 2015 to till date and as such no exemption charges could be recovered from the Petitioners.

9. The commission vide its order dated 29.01.2016 observed and ordered as under:

“PSPCL seeks time to file its response to the rejoinder dated 22.01.2016 filed by the petitioner. PSPCL is allowed to file the same by 29.01.2016 with copy to the petitioner. The stay granted vide Order dated 22.12.2015 shall remain in operation till next date of hearing.

The petition shall be taken for hearing on 01.02.2016 at 11.30 A.M.”

10. PSPCL filed reply/comments to the rejoinder filed by the Petitioners in compliance to the Commission's order dated 29.01.2016, vide its letter dated 29.01.2016, which is summarized as under:

- (i) The Petitioners have conveniently avoided the basic issue brought out and instead all their pleas are based on frivolous logics with sole aim of somehow to avoid paying the legitimate charges as per the Tariff Orders issued by the Commission, which are based on provisions of the Electricity Act, 2003, Open Access Regulations, 2011 and Tariff Policy.

- (ii) The Petitioners are trying to find loopholes to earn illegitimate profit whereas these loopholes actually do not exist if the Tariff Orders are understood comprehensively. PSPCL has submitted that the issues have been explained in PSPCL's reply dated 15.01.2016 and PSPCL has reiterated salient point in its comments.
- (iii) The Open Access consumers have been paying PLEC on total consumption i.e. open access power plus PSPCL power during peak load hours ever since Open Access Regulations, 2011 have come into effect since 2011 and even during non ToD period i.e. from 1st April to 30th Sept. each year thereafter. Therefore, levying of PLEC on open access consumption during peak load hours during ToD period is as per prevailing instructions approved by the Commission.
- (iv) Moreover, even Non Open Access LS consumers who have opted for ToD tariff are paying ToD tariff on total consumption which they are drawing from PSPCL during peak load hours, and has paid a total of ToD tariff/charges of ₹644184840/- during peak load hours during the period October, 2014 to March, 2015. Similarly Non Open Access consumers who did not opt for ToD tariff have paid a total of PLEC of ₹473046567/- during the period October, 2014 to March, 2015. Open Access consumers who have not opted for ToD tariff have paid PLEC of ₹384426/- during the period October,

2014 to March, 2015. The details of power drawn by Open Access consumers during ToD period from PSPCL as well as through open access during Peak Load Hours have been submitted by PSPCL as under:

Month	2015-16	
	OA Units	PSPCL Units
Oct, 2015	20293832	31961792
Nov, 2015	28258902	26351107
Dec, 2015	32799814	13458732

PSPCL has further submitted that the tendency of open access consumers to bring more power from Open Access during Peak Load Hours is on the rise. This will affect PSPCL, commercially as well as technically, as the methodology behind devising TOD Tariff lies on the fact that the load curve of the utility will get flattened and utility will be benefited. More and more Open Access consumers, adopting the same trend in future shall adversely affect PSPCL.

- (v) If plea of the Petitioners for not charging PLEC on open access power during peak load hours is accepted, it shall create two categories of consumers within LS category i.e. one who pay PLEC/ToD on total consumption during peak load hours and others who pay ToD only on part of their consumption which they get from PSPCL, which is shrinking, during peak load hours.
- (vi) The Open Access consumers, who have opted for ToD tariff shall escape from paying fully the

PLEC/ToD tariff as has been worked out in the Tariff Orders, since PLEC/ToD tariff forms a part of the average rate of realization from LS category.

(vii) The Commission while disposing off petition No.59 of 2015 filed by Indus Towers Ltd., vide Order dated 12.01.2016, regarding ToD tariff, decided as under:-

“(i).... The very purpose of introduction of ToD tariff for LS and MS category of consumers is to flatten the load curve of the utility by way of shifting the load from peak load hours to off peak hours.....”

(ii) The Commission further reiterated in its Order that section 62(3) of Electricity Act, 2003 states as under:-

"The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. "

The Commission has further held in this ibid Order that the principles of differentiation of tariff to be determined by the Commission under the

Electricity Act, 2003 have been clearly laid down in Section 62(3) of the Electricity Act, 2003. Giving undue preference of TOD Tariff to Telecom Tower consumers if given, will be against the provisions of Section 62(3) of Electricity Act, 2003.

One of the stated purpose of TOD tariff was that the revenue of utility would increase when load shall shift to off peak hours and PSPCL shall be compensated for the fixed charges due to availability of surplus power.

- (viii) If PLEC is not charged on open access power during peak load hours, all the above stated objectives of ToD tariff shall be defeated, due to the reasons stated by PSPCL as under:
 - (a) The consumers shall tend to consume more open access power during peak load hours due to saving in tariff. The flattening of the load curve shall adversely suffer.
 - (b) The LS consumers who purchase power through open access and those who source all power from PSPCL during peak load hours, shall pay differential tariff in violation of Section 62(3) of the Electricity Act, 2003.
- (ix) The Open Access consumers who have opted for ToD Tariff, are enjoying the following advantages viz-a-viz other LS consumers:-
 - (a) These consumers are allowed to use load upto

CD (without any prior sanction) instead of peak load allowed.

- (b) They don't pay any peak load violation charges on daily basis.
 - (c) The proposal of levying of PLEC on open access power as per memo no 4983 dated 08.12.2015 is on actual open access units consumed, instead of on lump sum basis calculated as per Peak Load Exemption.
 - (x) PSPCL has charged PLEC on Open Access power vide memo no. 4983 dated 08.12.2015 as per approved tariff frame-work by the Commission and there is no violation.
 - (xi) The Petitioners may be directed to abide by the Tariff Orders of the Commission in letter and spirit and pay all the charges mentioned therein.
 - (xii) The Petitioners are esteemed consumers of PSPCL but nevertheless should not shy away from paying the legitimate and approved electricity charges as per Tariff Orders and instead should increase business efficiency elsewhere to reduce their expenditure.
11. The Commission vide its order dated 01.02.2016 observed and ordered as under:
- “PSPCL had sought time to file response to the rejoinder dated 22.01.2016 filed by the petitioner. PSPCL was directed to file the same by 29.01.2016. PSPCL filed the*

same vide memo No.5650 dated 29.01.2016 during hearing.

After hearing the arguments on behalf of parties at length, hearing of the case is closed.

Order is reserved”.

12. PSPCL filed additional comments vide its letter dated 01.02.2016 during the hearing, summarized as under:
 - (i) The provision in the NOC being issued by SLDC for allowing those OA consumers who have opted for ToD tariff to restrict demand within its sanctioned contract demand has not been provided in the TO and General Conditions of Tariff approved by the Commission.
 - (ii) Now, since the Commission in the Orders against Petition No. 1 and Petition No. 3 of 2015, has held that ToD tariff is applicable on PSPCL power only and thus cannot be applied on open access power. Therefore, the drawl against the open access is to be regulated as per regulation 18(2)(g) of the Open Access Regulations, 2011, which provides that the Open Access consumer has to restrict his drawl during peak load hours including open access power to the extent of peak load exemption allowed and has to be dealt accordingly as per procedures approved by the Commission.

13. Findings and Decision

After going through the submissions/arguments made by the Petitioners and PSPCL, the Commission decides as under:

The only issue to be answered in this Petition is whether Peak Load Exemption Charges (PLEC) as contained in

PSPCL memo no. 4983/87 dated 08.12.2015 can be recovered from the Large Supply Industrial Consumers who have opted for ToD tariff and purchased open access power during peak load hours during 1st October 2014 to 31st March 2015 and/or during 1st October 2015 to 31st March 2016.

The Petitioners contested the levy of PLEC from Open Access Consumers who are covered under ToD Tariff on the grounds that neither the Tariff Orders issued by the Commission for FY 2014-15 and FY 2015-16 permit levy of such charges during the period the consumers have opted for ToD tariff nor PSERC (Terms & Conditions for Intra-state Open Access) Regulations, 2011 (hereinafter termed as Open Access Regulations, 2011) provides for levy of such charges on the open access power availed by the consumers. The Open Access Regulations, 2011, in Chapter 5, provides for levy of transmission charges, scheduling and system operation charges, wheeling charges, cross subsidy surcharge, additional surcharge and the same has also been held by the Commission in its Order dated 20.05.2015 in Petition No. 1 of 2015. Neither ToD nor PLEC have been provided in any of the Regulations governing open access power. The Petitioners further argued that NOC issued by PSPCL clearly states that for consumers who have opted for ToD tariff, the total drawl both from PSPCL as well as open access power shall be

restricted to sanctioned contract demand both during peak as well as non peak hours.

On the other hand, PSPCL relied heavily on Regulation 18(2)(g) of the Open Access Regulations, 2011 to justify levy of PLEC on Open Access customers and argued that ToD tariff has not replaced the Open Access Regulations, 2011. Regulation 18(2)(g) reads as under:

“During peak load hour restrictions, the open access customers shall restrict their total drawal including open access power to the extent of the peak load exemption allowed.”

Let us examine the issue in the light of above mentioned regulation. The regulation 18(2)(g) starts with the words ‘*During peak load hour restrictions*’, which implies that the ibid regulation shall become operative only if there are peak load hours restrictions. The regulation then proceeds further to lay down that in case of peak load hours restrictions, the Open Access customer shall restrict his drawal including open access power to the extent of peak load exemption allowed. It means that in case there is no peak load hours restriction during any period of the year, there will be no restriction for drawal of power including open access power up to sanctioned contract demand.

Now peak load hours restrictions shall be as may be approved by the Commission. The terms and conditions for imposition of peak load hour restrictions/PLEC or Time of the Day (ToD) tariff are governed by General

Conditions of Tariff and the Tariff Order for the relevant year. Clause 15 of the General Conditions of Tariff annexed to Tariff Order for FY 2014-15 as well to Tariff Order for FY 2015-16 reads as under:

“15. Levy of Peak Load Exemption Charges/ToD Tariff

*15.1 All Large Supply consumers and Medium Supply consumers (except essential services) having sanctioned load of 50 kW or more, **may be** subjected to Peak Load Hours Restrictions, as declared by the distribution licensee from time to time **with the approval of the Commission**. During peak load hours restrictions, the consumers shall be allowed to use only part of their sanctioned load without payment of any additional charges. However, a consumer shall be entitled to use additional load during peak load hours restrictions, which will be governed by **such conditions and payment of Peak Load Exemption Charges (PLEC) as approved by the Commission**. PLEC shall not be adjustable against MMC and will also be exclusive of electricity duty, cesses, taxes and other charges levied by the Government or other competent authority.*

*15.2 The consumers covered under Peak Load Hours instructions as per 15.1 above may opt to be covered under ToD Tariff **on such terms and conditions as specified by the Commission instead of Peak Load Hours instructions.**”[Emphasis supplied]*

Thus, clause 15.1 of the General Conditions of Tariff is clear that Large Supply & Medium Supply industrial consumers may be subjected to peak load hour restrictions as approved by the Commission. The word ‘**may**’ in the opening sentence clearly indicate that it is not necessary and mandatory that these industrial consumers shall be subjected to peak load hour restrictions throughout the year. The opening sentence ends with the words “with the approval of the Commission” which means that the policy regarding imposition of peak load hours restrictions for a particular year is to be decided and approved by the Commission, which inter-alia depends on various factors viz demand-supply gap, availability of adequate transmission & distribution capacity for transfer of power during different periods of the year and also on techno-economic considerations after examination of the data submitted by the licensee. In case, the Commission decides to impose peak load hours restrictions, then clause 15.1 of the General Conditions of Tariff further provides that in such a case, the consumers shall be entitled to use additional load during this period on payment of PLEC and as per the conditions approved by the Commission. So, PLEC shall be payable only if peak load hours restrictions are imposed by the Commission on a class of consumers during a particular period of the year. Further, clause 15.2 of the General Conditions of Tariff provides that consumers can opt for ToD tariff **instead of** peak load hours restrictions on such terms and

conditions as approved by the Commission. The word **'instead of'** makes it abundantly clear that if a consumer opts for ToD tariff as per the terms & conditions approved by the Commission then the peak load hours restrictions, which include payment of PLEC, shall not be applicable to such consumers.

The terms and conditions for imposition of ToD tariff or PLEC have been provided in the Tariff Orders for the relevant years. The Commission in para 7.3.15 of the Tariff Order for FY 2014-15 approved the Time of Day (ToD) tariff on payment of PLEC for Large Supply and Medium Supply industrial consumers as under:

7.3.15 In view of the above, the Commission approves the Time of Day (ToD) tariff for Large Supply Industrial Category and Medium Supply Industrial Category consumers, as detailed below:

i) For Large Supply industrial category

(a) The following Tariff is approved for all Large Supply Industrial Category consumers:

<i>Period</i>	<i>Time period</i>	<i>Tariff</i>
<i>April, 2014 to May, 2014</i>	<i>06.00 AM to 06.00 PM</i>	<i>Normal Tariff for FY 2014-15*</i>
	<i>06.00 PM to 10.00 PM[#]</i>	<i>Normal Tariff for FY 2014-15* plus PLEC during peak load hours as approved by the Commission in the Tariff Order for FY 2013-14</i>
	<i>10.00 PM to 06.00 AM</i>	<i>Normal Tariff for FY 2014-15* minus ₹1.00 per kVAh</i>

June, 2014 to Sept., 2014	06.00 AM to 06.00 PM	Normal Tariff for FY 2014-15*
	06.00 PM to 10.00 PM[#]	Normal Tariff for FY 2014-15* plus PLEC during peak load hours as approved by the Commission in the Tariff Order for FY 2013-14
	10.00 PM to 06.00 AM	Normal Tariff for FY 2014-15*

* As per Schedule of Tariff for FY 2014-15.

Peak Load hours shall not be for more than 3 (three) hours between 6 PM to 10 PM depending upon season to season.

(b)(i) The following ToD Tariff is approved for Large Supply Industrial Category consumers, **who opt for ToD tariff:**

Period	Time period	Tariff
October, 2014 to March, 2015	06.00 AM to 06.00 PM	Normal Tariff for FY 2014-15*
	06.00 PM to 10.00 PM	Normal Tariff for FY 2014-15* plus ₹3.00 per kVAh
	10.00 PM to 06.00 AM	Normal Tariff for FY 2014-15* minus ₹1.50 per kVAh

* As per Schedule of Tariff for FY 2014-15.

(ii) The following tariff is approved for those Large Supply industrial consumers, **who do not opt for ToD tariff:**

Period	Time period	Tariff
October, 2014 to March, 2015	06.00 AM to 06.00 PM	Normal Tariff for FY 2014-15*
	06.00 PM to 10.00 PM	Normal Tariff for FY 2014-15* plus PLEC[#] during peak load hours as existed prior to FY 2013-14
	10.00 PM to 06.00 AM	Normal Tariff for FY 2014-15*

* As per Schedule of Tariff for FY 2014-15.

Peak Load hours shall not be for more than 3 (three) hours between 6 PM to 10 PM depending upon season to season.

ii) For Medium Supply industrial category

(a) The following ToD tariff is approved for Medium Supply Industrial Category consumers, who opt for the same:

Period	Time period	Tariff
April, 2014 to September, 2014	06.00 AM to 06.00 PM	Normal Tariff for FY 2014-15*
	06.00 PM to 10.00 PM	
	10.00 PM to 06.00 AM	
Oct., 2014 to March, 2015	06.00 AM to 06.00 PM	Normal Tariff for FY 2014-15*
	06.00 PM to 10.00 PM	Normal Tariff for FY 2014-15*
	10.00 PM to 06.00 AM	Normal Tariff for FY 2014-15* minus ₹1.00 per kVAh

* As per Schedule of Tariff for FY 2014-15.

(b) The following tariff is approved for Medium Supply Industrial Category consumers, who do not opt for ToD tariff:

Period	Time period	Tariff
FY 2014-15	06.00 AM to 06.00 PM	Normal Tariff for FY 2014-15*
	06.00 PM to 10.00 PM	
	10.00 PM to 06.00 AM	

* As per Schedule of Tariff for FY 2014-15.

iii) -----

- iv) -----
- v) -----
- vi) -----
- vii) -----

It is evident from the tables under para 7.3.15 (i)(b) that during FY 2014-15, the applicable tariff for Large Supply industrial consumers who opted for ToD tariff during the time period of 06.00 PM to 10.00 PM is normal tariff plus ₹3/- per kVAh, whereas for consumers who do not opt for ToD tariff, the applicable tariff during the same period is normal tariff plus PLEC during peak load hours as existed prior to FY 2013-14. So, it is very much clear that during peak load hours, only ₹3/- per kVAh over and above the normal Tariff is to be charged from the consumers who opted for ToD tariff, whereas for consumers who did not opt for ToD tariff, PLEC instead of ₹3/- per kVAh is chargeable, from 1st October, 2014 to 31st March, 2015. The Tariff Order nowhere provides that PLEC can be imposed on consumers who have opted for ToD tariff and also brought open access power during peak load hours. PSPCL by issuing the instructions vide letter dated 08.12.2015 has amended the Tariff Order at their own level, which is illegal and incorrect.

Similarly, the Commission laid down the terms and conditions for ToD tariff and levy of PLEC in para 5.3.3 of the Tariff Order for FY 2015-16. The Commission

approved the ToD tariff for the period 1st October, 2015 to 31st March 2016, on optional basis, as under:

5.3.3 The Commission, therefore, decides that there shall be no ToD rebate/ToD tariff during the months of April and May, 2015. The Commission further decides to continue ToD tariff from 01.10.2015 to 31.03.2016 on optional basis. However, the Commission disagrees with PSPCL as far as charging of surcharge of 0.50 paise/unit during day time is concerned, but decides to reduce the rebate from ₹1.50/kVAh to ₹1.00/kVAh during off peak hours from 10.00 PM to 06.00 AM.

In view of the above, the Commission approves the Time of Day (ToD) tariff for Large Supply industrial category consumers and Medium Supply industrial category consumers as detailed below:

- i) For Large Supply industrial category*
 - (a) The following Tariff is approved for all Large Supply Industrial Category consumers during the period of 01.04.2015 to 30.09.2015:*

<i>Period</i>	<i>Time period</i>	<i>Tariff</i>
<i>April, 2015 to September, 2015</i>	<i>06.00 AM to 06.00 PM</i>	<i>Normal Tariff for FY 2015-16*</i>
	<i>06.00 PM to 10.00 PM</i>	<i>Normal Tariff for FY 2015-16* plus PLEC[#] during peak load hours as approved by the Commission in the Tariff Order for FY 2013-14</i>
	<i>10.00 PM to 06.00 AM</i>	<i>Normal Tariff for FY 2015-16*</i>

** As per Schedule of Tariff for FY 2015-16.*

Peak Load hours shall not be for more than 3 (three) hours between 6 PM to 10 PM depending upon different seasons.

(b) The following ToD Tariff is approved for Large Supply Industrial Category consumers, **who opt for ToD tariff** during the period 01.10.2015 to 31.03.2016:

Period	Time period	Tariff
October, 2015 to March, 2016	06.00 AM to 06.00 PM	Normal Tariff for FY 2015-16*
	06.00 PM to 10.00 PM	Normal Tariff for FY 2015-16* plus ₹3.00 per kVAh
	10.00 PM to 06.00 AM	Normal Tariff for FY 2015-16* minus ₹1.00 per kVAh

* As per Schedule of Tariff for FY 2015-16.

(c) The following tariff is approved for Large Supply industrial consumers, who **do not opt for ToD tariff** during the period 01.10.2015 to 31.03.2016:

Period	Time period	Tariff
October, 2015 to March, 2016	06.00 AM to 06.00 PM	Normal Tariff for FY 2015-16*
	06.00 PM to 10.00 PM	Normal Tariff for FY 2015-16* plus PLEC[#] during peak load hours as existed prior to FY 2013-14
	10.00 PM to 06.00 AM	Normal Tariff for FY 2015-16*

* As per Schedule of Tariff for FY 2015-16.

Peak Load hours shall not be for more than 3 (three) hours between 6 PM to 10 PM depending upon different seasons.

ii) For Medium Supply industrial category

(a) The following ToD tariff is approved for Medium Supply Industrial Category consumers, who opt for the same:

<i>Period</i>	<i>Time period</i>	<i>Tariff</i>
<i>April, 2015 to September, 2015</i>	<i>06.00 AM to 06.00 PM</i>	<i>Normal Tariff for FY 2015-16*</i>
	<i>06.00 PM to 10.00 PM</i>	
	<i>10.00 PM to 06.00 AM</i>	
<i>Oct., 2015 to March, 2016</i>	<i>06.00 AM to 06.00 PM</i>	<i>Normal Tariff for FY 2015-16*</i>
	<i>06.00 PM to 10.00 PM</i>	<i>Normal Tariff for FY 2015-16*</i>
	<i>10.00 PM to 06.00 AM</i>	<i>Normal Tariff for FY 2015-16* minus ₹1.00 per kVAh</i>

* As per Schedule of Tariff for FY 2015-16.

(b) The following tariff is approved for Medium Supply Industrial Category consumers, who do not opt for ToD tariff:

<i>Period</i>	<i>Time period</i>	<i>Tariff</i>
<i>FY 2015-16</i>	<i>06.00 AM to 06.00 PM</i>	<i>Normal Tariff for FY 2015-16*</i>
	<i>06.00 PM to 10.00 PM</i>	
	<i>10.00 PM to 06.00 AM</i>	

* As per Schedule of Tariff for FY 2015-16.

iii) -----

v) -----

v) -----

vii) -----

viii) -----

Again, during 1st Oct. 2015 to 31st March 2016, the consumers who opted for ToD Tariff are required to pay normal tariff for FY 2015-16 plus ₹3/- per kVAh during peak load hours from 06.00 PM to 10.00 PM, whereas the consumers who did not opt for ToD tariff are required to pay normal tariff for FY 2015-16 plus PLEC as existed prior to FY 2013-14. From April, 2015 to September, 2015, all the consumers are required to pay normal tariff plus PLEC, as approved for FY 2013-14 during the peak load hours falling between 06.00 PM to 10.00 PM.

Thus, from the above, we conclude that since as per clause 15 of the General Conditions of Tariff read with para 7.3.3 of Tariff Order for FY 2014-15 and para 5.3.3 of Tariff Order for FY 2015-16, the peak load hours restrictions including PLEC, are not applicable to the consumers who have opted for ToD tariff as per the terms and conditions approved by the Commission. As such, there is no occasion to levy peak load hour exemption charges on such consumers even if such consumers bring open access power during this period. No differentiation between consumers using power exclusively from PSPCL and those availing open access also, has been made in the Tariff Orders for FY 2014-15 and FY 2015-16.

Since, no peak load hours restrictions are applicable for the consumers who have opted for ToD tariff from 1st Oct. to 31st March of relevant financial year,

as such, these consumers can draw power including open access power up to its sanctioned contract demand. The provision in the NOC being issued by PSTCL allowing open access consumers, who have opted for ToD tariff, to restrict its total drawal within sanctioned contract demand is perfectly in order and is in accordance with the provisions of ToD tariff regime as approved by the Commission, in the Tariff Orders for FY 2014-15 and FY 2015-16.

PSPCL also referred to Regulation 31(1)(a) to justify levy of PLEC stating that in case of drawl more than the scheduled entitlement by an open access consumer, PLEC is chargeable from such consumer along with highest tariff applicable to any permanent category of consumers. Regulation 31 of Open Access Regulations, 2011 deals with levy of imbalance charges which are to be recovered or paid to the Open Access customers in case of over drawl or under drawl of power more/less than the scheduled power. Regulation 31(1)(a) provides that in case of over-drawal by an open access consumer, he shall be required to pay UI charges including congestion charges or highest tariff for any permanent consumer category including PLEC, whichever is higher. This is a punitive clause to discourage over drawl of power by open access consumers. The levy of highest tariff in case of over-drawal on the open access consumer irrespective of the category to which he belongs, does not allow the

distribution licensee to levy such highest tariff for its normal billing. Similarly, PLEC is added to this highest tariff to make it more stringent but again it does not mean that open access consumer shall be liable to pay the highest tariff applicable to any consumer category including PLEC for his normal consumption. Thus, reference to clause 31 (1) (a) to justify levy of PLEC on the open access power is devoid of any merit.

Another argument advanced by PSPCL is that regulation 26(1) of Open Access Regulations, 2011, provides for calculation of cross subsidy surcharge payable by Open Access consumers including open access power and since revenue realized from LS category also includes revenue from PLEC so by not charging PLEC or ToD tariff on open access power during peak load hours, the cross subsidy surcharge will only partially subsidise the cross subsidy element. We find no merit in this argument. The cross subsidy surcharge has to be calculated as per the Open Access Regulations, 2011. The sales and revenue figures for the ensuing year are projections and any shortfall or surplus is duly accounted for during review and true up on the basis of audited figures.

PSPCL has also repeatedly asserted that LS consumers have to pay either PLEC or ToD tariff for the power consumed during peak load hours including open access power since PLEC or ToD tariff serve the same purpose. PSPCL argued that not levying either PLEC or

ToD tariff on open access power, according to PSPCL, shall unjustifiably enrich the open access consumers at the cost of other consumers. It appears that PSPCL at their own level had decided to either impose ToD tariff on open access power purchased by the consumers or levy PLEC. Since the Commission in its Order dated 20.05.2015 in Petition No. 01 of 2015 declared the levy of ₹3/- per kVAh on the power purchased through open access during peak load hours as wrong and directed PSPCL to refund the amount so recovered from the consumers so as to block the implementation of Commission's Order, PSPCL imposed PLEC charges on such consumers. The Commission observes that PSPCL through its internal communication dated 08.12.2015 has created a new category of consumers in the Tariff Orders for FY 2014-15 and FY 2015-16 and imposed additional charges which have not been approved by the Commission in these Tariff Orders as explained above. PSPCL letter dated 08.12.2015 states that "*it has been decided to levy following charges---- on the consumers who opted for ToD tariff and brought open access power during peak load hours*". The Commission in the Tariff Orders for FY 2014-15 & FY 2015-16 has approved the tariff structure for the period from 1st Oct to 31st March for LS industrial consumers who opt for ToD tariff and those who do not opt for ToD tariff. However, PSPCL at their own level created a new category of consumers who opt for ToD tariff and brought open access power and imposed additional

charges. Neither such category was approved by the Commission in the Tariff Orders for FY 2014-15 or FY 2015-16 nor approved the PLEC charges on such consumers. Only on this account, the PSPCL letter dated 08.12.2015 can be struck down. In case the licensee requires any review of the Orders of the Commission, it should have approached the Commission rather than imposing any charges at its own level causing avoidable harassment to the consumers. The Commission has been advising the licensee to submit proposal for levy of “additional surcharge” on the Open Access consumers to meet the fixed cost arising out of obligation to supply as per section 42(2) of the Act and regulation 27 of the Open Access Regulations, 2011, but instead of pursuing the case for levy of charges which are admissible under the law, PSPCL seems to be pleading for charges which are not in accordance with the law.

Thus, PSPCL has violated regulation 6(2) of the PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, which provides that

“The generating company or the licensee shall not charge a tariff in excess of the tariff determined by the Commission and if any generating company or licensee recovers a price or charge exceeding the tariff determined by the Commission, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the generating company or the licensee.”

The action of PSPCL in amending the Tariff Orders and levying charges not approved by the Commission also violates sub-section 6 of section 62 of the Electricity Act, 2003, which reads as under

“ If any licensee or a the generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the generating company or the licensee.”

In view of the above, memo no. 4983/87/ DB-36 dated 08.12.2015 of PSPCL is set aside to the extent of levying of charges as prescribed in PR Circular No. 05/2013 from the Petitioners and all other similarly placed consumers who have opted for ToD tariff and brought open access power during peak load hours for the period from October, 2014 to March, 2015 and from October, 2015 onwards. In case, any amount on this account has been charged/recovered to/from any Open Access consumer, the same shall be refunded by PSPCL along with interest as per section 62(6) of the Electricity Act, 2003, in the next bill of such consumer.

The petition is disposed of accordingly.

Sd/-
(Gurinder Jit Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 03.02.2016