

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

Petition No. 77 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 read with other relevant provisions of the Electricity Act, 2003 and Chapter XI of PSERC (Conduct of Business) Regulations, 2005 as amended up to date and other relevant rules and regulations as approved by the Commission for non-compliance of Order dated 20.05.2015 issued by the Commission in Petition No. 3 of 2015 directing PSPCL not to charge ₹3/- per unit and refund peak charge of ₹3/- per unit under ToD tariff illegally recovered by Respondent PSPCL on power brought in by the Petitioner during 06:00 PM to 10:00 PM under Open Access and further directing PSPCL not to charge ToD of ₹3/- per unit in the ensuing bills to be issued to the Petitioner (s); And for quashing the order bearing no. 4983/87/DB-36 dated 08.12.2015, illegally issued by the Respondent PSPCL, as a device for not complying with the ibid order dated 20.05.2015, by imposing PLEC on the

open access power drawn by the Petitioner and similarly placed consumers during the ToD regime; And for other reliefs as prayed for.

AND

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

....Petitioner

Versus

Sh. K.D. Chaudhary, Chairman-cum-Managing Director, Punjab State Power Corporation Limited (PSPCL) having office at The Mall, Patiala, Punjab

....Respondent

The present Petition has been filed by Nahar Spinning Mills Limited under Section 142,146 and 149, read with other relevant provisions of the Electricity Act, 2003 and Chapter XI of PSERC (Conduct of Business) Regulations, 2005 as amended up to date and other relevant rules and regulations as approved by the Commission for non-compliance of Order dated 20.05.2015 issued by the Commission in Petition No. 3 of 2015.

2. The submissions made by the Petitioner in the Petition are summarized as under:
 - (i) The grievance of the Petitioner is that PSPCL in sheer disregard and contravention of the Order dated 20.05.2015, passed by the

Commission in Petition No. 3 of 2015, for refund/ non-imposition of ToD charge of ₹3/- per unit, wrongly charged from the Petitioner on the power drawn in peak hours under open access, has devised an illegal methodology of not complying with the ibid Order dated 20.05.2015, by illegal imposition of Peak Load Exemption Charges (PLEC) as per PR Circular No. 5/2013 upon the power drawn by the Petitioner under open access in peak hours during ToD regime of FY 2014-15 and FY 2015-16, vide its communication bearing Memo No. 4983/87/DB-36 dated 08.12.2015.

(ii) The factual matrix of the matter which is relevant for the just and effective disposal of the matter submitted by the Petitioner is as under:

(a) The Commission issued Tariff Order for FY 2014-15 on 22.08.2014. In this Tariff Order, Time of day (ToD) tariff introduced in FY 2013-14, for second half of FY 2013-14, was continued for second half of FY 2014-15, with some modifications. The extract of the relevant para of the Tariff Order for FY 2014-15, as applicable to the Petitioner has been reproduced by the Petitioner 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:

Period	Time period	Tariff
April, 2014 to May, 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* minus ₹1.00 per kVAh
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) For Medium Supply industrial category

.....

(iii) *The ToD tariffs shall be applicable for the period as indicated in the above tables.*

(iv) *Large Supply and Medium Supply industrial category consumers have to submit the option for opting for ToD tariff by 15.09.2014.*

(v) *Large Supply and Medium Supply industrial category consumers opting for ToD tariff have to arrange their own meters capable of recording ToD readings/data as per the above time blocks by 15.09.2014. PSPCL shall ensure its testing and commissioning by 30.09.2014, as the ToD tariffs shall be applicable from 01.10.2014.*

(b) The Commission has also issued Schedule of Tariff (Annexure II of Volume II of the Tariff Order for FY 2014-15), whereby, Schedule of Tariff for LS industry has been provided in SI.3 and Note below the para provides as under:-

“ToD tariff shall be applicable as approved by the Commission in para 7.3.15 of this Tariff Order.”

(c) ToD tariff was adopted by PSPCL and CC No 46/2014 was issued by PSPCL on 04.09.2014.

(d) Similarly, ToD tariff was again made applicable for FY 2015-16 as per Tariff Order for the FY 2015-16 passed by the Commission. ToD tariff provision was also made in Schedule of

Tariffs and accordingly, PSPCL issued CC No 16 of 2015 for the year 2015-16.

- (e) Both the Tariff Orders for FY 2014-15 and FY 2015-16, categorically stipulate that during the ToD regime, the consumers who opt for ToD tariff, PLEC shall not be applicable on them, as there has been a choice given to the consumer either to opt for ToD or for PLEC during the ToD regime. Thus, for 6 month of winter, every LS consumer will be compulsorily covered under either of these two categories.
- (f) ToD tariff came into force w.e.f. 01.10.2014 and the Petitioner opted for the same by making a request to PSPCL for FY 2014-15 and also from 01.10.2015 for FY 2015-16.
- (g) It is also undisputed that since the Petitioner has been inter-alia availing power under open access from Indian Energy Exchange, hence after fulfilling the pre-requisites, the Petitioner was rendered NOC, as required, from time to time, by PSTCL/SLDC.
- (h) Although, the Commission vide its Tariff Order for FY 2014-15 had never ordered for the imposition of ToD tariff of ₹3/- per unit on availing power under open access, however, PSPCL, unilaterally, while misinterpreting the ibid Order as per its own suitability/benefit, wrongly imposed ToD tariff of ₹3/- per unit upon the Petitioner, on availing open access power.
- (i) The Petitioner being aggrieved of the illegal action of PSPCL, while inter alia challenging the imposition of ToD tariff of ₹3/-

per unit on availing open access power, filed Petition before the Commission, inter-alia, praying for the reliefs as under:

- Not to apply ToD rebate/charges on open access power.
- To apply actual power factor with three or four digit format and formula for working out the quantum of open access power in MVAh.
- To work out the threshold consumption for eligibility of rebate of ₹1 per unit and display it on the bills.
- To rectify the bills in light of the above and refund the excess amount recovered from the consumers with penal interest or surcharge applicable to consumers for delayed payments.
- Any other order/relief which the Commission may grant in favour of the Petitioner in the facts and circumstances of the instant matter.

(j) The aforesaid Petition was allowed by the Commission by way of order dated 20.05.2015 and the issues were decided as under:

“(i) ToD charge on Open Access Power:

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

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

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

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

.....The Commission observes that PSPCL is willing to allow this rebate to the consumers but it has taken more than 8 months to develop the software for this purpose. This delay should have been avoided by PSPCL by taking timely action in the interest of the consumers. PSPCL is directed to complete the job of allowing admissible rebate to the consumers in the immediate billing cycle after the issuance of this order. Compliance report will be submitted to the Commission within two months of the issuance of the Order.

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

- (k) PSPCL did not comply with the order of the Commission on ‘ToD charge on Open Access Power’ and did not refund/adjust the amount of ToD charge wrongly charged from the Petitioner in the energy bills subsequently received by the Petitioner in the month of June 2015. However, PSPCL chose to file a Review Petition (No. 4 of 2015).
- (l) Although, the Order dated 20.05.2015 was in operation as neither the Order dated 20.05.2015 was stayed nor the same was set aside, PSPCL in the garb of the Review Petition did not implement/comply with directions of the Commission in its Order dated 20.05.2015 and did not refund the amount wrongly charged to the Petitioner, in the energy bills.
- (m) The Review Petition preferred by PSPCL was dismissed by the Commission in terms of Order dated 24.08.2015.
- (n) PSPCL failed to comply with the directions passed by the Commission by way of order dated 20.05.2015 and did not refund the amount wrongly charged to the Petitioner in the energy bills on account of ToD charges on open access power brought in during peak hours, despite the fact that the ibid Order passed by the Commission is in operation and even attained finality, as even no Appeal has been preferred by PSPCL before APTEL against the order dated 20.05.2015 passed by the Commission, within the prescribed limitation period.

- (o) When PSPCL continued its malpractices of not complying with the directions passed by the Commission by way of Order dated 20.05.2015 and failed to refund the amount wrongly charged to the Petitioner in the energy bills on account of ToD charge on open access power bought in during peak load hour. Being aggrieved, the Petitioner preferred a petition (No. 63 of 2015) for noncompliance of the ibid Order against PSPCL.
- (p) PSPCL did not bother either to comply with the order dated 20.05.2015 or file reply to the ibid petition preferred by the Petitioner, however, PSPCL kept on seeking adjournment for filing reply to the Petition. The Petitioner, in anticipation that PSPCL would impose ToD charge upon the Petitioner for the year 2015-16 during the ToD regime in the forth coming energy bills, prayed before the Commission for restraining PSPCL from imposing ToD charges in the forth coming energy bills. Accordingly, while appreciating the merits of the matter and recognizing the bonafide of the Petitioner, the Commission during the pendency of the ibid petition granted an interim order in favour of the Petitioner directing PSPCL not to impose ToD charge any further in the forth coming bills of the Petitioner. Consequently, PSPCL in compliance of the interim order granted by the Commission in Petition No. 63 of 2015, did not impose ToD charge in the energy bills issued to the Petitioner. However, PSPCL did not refund the ToD charges levied at the rate of ₹3/- per unit in compliance of the order dated 20.05.2015, passed by the Commission in Petition No. 3 of

2015.

- (q) Finally, after seeking various adjournments, PSPCL submitted a communication before the Commission bearing memo no. 5214/TR-5/725, dated 10.12.2015, vide which PSPCL undertook to implement the Order dated 20.05.2015 passed by the Commission in Petition No. 3 of 2015 and accordingly, conveying its decision that the amount already charged from 01.10.2015 to 31.03.2015 on account of open access power consumed during 06:00 PM to 10:00 PM by Open Access customers, who have opted for ToD tariff, will be refunded and such charges may not be levied during the financial year 2015-16 from those consumers who have opted for ToD tariff and also brought open access power during peak load hours.
- (r) In light of submissions of PSPCL dated 10.12.2015, Petition No. 63 of 2015 was disposed of by the Commission by Order dated 18.12.2015.
- (iii) Despite the clear-cut undertaking by PSPCL by way of the aforesaid communication dated 10.12.2015 for implementation of the order dated 20.05.2015 passed by the Commission in Petition No. 3 of 2015, for refunding/adjusting the ToD charge illegally imposed upon the Petitioner for drawl of open access power, now PSPCL has illegally imposed PLEC upon the Petitioner for drawl of open access power brought in during 06:00 PM to 10:00 PM during the ToD regime during FY 2014-15 and FY 2015-16 on the rates as per PR Circular No. 5 of 2013, by way of its communication bearing memo 4983/87/DB-36 dated 08.12.2015,

just in order to evade the financial implications involved on the compliance of the Order dated 20.05.2015, passed by the Commission in Petition No. 3 of 2015.

- (iv) Charging of PLEC on the Petitioner and the similarly situated consumers by way of communication bearing memo 4983/87/DB-36 dated 08.12.2015 is illegal, unjust, arbitrary, malicious and unsustainable in the eyes of law, as the order regarding ToD tariff passed by the Commission in the Tariff Order for FY 2014-15 and FY 2015-16 categorically provides that during ToD regime, a consumer can opt either for ToD tariff or for PLEC, meaning thereby, the Tariff Orders passed by the Commission from the year 2014-15 onwards do not permit the applicability of PLEC upon the consumers who have opted for ToD tariff, during the said regime. Charges payable on open access power are also detailed out in Open Access Regulations, 2011. The imposition of PLEC upon the power drawn by the Petitioner during 06:00 PM to 10:00 PM under Open Access during the ToD regime is illegal and unsustainable in the eyes of the law, therefore, the imposition of PLEC by the respondent by way of ibid communication dated 08.12.2015 deserves to be curbed with a iron hand.
- (v) Even otherwise, during the pendency of Petition No. 3 of 2015 before the Commission, it has been an undisputed case of both the parties that during 6 months of ToD regime, either PLEC or ToD shall be applicable upon the consumer depending upon the category chosen by the consumer. Once the consumer has chosen to be under ToD regime, there is no need to take approval

from PSPCL for drawing power in peak load hours and he can draw up to CD. The NOC being issued by SLDC, PSTCL as per Procedure for Short Term Open Access approved by the Commission provides as under:-

“During Peak Load hours, the Open Access Customer shall restrict its drawl including open access power of the extent of Peak Load Restrictions allowed. However, if the ToD tariff has been made applicable for the open access customer, there shall be no limit of peak load exemption and the customer will restrict its total demand to be within its exemption and the customer will restrict its total demand to be within its sanctioned contract demand during peak load as well non peak load period”.

- (vi) The action of PSPCL in the garb of illegal imposition of PLEC upon the power drawn by the Petitioner during ToD regime is just a device illegally designed in order to evade the implementation of order dated 20.05.2015 passed by the Commission in Petition No. 3 of 2015. The imposition of PLEC upon the power drawn by the Petitioner under Open Access during ToD regime is illegal and unsustainable in the eyes of law, therefore, the imposition of PLEC by PSPCL by way of ibid communication dated 08.12.2015 deserves to be set-aside and PSPCL be directed to immediately comply with the Order dated 20.05.2015 in line with the undertaking dated 10.12.2015 submitted by PSPCL.
- (vii) The Commission in its Order dated 20.05.2015 in Petition No. 3 of 2015 has made the following observation:-

“.....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.....”

There is no mention of ToD charges for open access power availed in peak load hours in the Open Access Regulations, 2011. There is also like wise no mention of PLEC to be levied on open access power during peak period in the Regulations and the observation holds good for PLEC as well. The Tariff Orders of the respective years also do not specify any PLEC charge or ToD charges leviable on open access power under the para titled “Open Access Charges”.

- (viii) In order to add strength to the issue under reference of levy of PLEC being illegal, the Petitioner submitted that since PSPCL itself was aware that the levy of PLEC upon the consumers opting for ToD tariff is not permissible, PSPCL had never pleaded before the Commission in any of the proceedings, neither in Petition No. 3 of 2015 nor during Review Petition itself preferred by PSPCL, nor

during the pendency of Petition No. 63 of 2015, PSPCL also not pleaded that PLEC shall also be applicable upon the Petitioner for drawl of power under Open Access during the ToD regime, despite of opting for ToD tariff. However, PSPCL itself has rendered an undertaking to the effect of complete compliance of the Order dated 20.05.2015 passed by the Commission in Petition No. 3 of 2015. PSPCL did not even placed the communication dated 08.12.2015 before the Commission on 15.12.2015 i.e. the last date of hearing of Petition No. 63 of 2015, when the Petitioner handed over the communication dated 10.12.2015 regarding the decision of PSPCL to implement the Order dated 20.05.2015 passed by the Commission in Petition No. 3 of 2015. Even, the letter dated 08.12.2015 having wide financial implication for Open Access consumers has been issued as an internal communication and not as a Commercial Circular as per the standard practice and to the best of the knowledge of the Petitioner is also a violation of the standing instructions of the Commission and needs to be quashed at the very outset and PSPCL be directed for strict compliance of the Order dated 20.05.2015, passed by the Commission in Petition No. 3 of 2015.

- (ix) Despite having due knowledge of the fact that the Order dated 20.05.2015 is binding upon PSPCL and has attained finality and its own undertaking dated 10.12.2015 submitted before the Commission for complying with the Order dated 20.05.2015, PSPCL by illegally imposing PLEC upon the open access power drawn by the Petitioner during ToD regime, in order to avoid

financial implications, has willfully and intentionally disregarded and has not complied with the Order dated 20.05.2015 passed by the Commission. The action of PSPCL of willful and intentionally disregarding the ibid order(s) passed by the Commission is contemptuous in nature for which PSPCL is liable to be punished/penalized.

- (x) PSPCL is to refund a huge sum of amount to the Petitioner, on account of ToD charges wrongly charged in the energy bills of the Petitioner during FY 2014-15. PSPCL has failed to refund the amount of ToD illegally charged upon the Petitioner, rather now while going a mile ahead to the extent of perversity, PSPCL in order to avoid financial implications of the Order dated 20.05.2015 has designed an illegal device of levying PLEC upon the power drawn by the Petitioner under Open Access during ToD regime, vide its communication dated 08.12.2015.
- (xi) The continuous default by PSPCL is already pinching the Petitioner financially and also causing mental agony. The market conditions are not favorable for last few years and blockage of these huge funds is forcing the Petitioner to arrange working capital from open market at high cost. Now, further illegal decision of imposing PLEC on open access power drawn by the Petitioner during ToD regime shall further prejudice the rights of the Petitioner and similarly placed consumers. PSPCL is enjoying on their funds in utter disregard of the orders passed by the Commission. In case, the Petitioner had not deposited the bills on due dates, the Petitioner would have been penalized by PSPCL on

account of huge late payment surcharge and would have also faced threat of disconnection.

(xii) The Petitioner has prayed in the Petition as under:

- a. Summon PSPCL and punish/penalize in accordance with law, for willful and deliberate disobedience/non compliance of the order dated 20.05.2015 passed by the Commission in Petition No. 3 of 2015.
- b. Direct PSPCL to refund the amount of ToD recovered from the Petitioner in the last and current year on open access power availed during peak load hours with penal interest.
- c. Quash or in alternate direct PSPCL to withdraw the communication bearing memo no. 4983/87/DB-39 dated 08.12.2015, issued by PSPCL and restrain it from imposition of PLEC upon the power drawn by the Petitioner under open access in peak load hours during ToD regime or any such other charges and direct PSPCL for strict compliance of the order dated 20.05.2015 passed by the Commission in Petition No. 3 of 2015.
- d. Direct PSPCL to immediately refund the illegal levy of PLEC/any other charges recovered, if any, from the Petitioner under the garb of letter dated 08.12.2015.
- e. Direct PSPCL not to levy ToD charge or any such other charge, any further, on open access power in peak load hours being arranged by the Petitioner in the ensuing

bills.

- f. Grant any other relief which the Commission may deem fit in the facts and circumstances of the case.

It has further been prayed by the Petitioner that during the pendency of the instant Petition, the operation of communication bearing memo no. 4983/87/DB-36 dated 08.12.2015, issued by PSPCL regarding imposition of PLEC upon the power drawn by the Petitioner under open access during ToD regime, may be stayed and PSPCL be restrained from levying PLEC upon the Petitioner on power drawn under open access during ToD regime. Further, PSPCL may be directed to immediately refund the illegal levy of PLEC/any other charges recovered, if any, from the Petitioner under the garb of letter dated 08.12.2015.

3. The Commission vide order dated 22.12.2015 observed and ordered as under:-

“Nahar Spinning Mills Limited filed this petition impugning memo no. 4938/87/DB-36 dated 08.12.2015 and memo no. 5006/13/DB-36 dated 17.12.2015 issued by Dy. Chief Engineer/ Billing vide which decision to levy the following charges as prescribed in PR Circular No. 05/2013 from the consumers who have opted for ToD tariff and brought open access power during peak load hours has been conveyed to all concerned :

- (i) *Rs.2.70/kW/Hour for consumers availing peak load above 100 kW and upto 65% SCD*
- (ii) *Rs.4.05/kW/Hour for consumers availing peak load*

above 100 kW and above 65% SCD and the above charges is to be recovered for the period from October, 2014 to March, 2015 and to be charged during 2015-16 i.e. October, 2015 onwards.

It has been further instructed to implement this decision simultaneously with the instructions issued vide memo no. 4978/82 dated 08.12.2015 vide which decision to comply the orders of the Commission passed in Petition No. 1 of 2015 and Petition No. 3 of 2015 and Review Petition No. 3 and 4 of 2015 was conveyed.

The Petitioners have also filed an Interlocutory Application (IA) for granting ex-parte stay against the letters no. 4983/87 dated 08.12.2015 and no. 5006/13 dated 17.12.2015 and for restraining the respondents from issuing any bills asking the Petitioners to pay Peak Load Exemption Charges (PLEC) on the electricity purchased under Open Access during 6 PM to 10 PM in the ToD period i.e. from October, 2014 to March, 2015 and from October, 2015 onwards on the basis of above said impugned letters during the pendency of the present petition.

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. 11 of 2015 filed in Petition No. 77 of 2015 is disposed of.

The petition is admitted. PSPCL is directed to file reply by 12.01.2015 with copy to the Petitioners. The petition shall be taken up for hearing on 19.01.2016 at 11:30 A.M.”

4. In compliance to the Order dated 22.12.2015 of the Commission, PSPCL filed its reply 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 Petitioner 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 hours 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) PSPCL has given the details of one no. electricity connection of the Petitioner, and has submitted that this illustration shows that the consumer is scheduling maximum power during peak load hours during the ToD period from October, 2015 onwards to avail maximum benefit of neither paying PLEC nor ToD on this component of power.

- (ix) Regulation 18(2)(g) of the 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 of 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 etc. (₹ 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 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.

(xiv) The para wise reply to the petition submitted by PSPCL is summarized as under:

- (i) The levy of PLEC charges as per memo no. 4983/87/DB-39 dated 08.12.2015 is fully justified as per clause 18(2)(g) of the Open Access Regulations, 2011, Section 62(3) of the Electricity Act, 2003 and Tariff Orders for FY 2014-15 and FY 2015-16.
- (ii) The levy of PLEC instead of ToD tariff on open access power during peak load hours is justified to fully recover the cross subsidy level as worked out by the Commission in the Tariff Orders for FY 2014-15 and FY 2015-16.

- (iii) The Petitioner 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 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, Clause 18(2)(g) of Open Access Regulations, 2011, provisions of Tariff Orders for FY 2013-14, FY 2014-15 and FY 2015-16 and various other provisions of Open Access Regulations, 2011.
- (iv) The Open Access consumers who are generally big business houses want to enrich at the cost of other LS and other categories of consumers.
- (v) If a 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. He 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 Petitioner is misrepresenting the provisions of Open Access Regulations, 2011, to gain pecuniary benefits. The Tariff Orders are issued on the basis of revenue neutrality and if he avoids paying either PLEC or ToD tariff on open access power, then he shall be

destabilizing the calculations for cross subsidy surcharge. The levy of PLEC instead of ToD tariff on open access power during peak load hours is justified to fully recover the cross subsidy level as worked out by the Commission in the Tariff Orders for FY 2014-15 and FY 2015-16.

- (vii) PSPCL prayed that since PLEC charges already stands approved by the Commission and thus, PLEC charges instead of ToD tariff have been levied on the open access power, as per its letter dated 08.12.2015.

There is no deliberate attempt to misguide or hide facts from the Commission.

- (viii) As per Orders of the Commission, memo no. 1169 dated 30.12.2015 has been issued that the charges in lieu of PLEC shall be indicated separately and payment shall be accepted without these charges in view of stay granted till 19.01.2016 or till final decision in the matter by the Commission.

- (i) 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 its letter 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) Alternately, 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 restrained 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.

5. The Commission vide its Order dated 20.01.2016 has 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 filed reply vide C.E./ARR & TR memo No.5555 dated 18.01.2016, during hearing. The counsel for the petitioner seeks time upto 22.01.2016 to file rejoinder to the reply of PSPCL. The petitioner shall file the rejoinder by 22.01.2016 and ensure that a copy of the same is supplied to PSPCL also by 22.01.2016.”

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.”

6. Nahar Spinning Mills Limited filed rejoinder to the reply of PSPCL vide their letter dated 22.01.2016, which is summarized as under:
 - (a) PSPCL in order to evade the directives passed by the Commission has devised a illegal methodology by illegally levying PLEC on the Open Access consumers, which is illegal, un-tenable, unjust, arbitrary and unsustainable in the eyes of the law and the illegal action of PSPCL deserves to be curbed with an iron hand.
 - (b) PSPCL, in order to cover up its ill deeds has raised false and frivolous assertions without there being any cogent reasoning in support thereof. No reliance can be placed upon the assertions made by PSPCL in its reply.
 - (c) In order to evade the orders passed by the Commission to refund the ToD charges illegally recovered by the Petitioner, PSPCL has illegally levied PLEC upon the Petitioner, while deciding to the levy PLEC on the Open Access Power brought during 18.00 hours to 22.00 hours, on the consumers, such as the Petitioner, opting for ToD tariff, PSPCL is interpreting the Electricity Act, 2003, Regulation and Tariff Order in its own way and has taken up on itself to ensure its revenue neutrality which is a function assigned to the Commission under the Electricity Act, 2003. Hence, PSPCL has traveled a mile

ahead on the way of perversity and has exceeded its jurisdiction.

- (d) The action of PSPCL to charge PLEC on open access power purchased during peak load hours seems to be a desperate attempt to cover up its failure to defend its action of levy of ₹3 per unit on open access power during peak load hours in Petition No. 1 of 2015 and Petition No. 3 of 2015 and in Review Petitions.
- (e) The Commission vide its Order dated 13.11.2015 in Petition No. 63, has directed PSPCL to implement Order dated 20.05.2015. However, PSPCL in order to evade the directives issued by the Commission, without even apprising the Commission about the proposed illegal action, itself implemented PLEC to nullify the financial effect of the Order dated 20.05.2015 for refund of ToD charges wrongly charged on drawl of open access power during peak hours.
- (f) The levy of ₹3 per unit on open access power was set aside by the Commission mainly on the ground that there is no such provision in the Electricity Act, 2003 and Open Access Regulations, 2011. Instead of approaching the Commission for prior approval to levy any charge in lieu of ToD charge and acting in a judicious and transparent manner, PSPCL has again acted in an arbitrary manner and illegally levied PLEC on open access power. It is further submitted that there is again no provision in the Act and Regulations to levy PLEC on open access power.

- (g) The action of PSPCL seems to be out of its desire to curb open access in one way or the other and not to work in an competitive environment which is the object of the Electricity Act, 2003. PSPCL needs to be alive to the fact that the power rates are continuously declining and power in open market is cheaper than PSPCL's sale rate. The availability/increase of open access power even after enforcement of 5th amendment in Open Access Regulations, 2011 is indicative of the same. PSPCL needs to review/change its methodologies, shun cost plus revenue recovery approach, bring efficiency and pass on savings to the consumers, instead of increasing the burden on the consumers like the Petitioner.
- (h) Regulation 18(2)(g) of the Open Access Regulations, 2011 puts restrictions on the Open Access consumers to restrict their drawl during peak load hours. It nowhere states that PLEC is chargeable on open access power. Hence, no reliance can be placed upon the false and frivolous assertions by PSPCL. Every consumer has to sign an open access agreement with Nodal Agency i.e. SLDC and thereafter Approval Letter and NOC are issued. These also contain clauses in compliance to the above stated regulation. For the year 2014-15, SLDC issued Public Notice amending the relevant portion to allow the existing Open Access consumers opting ToD to draw power up to CD during peak hours including Open Access quantum as permitted and the power from PSPCL. Thereafter, these documents have been amended accordingly. Once, in compliance to the Order of the

Commission and commercial circular issued by PSPCL, a consumer has opted for ToD tariff, “Policy on Peak Load Hours(PLH) Restrictions and Exemptions thereto” approved by the Commission, is not applicable as consumer is not required to seek any exemption to avail power during peak load hours. Therefore, there cannot be two set of rules for PSPCL power and open access power.

- (i) The contention of PSPCL regarding less recovery is totally misplaced. The Open Access consumers are not being given the benefit of rebate on open access power and this fact has been deliberately concealed in the details provided by PSPCL, meaning thereby that the less out go due to rebate will be more than to compensate PSPCL for cross subsidy amount. The cross subsidy surcharge has to be calculated as per regulations and not as per the wish of PSPCL. In any case, the ARR and Tariff Orders for the ensuing year are only projections. These are further to be revised and then to be trued up. There will always be difference in projections and actual and these are duly taken care of by the Commission.
 - (j) Regulation 31(1)(a) relates to punitive UI charges under a specific violation of schedule. The provisions of the Act clearly defining the open access charges already upheld by the Commission in Petition No. 1 of 2015 and Petition No. 3 of 2015, have to be complied with by the Licensee.
7. The Commission vide its Order dated 29.01.2016 has 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.”

8. PSPCL filed reply/comments to the rejoinder filed by the Petitioner, in compliance to the Commission’s order dated 29.01.2016, which are 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.

9. 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. 5652 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.”

10. PSPCL has filed additional comments on dated 02.02.2016, in continuation to its reply/comments dated 29.01.2016, which are summarized as under:

- (a) The provision in the NOC being issued by SLDC for allowing those Open Access consumers who have opted for ToD tariff to restrict demand within its sanctioned contract demand has not been provided in the Tariff Orders and General Conditions of Tariff approved by the Commissions.
- (b) Now, since the Commission in the Orders against Petition No. 1 of 2015 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.

11. Findings and Decision:

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

During hearing of the Petition on 01.02.2016, the Petitioner argued only on the issue of 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. As such, the Commission confines the order on this issue only

The Petitioner 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 Petitioner 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>
<i>June, 2014 to Sept., 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*</i>

* 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:**

<i>Period</i>	<i>Time period</i>	<i>Tariff</i>
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:**

<i>Period</i>	<i>Time period</i>	<i>Tariff</i>
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:

<i>Period</i>	<i>Time period</i>	<i>Tariff</i>
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:

<i>Period</i>	<i>Time period</i>	<i>Tariff</i>
<i>FY 2014-15</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>10.00 PM to 06.00 AM</i>	

* 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>
April, 2015 to September, 2015	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 approved by the Commission in the Tariff Order for 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.

(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:

<i>Period</i>	<i>Time period</i>	<i>Tariff</i>
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:

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

(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 FYs 2014-15 & 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 the following charges---- consumers who have 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 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. 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