

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

Petition No.80 of 2015

Date of Order:03.02.2016

Present: Smt. Romila Dubey, Chairperson

Shri Gurinder Jit Singh, Member.

In the matter of: Petition under clause 44 of Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2014 (hereinafter to be called Supply Code, 2014) read with clause 47 of Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters), Regulations, 2007, (hereinafter to be called Supply Code, 2007) for interpretation of clause 14 and 17 of Supply Code, 2007 and Section 47 of the Electricity Act, 2003 to the effect that a consumer is entitled to get interest on the initial security even for the period the connection was not released; with further prayer to take appropriate action under Section 142 and 146 of the Electricity Act, 2003, against the respondent and its officials for issuing the impugned demand letter dated 14.12.2015, asking the petitioner to deposit the interest amount already given to the petitioner on the initial security, and further for not giving the interest on initial security for whole period, being in violation of the clause 14 and 17 of Supply Code, 2007 and Section 47

of the Electricity Act, 2003 and Order of the Commission in petition No.45 of 2014, titled as GNA Udyog Limited V/s PSPCL.

AND

In the matter of: Amtek Railcar Industries Pvt. Limited, Village Phatak Majri, P.O. Sadhugarh, District Fatehgarh Sahib, through Shri Rajbir Singh, Factory Manager of the Company.

.....Petitioner

Versus

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

.....Respondent

Order:

1.0 The present petition has been filed by Amtek Railcar Industries Pvt. Limited, Village Phatak Majri, P.O. Sadhugarh, District Fatehgarh Sahib through its Manager Shri Rajbir Singh under clause 44 of Supply Code, 2014 read with clause 47 of Supply Code, 2007 for interpretation of clause 14 and 17 of Supply Code, 2007 and Section 47 of the Electricity Act, 2003. The petitioner submitted as under:

1.1 The petitioner applied for electricity connection with load/demand of 10000 kW/6000 kVA and deposited ₹7,08,000/- as initial security on 17.01.2011. The Feasibility Clearance Committee after considering the case of the petitioner, granted feasibility clearance vide letter dated 14.10.2011. Thereafter, the petitioner submitted A&A form and also deposited remaining security amount of ₹64,05,750/- on

11.11.2011 and thus made a total deposit of ₹ 71,13,750/- as initial security.

- 1.2 PSPCL issued demand notice dated 03.04.2012 and asked the petitioner to deposit ₹3,05,52,609/- as Service Connection Charges, which the petitioner deposited on 05.06.2012.
- 1.3 PSPCL released the connection with part load of 250 kW on 30.01.2014 and till now, the same is continuing with same load because 66 kV over head bay construction is still in hand.
- 1.4 As per provisions of the Supply Code, 2007, the initial security of ₹71,13,750/- deposited by the petitioner was adjusted as Security (consumption) at the time of release of connection as per clause 14 of the Supply Code, 2007.
- 1.5 As per clause 17 of the Supply Code, 2007, a person/consumer is entitled to get interest on this Security (consumption).
- 1.6 Section 47 of the Electricity Act, 2003 deals with power of a licensee to seek security from consumers and pay interest on the security amount.
- 1.7 There is no difference of initial security or Security (consumption) as per section 47 of the Electricity Act, 2003 and a distribution licensee is liable to pay interest on the security amount taken from a consumer.
- 1.8 PSPCL, issued bill dated 09.05.2014 and in this bill granted interest of ₹8,32,309/- for FY 2013-14 on the initial security amount deposited by the petitioner. The petitioner was entitled to get interest on the security amount from the date the amount was deposited but was under impression that the

remaining interest would be paid by the PSPCL in the next year bill.

- 1.9 PSPCL issued a letter No.2394 dated 14.12.2015 wherein it has been mentioned that Audit Party of PSPCL vide half margin No. 207 dated 14.12.2015 has found that excess interest on security amount for FY 2013-14 has been given to the petitioner & was asked to deposit ₹ 6,93,211/- with PSPCL within 15 days from the receipt of the letter.
- 1.10 The perusal of the half margin No. 207 dated 14.12.2015 shows that the audit party is of the view that the interest on the initial security can be granted from the date the connection is released. As the connection was released on 30.01.2014 so they have calculated interest payable for FY 2013-14 only from 30.01.2014 to 31.03.2014.
- 1.11 PSPCL lost sight of the fact that section 47.4 of the Electricity Act, 2003, speaks about the payment of interest on the security amount mentioned in section 47.1. The distribution licensee is liable to pay interest on the amount as mentioned in section 47.1 of the Electricity Act, 2003 as per section 47.4 of the Electricity Act, 2003. There is no further restriction in section 47.4 for granting interest on the security amount. Further, there is no difference in the period before grant of electricity connection or after grant of electricity connection as per section 47 of the Electricity Act, 2003. So the petitioner was rightly granted interest by the PSPCL vide bill dated 09.05.2014 for FY 2013-14. The petitioner is also entitled to get interest on this amount from the date the amount was deposited.

- 1.12 As per clause 17.4 of the Supply Code, 2007, in case there is a delay in effecting adjustments of the interest on the security amount due to the consumer then the licensee will for the actual period of delay pay interest at twice the SBI's Short Term PLR prevalent on first of April of relevant year. The petitioner has calculated the interest on the Security amount from the date the amount was deposited up to 31.03.2013. As per calculations by applying the simple interest, the interest comes to ₹22,36,424.27 from the date of deposit to 31st March, 2013 as per clause 17.4 of the Supply Code, 2007 (Clause 17.3 of the Supply Code, 2014). This amount has been calculated upto 31.03.2013 because thereafter the interest was paid vide bill dated 09.05.2014 for FY 2013-14. It is further submitted that if we calculate the interest by compounding interest then the interest comes to much more.
- 1.13 A similar matter came before the Commission in petition No.45 of 2014 titled as GNA Udyog Limited V/s PSPCL and the Commission held that a consumer is entitled to get interest on the amount deposited as initial security from the date it was deposited with the distribution licensee.
- 1.14 Thus, the petitioner was rightly given interest in the bill dated 09.05.2014 on the Security amount for the period 2013-14 and the letter dated 14.12.2015 issued by the PSPCL asking the petitioner to deposit ₹6,93,211/- on account of interest on initial security is totally wrong and illegal and against Section 47 of the Electricity Act, 2003, clause 14 and 17 of the Supply Code, 2007 and also against the Order dated 17.09.2014 passed by the Commission in petition No. 45 of 2014. The petitioner is also entitled to get interest of

₹ 22,36,424.27 from the date of deposit of initial security to 31.03.2013, calculated as per clause 17.4 of the Supply Code, 2007.

- 1.15 As per section 142 and 146 of the Electricity Act, 2003, only the Commission has power to decide a complaint and take necessary action so the petitioner is filing the present petition/complaint before the Commission. Clause 44 of the Supply Code, 2014 provides that any dispute arising between the distribution licensee and a consumer in respect of interpretation of the Supply Code shall be referred to the Commission.
- 1.16 The petitioner has been asked by PSPCL vide letter dated 14.12.2015 to deposit the interest of ₹6,93,211/- paid vide bill dated 09.05.2014 within 15 days and in case of default, action would be taken against the petitioner as per instructions of the Corporation. In case the operation of the impugned letter dated 14.12.2015 is not stayed, the respondent would take action against the petitioner and may also disconnect the electricity connection and in that case the petitioner would suffer an irreparable loss and injury.
- 1.17 The petitioner made the following prayers:
- i. Clause 14 and 17 of Supply Code, 2007 and section 47 of the Electricity Act, 2003 may kindly be interpreted and it may kindly be held that a consumer is entitled to get interest on the initial security even for the period the connection was not released.
 - ii. The impugned letter No. 2394 dated 14.12.2015 vide which the petitioner has been directed to deposit the interest amount of ₹6,93,211/- already given to the

petitioner on the initial security for the period 2013-14, upto the period the connection was released to the petitioner, may be set aside.

- iii. Necessary directions may be issued to the respondent to pay the interest on the initial security deposited by the petitioner from the date it was deposited as per clause 17.4 of the Supply Code, 2007, in the interest of justice.
- iv. Necessary action under sections 142 and 146 of the Electricity Act, 2003, may kindly be taken against the respondent and its officials for issuing the impugned demand letter dated 14.12.2015.
- v. During the pendency of the present petition before the Commission, the operation of the impugned letter dated 14.12.2015 may kindly be stayed, in the interest of justice.

2.0 After hearing the Counsel for the petitioner on 01.01.2016, the petition was admitted. PSPCL was directed vide Order of the Commission dated 04.01.2016 to file reply by 22.01.2016 with copy to the petitioner. The impugned demand vide letter dated 14.12.2015 raised by Assistant Executive Engineer, Rural Sub Division, PSPCL, Sirhind, was stayed and respondents were restrained from taking any further action against the petitioner on this account. PSPCL was further restrained from raising any demand for refund of interest amount on initial security already given to consumers as held in Order dated 17.09.2014 in petition No. 45 of 2014 in the matter of GNA Udyog Limited, G.T. Road Goraya, Distt. Jalandhar V/s PSPCL and in case demand to refund interest amount given to any consumer has already been raised by

PSPCL, the same was stayed. The next date of hearing was fixed for 27.01.2016.

3.0 During hearing on 27.01.2016, it was observed that PSPCL has not yet filed reply and accordingly the Commission vide Order dated 29.01.2016 directed PSPCL to file reply by 29.01.2016 with copy to the petitioner. The stay and restraint granted vide Order dated 04.01.2016 was extended till next date of hearing. The petition was fixed for further hearing on 01.02.2016.

4.0 PSPCL vide Chief Engineer/ARR & TR Memo No. 5648 dated 29.01.2016 submitted the reply as under:

4.1 The petitioner deposited ₹ 7,08,000/- as EMD and the same was not initial security. After feasibility clearance, the initial security of ₹64,05,750/- was deposited on 11.11.2011. In this way, the EMD deposited was adjusted in initial security on 11.11.2011.

4.2 The compliance of demand notice by the petitioner was not made on 05.06.2012 since the amount was deposited on 05.06.2012 while the test report was submitted on 01.01.2013. The petitioner failed to submit test report in time and filed an application for extension of the period of demand notice twice and the same was extended as per rules and test report was submitted by the petitioner on 01.01.2013. So, compliance of demand notice was made on 01.01.2013.

4.3 As per Supply Code, 2007 (applicable at that time), the initial security and Security (consumption) are defined separately. Initial security is adjusted against Security (consumption) only after release of connection. Interest is to be paid on Security (consumption) as per Supply Code, 2007. Hence interest on initial security becomes payable only from the

date of release of connection. In this case, the initial security was adjusted against Security (consumption) on release of partial load to the petitioner.

- 4.4 Interest on initial security was paid wrongly to the petitioner for complete financial year 2013-14 whereas the connection was released on 30.01.2014. During the audit of the office of concerned sub-division, the audit party raised objections on the interest paid on initial security by CBC Ludhiana for complete financial year 2013-14 and clarified that interest for financial year 2013-14 should be paid from the date of release of connection i.e. from 30.01.2014 to 31.03.2014. Thereafter, Notice No. 2394 dated 14.12.2015 was issued by the concerned sub-division to the petitioner.
- 4.5 PSPCL has made an appeal against the decision of the Commission in petition No. 45 of 2014 of M/S GNA Udyog Ltd. Goraya V/s PSPCL. The appeal is pending before Hon'ble Appellate Tribunal for Electricity New Delhi (Appeal No.298 of 2014).
- 4.6 The amount was demanded as per Supply Code 2007, and Half Margin of audit dated 14.12.2015, so nothing wrong was done by the department.
- 5.0 The Commission heard the parties on 01.02.2016 and vide Order dated 01.02.2016 decided to close the hearing. The Order was reserved.

6.0 **Findings and Decision of the Commission**

The Commission has gone through the submissions and arguments made by both the parties. The issue regarding payment of interest on initial security deposited by an applicant/consumer as

per regulation 14 of the Supply Code, 2007 has already been decided by the Commission in petition no. 45 of 2014. The *ibid* Order of the Commission squarely applies to the present petition. The relevant portion of the Order of the Commission dated 17.09.2014 in petition no. 45 of 2014 is as under:

“All these regulations of the Supply Code are required to be read in conjunction with Section 47 of Electricity Act, 2003 (Act). Sub section (1) of Section 47 of the Act, empowers the distribution licensee to recover security from the person requiring supply of electricity for payment which may become due in respect of electricity supplied to such person and also for any electric line/plant or meter which is to be provided for supplying electricity to such person. Sub section (2) of Section 47 further empowers the distribution licensee to recover additional security through a notice if the security deposit has become invalid or insufficient. Sub section (4) of Section 47 provides for payment of interest on security by the distribution licensee at the rates as may be specified by the Commission on security amount recovered from the person. So the security recovered from the person both under sub section (1) and sub section (2) of Section 47 of the Act qualifies for interest as per sub-section (4) of section 47. Thus the Act is very clear that interest is payable on security whether the same has been recovered from the person before release of connection or thereafter during review while determining the adequacy of the amount of security deposited by the consumer. Moreover, it is an established law that regulations framed by the Commission under an Act of the Parliament are sub-ordinate legislation and in case of any ambiguity or in-consistency, the Act shall prevail.

Though as per Regulation 14 of the Supply Code, this amount recovered from the applicant has been termed as “Initial Security” but it is a security amount recovered as provided in Section 47 (1) of the Act and interest on such initial security is also payable. Since as per regulation 17.3 of the Supply Code, the interest is to be adjusted in the bills against the outstanding dues or any amount becoming due to licensee thereafter, so in case of a new connection although interest is payable from the date of deposit of such amount but is actually paid to the consumer after release of connection through bills. However, for the existing consumers requiring additional load, the interest on Security (consumption) and the additional security deposited as initial security for additional load/demand, can be paid to the consumer as and when the same becomes due as per Supply Code even before the release of extension in load/demand.”

Thus, interest on initial security recovered under regulation 14 of the Supply Code, 2007 is payable in accordance with regulation 17 of the Supply Code, 2007 from the date of its deposit. **The letter No. 2394 dated 14.12.2015 issued by AEE/Rural Sub-division, PSPCL, Sirhind directing the petitioner to deposit the interest amount of ₹6,93,211/- already paid to the petitioner is set aside.**

Regarding prayer of the petitioner to take action against the respondent under section 142 and 146 of the Act, the Commission in its Order dated 13.01.2016 in petition no. 65 of 2015 has held as under:

“Any Orders of the Commission clarifying any provision of Supply Code or laying down the rules for their implementation are applicable to all similarly placed consumers. Non compliance of the Order dated 17.09.2014 in petition No. 45 of 2014 of the

Commission under these circumstances is punishable under section 142 and 146 of the Act. However, before imposing any penalty, we would like to give another opportunity to PSPCL to grant interest on 'Initial Security' amount recovered from all applicants/consumers under regulation 14 of the Supply Code 2007 as per Order of the Commission dated 17.09.2014 in petition no. 45 of 2014."

Accordingly, PSPCL is directed to implement the Orders of the Commission referred above in letter and spirit.

The petition is disposed of accordingly.

Sd/-
(Gurinder Jit Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 03.02.2016