

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

Petition No.67 of 2015

Date of Order: 20.01.2016

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

In the matter of: Petition in the matter of payment of interest on security and refund of excess amount of security (works) – violations of section 47.4 of Electricity Act, 2003 and Reg. 19.3 (b) and Reg.19.7 of Supply Code, 2007.

AND

In the matter of: S.S.Steel Industry, Tohra Road, Village Chanalon (Sirhind), District Fatehgarh Sahib through its partner Shri Suresh Kumar Goyal..

.....Petitioner

Versus

Punjab State Power Corporation Limited, The Mall,
Patiala.

.....Respondent.

Order:

1.0 The present petition has been filed by S.S. Steel Industry, Tohra Road, Sirhind through its partner Shri Suresh Kumar Goyal. The petitioner made the following submissions:

1.1 The petitioner is running an industrial unit under the name of S.S.STEEL INDUSTRY bearing A/C. No. K62-SS01-00056 under Sirhind Division of PSPCL. The sanctioned demand is 2500 kVA which is fed at 11 kV.

- 1.2 The petitioner applied for a new connection for 2500 kVA Contract Demand and earnest money amounting to ₹3,75,000/- was deposited on 24.08.2009. The application was registered after getting the feasibility clearance on 09.12.2011. The feasibility clearance was delayed for more than 2 years for reasons best known to the respondents. After clearance of feasibility, security amount of ₹34,05,010/- was deposited on 09.12.2011 in addition to amount of earnest money.
- 1.3 The demand notice was issued to the petitioner after a delay of more than 3 months vide Memo No.420 dated 28.03.2012. Through this notice, the petitioner was directed to deposit a sum of ₹34,85,795/- on account of cost of estimate for erection of 11 kV independent feeder and also to submit test report etc. The petitioner deposited this amount on account of security (works) on 25.09.2012 and requested the respondent to take the work in hand.
- 1.4 The compliance of demand notice was made on 25.09.2012 by the petitioner, but the respondents did not release the connection till 22.11.2014. Release of connection was delayed for more than 2 years which was otherwise supposed to be released within 120 days after compliance of demand notice as per Regulation 6 of Supply Code.
- 1.6 As per rules, the respondents started paying interest on the security deposited by the petitioner. But the petitioner was shocked to receive a notice vide AEE Suburban Sirhind Memo No.2134 dated 06.11.2015 directing the petitioner to deposit ₹13,10,760/- alleged to have been wrongly paid to it on account of interest on security. It was contended that

interest on security was not payable before release of connection.

- 1.7 The contention of respondents to deny payment of interest on security is totally wrong and against the provisions of Section 47.4 of Electricity Act, 2003. As per provisions of this section of Electricity Act, 2003, interest is payable to the petitioner on the security deposited by it without any linkage to the release of connection. This view has been upheld by the Commission also in an identical petition No.45 of 2014 of M/S. GNA Udyog Limited Goraya vide Order dated 17.09.2014. It has been clarified in this Order by the Commission that “two different terms viz initial security and security (consumption) used in the Supply Code are being misinterpreted by PSPCL, and that Supply Code Regulations are required to be read with section 47 of Electricity Act, 2003.”
- 1.8 The petitioner has set up its industry by taking loans from the Bank on which the petitioner is paying huge interest. As such, denial of interest on security deposits of the petitioner by respondent would lead to serious financial crisis.
- 1.9 The petitioner has been harassed at every stage. Neither feasibility was cleared within 30 days (violation of Regulation 5.6) nor demand notice issued within 10 days (violation of Regulation 6.2 (b)]. Also the connection was not released within 120 days (violation of Regulation 6.3 (b)]. Had the petitioner’s connection been released within 120 days as per Regulation 6.3 (b), the petitioner would not have faced any problem.

1.10 The excess amount of security (works) has not been refunded to the petitioner in utter violation of Regulation 19.7 of Supply Code, 2007. As per this Regulation, the licensee is required to determine the excess amount deposited by the applicant within sixty days from the date of release of connection and refund the same by adjustment against electricity bills of the succeeding months. In the present case, the petitioner's connection was released on 22.11.2014 but no refund has been given till date despite repeated requests.

1.11 The petitioner made the following prayers:

- (i) the respondents may be restrained from recovering the amount of ₹ 13,10,760/- paid to the petitioner already on account of interest and respondents be restrained from disconnecting power supply of the petitioner to recover the said amount.
- (ii) Orders may be passed to pay the excess amount of security (works) with interest as per Regulation 19.7 of Supply Code, 2007 and also to pay interest on the amount of security (works) ₹ 34,85,760/- for the period of delay beyond the mandatory 120 days in accordance with Regulation 19.3 (b) of Supply Code, 2007.

2.0 The petition was admitted and the Commission vide Order dated 09.12.2015 directed PSPCL to file reply by 18.12.2015 with copy to the petitioner. The petition was fixed for hearing on 22.12.2015.

3.0 PSPCL vide Chief Engineer/ARR & TR Memo No. 5304/DD/TR-5/735 dated 21.12.2015 requested for two weeks time for submission of reply. The Commission vide Order dated 23.12.2015 directed PSPCL to file reply by 01.01.2016 with copy to

the petitioner. The petition was fixed for hearing on 06.01.2016 which was postponed to 13.01.2016.

4.0 PSPCL vide CE/ARR&TR Memo No. 5410/DD/TR-5/735 dated 05.01.2016 (received on 07.01.2016) filed reply and submitted as under:

4.1 The compliance of Demand Notice by the petitioner was not made on 25.09.2012 since only amount of security (works) was deposited on 25.09.2012 while test report was submitted on 24.12.2012. The petitioner failed to submit test report in time and filed an application for extension of the period of demand notice and the same was extended vide letter No. 2056 dated 19.10.2012 and test report was submitted by the applicant on 24.12.2012.

4.2 Due to system constraint, the feasibility clearance was issued vide Chief Engineer /Commercial, Patiala Memo No. 24542 dated 14.10.2011 subject to the compliance of following conditions for release of connection:

- a. After commissioning of 220 kV Grid S/Stn. Bassi Pathana.
- b. By shifting existing 66 kV Bassi to Sirhind line (on rail poles) to 66 kV DC line on DC Tower and augmentation of existing conductor with 0.2 sq. inch conductor and shifting of 66 kV S/Stn. Sirhind to 220 kV S/Stn. Bassi Pathana, which is still pending.

The petitioner had accepted all the above conditions of feasibility clearance and has given undertakings in this regard during compliance of demand notice. Thereafter, on petitioners request, revised feasibility was prepared due to change in loading conditions of existing mother sub-station (220 kV) & the feeding sub-station and the same was

sanctioned vide Engineer-in-Chief/Commercial memo no. 612 dated 10.11.14 and the connection of the petitioner was released on 22.11.2014 vide SCO No 104/65281 dated 13.11.14.

- 4.3 PSPCL is paying interest on Security (consumption) as per provisions of the Supply Code as applicable to the petitioner. Interest on Initial Security was paid wrongly to the petitioner from the date of deposit. During the audit of the office of concerned sub-division, the audit party raised objections on the interest paid on Initial Security by the office of CBC Ludhiana from the date of deposit and clarified that interest should be paid from the date of release of connection by referring the decision of ZDSC, Central Zone PSPCL, Ludhiana regarding R.P Multi Metals, Amloh in which ZDSC have given the decision that interest should be paid from the date of release of connection. Thereafter, notice No 2134 dated 06.11.2015 was issued by the concerned sub-division to the petitioner. The Ombudsman also decided the appeal of R.P Multi Metals (Appeal No. 14/2015) on 18.06.2015 in favour of the PSPCL.
- 4.4 PSPCL has made an appeal against the decision of the Commission in Petition No 45 of 2014 before Hon'ble Appellate Tribunal for Electricity, New Delhi.
- 4.5 PSPCL has already refunded excess amount ₹2,41,875/- of Security (works) after preparing actual estimate no. 53190/15-16. The actual service connection charges have been calculated as per Supply Code regulation 19.7 and CC 68/2008 which was applicable at the time of issue of demand notice to the petitioner. The refund has been given to

petitioner vide Sundry No 1/08/ R102 dated 10.08.2015 in the bill of 08/2015.

- 5.0 During hearing on 13.01.2016, the Commission heard arguments on behalf of parties and decided to close the hearing of the petition. The Commission vide Order dated 15.01.2016 asked the parties to file written submissions, if any, by 15.01.2016.
- 6.0 The petitioner filed written arguments dated 14.01.2016 (received on 15.01.2016) and submitted as under:
- 6.1 Notwithstanding the provisions of Supply Code, 2007, interest on security is payable from the date of deposit as per section 47.4 of Electricity Act, 2003. The petitioner also contends that though there is seeming conflict between the Supply Code and Electricity Act, 2003, the latter prevails, being the mother enactment. This view has been upheld by the Commission in an identical case of GNA Udyog Ltd. vide petition no. 45 of 2015. The decision of the Commission in this case has neither been stayed nor reversed by any Appellate Authority so far. As such, the petitioner prayed for similar relief in its case.
- 6.2 A sum of ₹ 2,41,875/- has been refunded by the respondents vide AEE Suburban Subdivision, Sirhind memo no. 2218 dated 20.11.2015 purportedly towards excess amount of Security (works). But they have wrongly computed the refundable amount by claiming both per kW/kVA and variable charges in utter violation of Supply Code, 2007 Reg. 9.1.1(b). This Regulation provides as under:
“Where load/demand required exceeds 500 kW/500 kVA, the applicant will be required to pay per kW/kVA charges as

approved by the Commission or the actual expenditure for release of connection, which is higher.”

As per PSPCL's calculations shown in the attached letter, the actual cost of work is ₹22,58,190/- which is more than the per kW/kVA charges (₹ 22,50,000/-). So, in accordance with Supply Code Regulation 9.1.1(b), the respondents are entitled to charge ₹ 22,58,190/- only, and not ₹ 32,43,920/-. It is, therefore, prayed that the respondents may be directed to refund ₹ 12,27,605/- with interest in accordance with Regulation 19.7 read with Regulation 9.1.1(b) of the Supply Code, 2007.

- 6.3 As release of its connection was delayed for more than the mandatory 120 days after deposit of Security (works). No approval of the Commission as per Supply Code Regulation 6.3(b) was obtained by the respondents for extension of this mandatory period of 120 days. As such, the petitioner is entitled to interest on Security (works) in accordance with Supply Code, 2007 Regulation 19.3(b). Similar claim has been upheld by the Commission in petition no. 7 of 2013 of SEL Mfg. Co. Ltd.

7.0 Findings and Decision of the Commission

The Commission has gone through the submissions and arguments made by both the parties. The first issue to be settled in the present petition is whether interest on initial security deposited by an applicant/consumer as per regulation 14 of the Supply Code, 2007 is payable from the date of deposit or after release of connection/extension in load when initial security is converted into Security (consumption).

The relevant regulations 14 & 17 of the Supply Code, 2007 reads as under:

“14. Initial security

- 14.1 *The applicant seeking supply of electricity as per Regulation 5 of these Regulations will be required to pay to the Licensee an amount as specified in the Schedule of General Charges approved by the Commission, as initial security towards supply of electricity.*
- 14.2 *The initial security will after release of connection be adjusted against Security (consumption) required to be deposited in accordance with Regulation 15.1.*
- 14.3 *The applicant seeking sanction of additional load/demand will be required to deposit initial security computed only for the additional load/demand.”*

“17. Interest on Security (consumption)

- 17.1 *The Licensee will pay interest on Security (consumption) at the SBI's Base Rate prevalent on first of April of the relevant year plus 2%, provided that the Commission may at any time by notification in official Gazette of the State specify a higher rate of interest.*
- 17.2 *The Licensee will indicate the amount becoming due to a consumer towards interest on the Security (consumption) in the first bill raised after thirtieth of April every year.*
- 17.3 *The interest will be credited to the account of a consumer annually on first day of April each year and will be adjusted on first May of every year against the outstanding dues and/or any amount becoming due to the Licensee thereafter.*
- 17.4 *In the event of delay in effecting adjustments due to the consumer as per Regulation 17.3, the Licensee will for the actual period of delay pay interest at twice the SBI's Base Rate prevalent on first of April of the relevant year plus 2%.”*

Thus as per regulation 14 of the Supply Code, 2007, an applicant/consumer requiring new connection or extension in load/demand is required to pay initial security which is adjusted against Security (consumption) after release of the connection.

Payment of interest on security is governed by Regulation 17.1 of the Supply Code, 2007 which provides for interest on Security (consumption) at SBI's base rate prevalent on 1st of April of the relevant year plus 2%. This interest shall be credited to the account of a consumer annually on first day of April each year and will be adjusted on 1st May of every year against the outstanding dues and/or any amount becoming due to the licensee thereafter as per Regulation 17.3 of the Supply Code, 2007.

Since two different terms i.e 'Initial Security' (required to be deposited by the consumer at the time of seeking electricity connection/extension in load) and 'Security (consumption)' (required to be maintained by the consumer after release of connection according to its consumption pattern) have been used in the Supply Code, 2007 for security deposit so the Commission in its Order dated 17.09.2014 in petition no. 45 of 2014 examined the issue in totality and in accordance with regulation 47 read with regulation 49 of the Supply Code 2007, interpreted the matter as per the provisions of section 47 of the Electricity Act, 2003.

The relevant regulations 47 & 49 of the Supply Code, 2007 are reproduced below for reference.

“47. Interpretation

47.1 These Regulations will be read and construed in all respects as being subject to the provisions of the Act, and the provisions of any other law for the time being in force.

47.2 Nothing contained in these Regulations will abridge or prejudice the rights of the Licensee and the consumer under the Act or any Rules or Regulations made there under.”

“49. Powers to remove difficulties

If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may do or undertake things or by a general or special order, direct the Licensee, to take suitable action, not being inconsistent with the Act, which appears to the Commission to be necessary or expedient for the purpose of removing difficulties.”

From the above, it is evident that Supply Code regulations are subject to the provisions of the Electricity Act, 2003 & if any difficulty arises in the implementation or interpretation of these regulations, the Commission may by Order direct the licensee to take action consistent with the Act.

The relevant section 47 of the Act reads as under:

“47.Power to require security:

(1)Subject to the provisions of this section a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him-

- a) in respect of the electricity supplied to such person; or*
- b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter,*

and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

- (2) Where any person has not given such security as is mentioned in sub section (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.*
- (3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.*
- (4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub section (1) and refund such security on the request of the person who gave such security.*
- (5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.”*

The matter was deliberated in detail in Order dated 17.09.2014 in petition no. 45 of 2014 wherein it has been held that interest on initial security deposited as per regulation 14 is payable as per the provisions of section 47 of the Act from the date of deposit. Thus it will be suffice to reproduce the relevant part of this Order of the Commission to settle the issue since the Order 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.”

Section 47 of the Act mandates payment of interest on initial security deposit irrespective of the time of its deposit. 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 & Supply Code 2014, as applicable from time to time.

The respondent has quoted some decision of ZDSC, Central Zone Ludhiana and also Order dated 18.06.2015 of the Ombudsman Electricity, Punjab in case No.14/2015 wherein the interest on initial security has been denied before release of connection/extension in load. In this regard, the Commission in its Order dated 13.01.2016 in petition no. 65 of 2015 has already held as under:

“We have gone through the Order and observed that the complainant/petitioner had brought the Order of the Commission in petition no. 45 of 2014 to the notice of the Ombudsman and same has duly been recorded in the proceedings but the interpretation rendered by the Commission on the provisions of the Supply Code regulations was set aside/overruled by Ombudsman which is against all judicial propriety. As pointed out above, Supply Code

regulations are subject to the provisions of the Act as per regulation 47 and regulation 49 of the Supply Code 2007 empowers the Commission to interpret the regulations and to direct the licensee by an Order to take appropriate action consistent with the Act. Such interpretation shall remain in force unless it is set aside by a superior Court/Tribunal. All such Orders of the Commission are required to be followed by all Consumer Grievances Committees/Forums and Ombudsman constituted under the regulations framed by the Commission. In this regard, we may refer to rule 7(3) of the Electricity Rules, 2005 which reads as under:

*“The Ombudsman shall consider the representations of the consumers consistent with the provisions of the Act, the Rules and Regulations made hereunder or **general orders or directions given by the Appropriate Government or the Appropriate Commission in this regard before settling their grievances.**”*
[Emphasis Supplied]

We hope that in future, the above observations of the Commission shall be kept in view by all the concerned authorities. Secretary, PSERC is directed to bring the above observations of the Commission to the notice of all the concerned authorities.”

Thus the Order of the Commission dated 17.09.2014 in petition no. 45 of 2014 shall prevail.

Further, the justification given by PSPCL for non compliance of Commission's Order dated 17.09.2014 in petition no.45 of 2014 by stating that the Order of the Commission has been challenged by PSPCL before the Hon'ble APTEL in Appeal No.298 of 2014 is also not legally tenable. It is evident that the Order of the Commission referred to

above has neither been stayed nor set aside till date by any competent Court or the Hon'ble APTEL. 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. We reiterate the directions issued to PSPCL in our Order dated 13.01.2016 in petition no. 65 of 2015 which reads as under:

“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.”

As such, AEE/Suburban, PSPCL Sirhind notice vide Memo No. 2134 dated 06.11.2015 for recovery of ₹13,10,760/- is set aside.

The other prayer of the petitioner is to direct PSPCL to refund the excess amount of Security (works) with interest as per regulation 19.7 of the Supply Code, 2007 and also to pay interest on the amount of Security (works) for the delay beyond mandatory 120 days in accordance with regulation 19.3 (b) of the Supply Code, 2007.

We have gone through the submissions of the petitioner and the reply of PSPCL and observed that the petitioner in its petition dated 23.11.2015 has deliberately concealed the fact that PSPCL has already refunded ₹ 2,41,875/- as excess amount recovered as Security (works) in the bill of August, 2015. This fact has also been mentioned in the reply of PSPCL dated 05.01.2016, a copy of which was also supplied to the

petitioner by PSPCL and this fact has not been denied by the petitioner. However, the petitioner again tried to misinform the Commission by stating in para 2 of its written arguments dated 14.01.2016 that “*a sum of ₹ 2,41,875/- has been refunded by the respondent vide AEE Suburban Sub Division, Sirhind Memo No. 2218 dated 20.11.2015 purportedly towards excess amount of security (works)*” whereas fact of the matter is that on the petitioner’s request dated 19.11.2015, AEE/PSPCL vide its letter dated 20.11.2015 has only provided the details of the amount already refunded by the respondent to the petitioner. The last line of the aforesaid letter of AEE/Suburban, Sirhind clearly mentioned that the amount has already been refunded in the bill of July, 2015 payable in August, 2015. Such conduct of the petitioner has not been appreciated by the Commission.

The petitioner has challenged the computation of the Service Connection Charges and claimed that less amount of Security(works) has been refunded. The dispute is covered under clause 4 of the “Consumer Complaint Handling Procedure (CCHP)” approved & notified by the Commission, **so the petitioner may approach the appropriate authority under CCHP or Forum for Redressal of Consumer Grievances in accordance with the provisions of PSERC (Forum and Ombudsman) Regulations, 2005 for redressal of his grievance regarding second prayer.**

The petition is disposed of accordingly.

Sd/-

(Gurinder Jit Singh)
Member

Chandigarh
Dated: 20.01.2016

Sd/-

(Romila Dubey)
Chairperson