

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

**Petition No.75 of 2015**

**Date of Order: 18.01.2016**

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 load/connection was not released; with further prayer to take appropriate action under Sections 142 and 146 of the Electricity Act, 2003, against the respondent and its officials for not giving the interest on additional security deposited by the petitioner, as per provisions of Section 47 of the Electricity Act, 2003, clause 14 and 17 of Supply Code, 2007 and Order of the Commission in petition no. 45 of 2014 titled as GNA Udyog Limited V/s PSPCL; any other Order or direction which this Court

may deem fit and proper may also be passed in favour of the petitioner.

AND

In the matter of: Arora Iron & Steel Rolling Mills (P) Ltd., Dhandari Khurd, Near Phase-VII, Focal Point, Ludhiana through its authorized representative Shri K.D. Parti.

.....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 Arora Iron & Steel Rolling Mills (P) Ltd., Dhandari Khurad, Focal Point, Ludhiana through its authorized representative Shri K.D.Parti 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 made the following submissions:

1.1 The petitioner is having an Arc Furnace for which it took electricity connection for a sanctioned contract demand of 2495 kVA at 11kV Supply Voltage. The Petitioner applied for the extension of load of 29,500 kW with additional contract demand of 28,500 kVA thus making total load as 31,922 kW with contact demand of 30,995 kVA along with conversion to 66 kV supply voltage. The petitioner deposited ₹ 42,75,000/-

as initial security on 19.08.2011 and thereafter, feasibility clearance was granted vide letter dated 27.12.2011. The petitioner was asked to submit A&A form which was submitted on 25.02.2012 along with initial security amount of ₹ 3,84,75,000/- vide B.A. 16 No. 285/10509 dated 24.02.2012. Thus a total amount of ₹4,27,50,000/- was deposited with the respondent as initial security.

- 1.2 The respondent could not release the extended load on the ground that Mother Sub Station is over loaded. Thereafter, the respondent issued revised feasibility clearance vide letter dated 21.05.2015 and allowed the extension in load from 10.00 PM to 08.00 AM. This feasibility clearance was again revised vide letter dated 24.09.2015 and partial load of 5000 kVA was allowed from 8.00 AM to 10.00 AM.
- 1.3 As per clause 14 of the Supply Code, 2007, the initial security deposited by a consumer has to be adjusted as Security (consumption) at the time of release of connection. As per clause 17 of the Supply Code, 2007, a person/consumer is entitled to get interest on the Security (consumption).
- 1.4 The Electricity Act, 2003 came into force with effect from 10.06.2003 and section 47 of the same deals with power of a licensee to seek security from consumers and pay the interest on the security amount to consumers. 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.

- 1.5 The petitioner deposited ₹42,75,000/- as initial security on 19.08.2011 and ₹3,84,75,000/- as security on 24.02.2012 and thus deposited a total amount of ₹ 4,27,50,000/- with the respondent as initial security. As per section 47 of the Electricity Act, 2003 the petitioner was entitled to get interest on the security amount from the date it was deposited with the respondent. But the respondent has failed to give any interest on this amount of ₹ 4,27,50,000/-.
- 1.6 Section 47.4 of the Electricity Act, 2003, provides for payment of interest on the security amount mentioned in section 47.1. So the distribution licensee is liable to pay interest in accordance with the provisions of section 47.4 on the amount deposited under section 47.1 of the Electricity Act, 2003. There is no further restriction on section 47.4 in 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. The petitioner is entitled to get interest on the security amount deposited by it with the PSPCL from the date the amount was deposited.
- 1.7 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 also from the date it was deposited with the distribution licensee. The Commission clearly held that 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. So the petitioner became entitled to get interest on the additional security/amount deposited by it from the date it was deposited but the respondent has failed to pay the same and thus has violated the provisions of section 47 of the Electricity Act, 2003, Clause 14 and 17 of the Supply Code, 2007 and Order dated 17.09.2014 passed by the Commission in petition No. 45 of 2014.

1.8 As per section 142 and 146 of the Electricity Act, 2003, the Commission has power to decide a complaint and take necessary action. As such, the petitioner is filing the present petition/complaint before the Commission.

1.9 The petitioner made the following prayers:

- i. to interpret clause 14 and 17 of Supply Code, 2007 and section 47 of Electricity Act, 2003.
- ii. to take action under section 142 and 146 of the Electricity Act, 2003, against the respondent and its officials for not paying the interest to the petitioner on the additional security deposited by it from the date it was deposited and violating clause 14 and 17 of Supply Code, 2007, 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.
- iii. to immediately pay the interest on the additional security deposited by the petitioner from the date it was deposited.

2.0 The petition was admitted & the Commission vide Order dated 23.12.2015 directed PSPCL to file reply by 04.01.2016 with copy

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

3.0 PSPCL vide Chief Engineer/ARR & TR Memo No. 5405/TR-5/740 dated 04.01.2016 (received on 07.01.2016) filed the reply and stated as under:

3.1 The petitioner applied for extension of load/contract demand of 29500 kW/ 28500 kVA thus making the total load/contract demand as 31922 kW/30995 kVA along with conversion of supply voltage from 11kV to 66 kV. The petitioner deposited 10% as earnest money amounting to ₹42,75,000/- on 19.08.2011. Later on conditional feasibility clearance was issued and petitioner submitted A&A form and deposited ₹3,84,75,000/- as 90% of ACD on 24.02.2012.

3.2 As per regulation 14 of PSERC (Electricity Supply Code and Related Matters) Regulations, 2007, the initial security deposited by the applicant seeking supply of electricity as per regulation 5 of Supply Code, 2007 will be adjusted against Security (consumption) after the release of connection. The licensee will pay the interest on Security (consumption) at the SBI's long term PLR prevalent on first of April of the relevant year, as per regulation 17 of Supply Code, 2007. There is no provision for payment of interest prior to the release of load/extension in load where the amount is paid as initial security by consumer for feasibility study etc.

3.3 Since extended load of the consumer was released on 29.05.2015 for specific time interval of 10:00 P.M. to 08:00 A.M on his specific request (night load basis), hence interest on Security (consumption) as per regulation 14 and 14.2 of Supply Code, 2007 shall be due on 28.05.2016 and initial

security deposited by the applicant shall be adjusted against Security (consumption). Rather the department deserves to recover additional Security (consumption) if the initial security falls below the Security (consumption) deducted from the average consumption for 1.5 month during the preceding year i.e. 29.05.2015 to 28.05.2016.

- 3.4 In this case the petitioner has deposited initial security of ₹42,75,000/- on 19.08.2011 and ₹3,84,75,000/- on 24.02.2012. The consumer/petitioner is entitled to interest on the security only after the extension of load/contract demand applied is released as per Supply Code, 2007 instructions. As load/contract demand of the petitioner is released on 29.05.2015, so the petitioner is entitled to interest on this amount after 29.05.2015.
- 3.5 As per instructions of Supply Code, 2007, applicant seeking supply of electricity as per regulation 5 of Supply Code, 2007, 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. The applicant seeking extension of additional load/contract demand will be required to deposit initial security only for additional load/contract demand. After the release of connection/additional Load, this initial Security will be adjusted against Security (consumption).
- 3.6 Supply Code, 2007 delineates and makes a clear distinction between initial security and Security (consumption). Thus regulation of PSERC is unambiguous whereby the interest is payable only on Security (consumption) which becomes due

after one year from the release of connection/extension of load.

- 3.7 The ratio of the case in petition no 45 of 2014 titled as GNA Udyog limited V/s PSPCL is not applicable in this case. Further appeal against the order dated 17.09.2014 passed by the Commission, in petition no. 45 of 2014 is lying pending in the appellate Tribunal for Electricity at New Delhi.
- 4.0 The petitioner filed the rejoinder to the reply of PSPCL on 08.01.2016 & submitted that:
  - 4.1 As per clause 17 of the Supply Code and section 47 of the Electricity Act, 2003, a distribution licensee is liable to pay interest on the security amount to a consumer. 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.
  - 4.2 As per clause 17.3 of the Supply Code 2007, the interest has to be credited to the account of a consumer annually on first day of April each year. As per clause 17.4 of the Supply Code, 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 Short Term PLR prevalent on first of April of the relevant year. So in the present case the petitioner is entitled to get interest at twice the SBI's Short Term PLR as per clause 17.4 of the Supply Code 2007.
  - 4.3 The Supply Code, 2007 is a delegated legislation, which cannot over ride the provisions of the Electricity Act, 2003.



- 4.4 PSPCL cannot refuse from complying with the Orders passed by the Commission in Petition No. 45 of the 2014 merely on the ground that an appeal has been filed before the Hon'ble APTEL. In the appeal filed by the PSPCL before the Hon'ble APTEL, no stay has been granted against the Order passed by the Commission. It is settled principle of law that mere pendency of an appeal would not give any right to the respondent to disobey the order passed by the Commission.
- 4.5 Hon'ble High Court decided C.W.P No.16262 of 2011 titled as M/s Ranjeev Alloys V/s PSPCL and held that the petitioner is entitled to get interest on the ACD amount from 2003 to 2008. PSPCL went in appeal against this order and filed LPA before the Hon'ble High Court which is pending. M/s Ranjeev Alloys filed contempt petition bearing No. COCP No. 3326 of 2013 and the Hon'ble High Court held that merely because LPA has been filed would be no ground to keep the orders of the writ court in abeyance and directed the PSPCL to comply with the order and the PSPCL has complied with the orders of the Hon'ble High Court.
- 5.0 After hearing the parties at length during hearing on 13.01.2016, the Commission vide Order dated 15.01.2016 closed the hearing of the case and parties were directed to file the written submissions, if any, by 15.01.2016. The Order was reserved.
- 6.0 No written submissions by any party were filed.

#### **7.0 Findings and Decision of the Commission**

The Commission has gone through the submissions and arguments made by both the parties. The only issues 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/additional load.

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 1<sup>st</sup> 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 1<sup>st</sup> 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 of 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 of the Commission 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.”*

So as held in the Order of the Commission dated 17.09.2014 in petition no. 45 of 2014, a conjoint reading of regulations 14, 17 of the Supply Code, 2007 and section 47 of the Act mandates payment of interest on initial security deposit from the date of its deposit.

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 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. The 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

*“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.”*

**Thus PSPCL is directed to immediately pay interest on initial security/additional security amount recovered as per regulation 14 of the Supply Code, 2007 from the petitioner for release in extension of load/demand in accordance with regulation 17 of the Supply Code, 2007 and Supply Code, 2014, as applicable, from the date of deposit.**

The petition is disposed of accordingly.

Sd/-

**(Gurinder Jit Singh)  
Member**

Sd/-

**(Romila Dubey)  
Chairperson**

**Chandigarh  
Dated: 18.01.2016**