

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

Petition No. 48 of 2015

Date of Order: 01.02.2016

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

In the matter of : Petition under section 142 of Electricity Act, 2003 for taking necessary action against the respondent and its officials for issuing commercial circular No. 29/2015 dated 22.07.2015 contrary to the amendment dated 01.06.2015 carried out by this Hon'ble Commission in Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) (5th Amendment) Regulations, 2015 and in violation of the provisions of Electricity Act, 2003, provisions of Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) Regulations, 2011 and General Conditions of Tariff and Schedule of Tariff.

AND

In the matter of : Trishala Alloys Pvt. Ltd, Village and Post Office Jandiali, Budhewal Road, Near Kohara, Ludhiana, Punjab, through its authorized

representative Sh. Deepak Kumar S/o Sh. Shiv Kumar, Liaison Officer of the Company.

Versus

Punjab State Power Corporation Limited,
through its CMD, The Mall, Patiala.

ORDER:

The present petition has been filed by Trishala Alloys Private Limited which has an electric connection with sanctioned contract demand of 4871 kVA. Trishala Alloys Private Limited also purchases electricity under open access as per provisions of Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) Regulations, 2011.

2. The submissions made by Trishala Alloys Pvt. Ltd in the Petition are summarized as under:
 - i) Section 181 of the Electricity Act, 2003 has given powers to State Electricity Regulatory Commissions to make regulations on various matters as mentioned in that section. A licensee or State Transmission Utility has no powers to make any rules/regulations under the provisions of Electricity Act, 2003 and they have to act as per terms and conditions of their licenses or rules & regulations framed by a Commission and provisions of the Act. The Commission using the powers under Section 181 of the Act has framed Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) Regulations, 2011 (Open

Access Regulations, 2011). As per Regulations 23 to 27 of these regulations, a consumer availing open access is liable to pay open access charges as under:

- a) Transmission charges
 - b) Scheduling and System Operation charges
 - c) Wheeling charges.
 - d) Cross Subsidy Surcharge; and
 - e) Additional Surcharge.
- ii) Chapter 6 of Open Access Regulations, 2011 deals with scheduling, metering and losses. Regulation 28 deals with scheduling and has been reproduced by Trishala Alloys Pvt. Ltd., as under:

“28. Scheduling:

- (1) Notwithstanding anything contained in the succeeding clauses of this regulation, scheduling of inter-State open access transactions shall be as specified by the Central Commission.*
 - (2) Subject to the foregoing clause, intra-State open access transactions in respect of all customers and generating stations irrespective of the capacity shall be scheduled by SLDC in accordance with the provisions of the State Grid Code.”*
- iii) PSPCL filed Petition No. 16 of 2013 before the Commission praying for making amendment in Open

Access Regulations, 2011, for the purpose of minimizing the impact of varying schedule of open access consumers and the Commission in its Order dated 01.06.2015 decided the said petition and incorporated a new sub-clause 28.3 in the Open Access Regulations, 2011. Relevant para of the Order dated 01.06.2015 has been reproduced by Trishala Alloys Private Limited, as under:

“.....the Commission decides to incorporate a new sub-clause as proposed by PSPCL, however, with some minor modification, in the Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) Regulations, 2011, as brought out below:

28(3) The quantum of drawl of electricity by an Open Access Consumer from the distribution licensee during any time block of a day shall not exceed the admissible drawl of electricity by the Open Access Consumer from the distribution licensee in such time block wherein the Schedule for Open Access drawl is the maximum.

.....”

- iv) Thereafter, the Commission issued a notification dated 01.06.2015, notifying 5th amendment in the Open Access Regulations, 2011, by adding clause 28.3 in the ibid Regulations. The relevant part of the notification has been reproduced in the Petition.

- v) PSPCL issued Commercial Circular No. 29/2015 dated 22.07.2015 with the subject: Amendment in Open Access Regulations– Regulating drawl of power from PSPCL systems by Open Access Consumers. In the start of para 1 of this circular, PSPCL has mentioned about the order passed by the Commission in Petition No. 16 of 2013 and has reproduced clause 28(3) and the example as mentioned by the Commission in its Order dated 01.06.2015. PSPCL mentioned in this circular as under:

“.....In case, drawl of power by an Open Access Customer exceeds its admissible drawl/entitlement (2 MA in the above example) during any part of the day, Demand Surcharge for maximum overdrawl than admissible drawl/entitlement in the billing period at the rates approved by the Commission in the Schedules of Tariff (presently charged @₹750 per kVA/Month) shall be levied.”

- vi) In para 3 of the ibid circular, it has been mentioned that open access industrial consumers exceeding the sanctioned contract demand/admissible drawl/entitlement shall be levied a demand surcharge as approved by the Commission from time to time (presently charged @₹750/kVA/month). It has further been mentioned that the demand surcharge shall be levied on the maximum increase in demand beyond sanctioned contract demand or admissible drawl/entitlement under open access during billing

period, whichever is more. The relevant part of para 3 of CC 29/2015 has been reproduced by Trishala Alloys Pvt. Ltd. as under:

“3. Demand Surcharge, Peak Load Exemption

Charges and Penalty for Peak Load Violation:-

(i) During 1st April to 30th September:

The Open Access Industrial Consumers exceeding the sanctioned Contract Demand/ admissible drawl / entitlement shall be levied a demand surcharge as approved by the Commission from time to time (presently charged @ ₹750/kVA/month). The demand surcharge shall be levied on the maximum increase in the demand beyond Sanctioned Contract Demand or admissible drawl/entitlement under Open Access during billing period, whichever is more. In addition, in case of failure to follow the Peak Load Restriction / Exemption Instructions, penalty for Peak Load Violation will be levied as approved by the Commission from time to time and as provided in the instructions issued by PSPCL.”

- vii) The demand surcharge has not been defined in the Open Access Regulations, 2011, but Clause SI.6 of the Schedule of Tariff annexed with the Tariff Order passed by the Commission for the financial year 2015-2016 deals with the Demand Surcharge and

same has been reproduced by Trishala Alloys Pvt. Ltd. as under:

“SI.6 Load/Demand Surcharge

SI.6.1 Load Surcharge

SI.6.2 Demand surcharge for exceeding the Contract Demand:

If a consumer in a month exceeds the sanctioned contract demand, demand surcharge shall be charged at a rate of ₹750/- per kVA on excess demand, irrespective of number of defaults. This demand surcharge shall be without prejudice to the distribution licensee’s right to take such other appropriate action as may be deemed necessary to restrain the consumer from exceeding his contract demand.

In the event of MDI being defective, maximum demand for billing purpose shall be computed as per clause 16 of General Conditions of Tariff, as amended from time to time. In case computed maximum demand is more than the sanctioned contract demand, no surcharge for demand consequent to this computation shall be levied.”

It has been submitted by Trishala Alloys Pvt. Ltd that from clause SI.6 of the Schedule of Tariff, it is very much clear that the demand surcharge would be charged in case the consumption goes beyond the contract demand. The contract demand has been defined in the General Conditions of Tariff annexed

with the Tariff Order passed by the Commission for the financial year 2015-2016 and same has been reproduced by Trishala Alloys Pvt. Ltd. as under:

“10. Contract Demand

10.1 Contract demand shall mean the maximum demand in kVA sanctioned to the consumer.

10.2 All consumers with load exceeding 100 kW (except Public Lighting & AP High Tech/High Density Farming), MS/BS consumes and DS/NRS consumers with load exceeding 50 kW but upto 100 kW shall declare the maximum demand in kVA which shall not exceed 100% of the sanctioned load in kW and converted in kVA by using 0.90 power factor. However, in case of MS consumers, the maximum demand shall not exceed 100 kVA. The date of applicability of contract demand for DS/NRS consumers with load above 50 kW and upto 100 kW shall be specified in Tariff Order.

10.3 The maximum demand for any month shall be considered as highest average load measured in kilovolt Ampere (kVA) during a block of 30 minutes period.”

Trishala Alloy Pvt. Ltd. has submitted that the plain reading of clause 10 of General Conditions of Tariff and clause SI.6 of the Schedule of Tariff makes it abundantly clear that the Demand Charges at the rate of ₹750 per kVA would be charged only in a

case where a consumer has crossed the maximum demand in kVA sanctioned to a consumer.

- viii) The Commission has amended the Open Access Regulations, 2011 vide 5th amendment dated 01.06.2015 and added clause 28.3 to the Open Access Regulations, 2011, but nowhere stated therein that in case drawl of power by open access consumer exceeds its admissible drawl, then it is liable to pay Demand Surcharge for maximum over drawl than admissible drawl. PSPCL on its own has issued Commercial Circular No. 29/2015 and by misinterpreting the 5th amendment carried out by the Commission, has mentioned therein that an open access consumer would be liable to pay demand surcharge, in case it exceeds its admissible drawl. PSPCL is mixing the Sanctioned Contract Demand with restricted contract demand. As per example given by the Commission in the order dated 01.06.2015, in petition no. 16 of 2013, if an open access consumer with a contract demand of 10 MVA has scheduled 8 MVA, 5 MVA and 2 MVA power through open access in different time blocks of the day, say 2-3 hours, 9-11 hours and 18-22 hours respectively, then the entitlement of open access customer during time blocks when there is no schedule or less schedule of power than maximum scheduled power under open access, shall be 2 MVA from the distribution licensee, for that day. This 2 MVA power is restricted demand (as in the case of

peak load hours restrictions) and not the contract demand. In case, a consumer exceeds this admissible drawl of electricity, but if the drawl of electricity under open access and from distribution licensee do not cross the Sanctioned Contract demand, then the demand surcharge cannot be recovered from a consumer. In case, the total drawl of electricity under open access and from distribution licensee exceeds sanctioned contract demand, then in that situation only, demand surcharge can be recovered as per clause Sl.6 of the Schedule of Tariff. As such, Commercial Circular No. 29/2015 issued by the respondent is totally wrong and illegal.

- ix) The Commission has only added clause 28.3 to the Open Access Regulations, 2011 and nowhere amended or added any clause in the Open Access Regulations, 2011, authorizing the respondent PSPCL to charge Demand Surcharge in case the drawl of electricity from the distribution licensee is more than admissible drawl. There is no provision in the Supply Code, 2015, General Conditions of Tariff and Schedule of Tariff attached with the Tariff Order for FY 2014-2015 and in the Tariff Order for the year 2015-16, which authorizes the respondent to change the sanctioned contract demand of a consumer availing open access and curtail it to the admissible drawl. As such, the impugned CC No. 29/2015 is totally wrong and illegal.

- x) As per section 181 of the Electricity Act, 2003, only the Commission is authorized to frame rules and regulations and a licensee has no power to make or frame any rule or issue any circular interpreting any rule or regulation framed by the Commission. The commercial circulars are issued for giving information of the rules and regulations framed by the Commission and nothing can be added or subtracted while issuing a circular about an amendment carried out by the Commission in a regulation framed by the Commission. By issuing commercial circular no. 29/2015 and by mis-interpreting the 5th amendment carried out by the Commission in the Open Access Regulations, 2011, the respondent has violated the provisions of the Electricity Act, 2003 and also the provisions of the Open Access Regulations, 2011. CC No. 29/2015 is also in violation of General Conditions of Tariff and Schedule of Tariff and for this, necessary action has to be taken under section 142 of the Electricity Act, 2003, against PSPCL and its officials. The impugned CC No. 29/2015 being in violation of the Electricity Act, 2003 and also contrary to 5th amendment carried out by the Commission in Open Access Regulations, 2011, General Conditions of Tariff and Schedule of Tariff is also liable to be set aside by the Commission.
- xi) In the case of peak load hours where a consumer has to restrict drawl of electricity from open access or from distribution licensee upto restricted contract

demand and in case there is any violation, then peak load violation charges are charged from the consumers. So, on same pattern, in case a consumer exceeds drawl of electricity than admissible drawl from a distribution licensee, then in that case licensee could charge violation charges in line with Peak Load Violation Charges and that too after taking proper orders from the Commission and not on their own. As such, the impugned CC No. 29/2015 is totally wrong and illegal.

xii) It has been prayed by Trishala Alloys Pvt. Ltd as under:

(a) The necessary action as contemplated under section 142 of the Act, against PSPCL and its officials, for issuing commercial circular No. 29/2015 dated 22.07.2015, contrary to amendment dated 01.06.2015 carried out by the Commission in Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) (5th Amendment) Regulations, 2015 and in violation of the provisions of Electricity Act, 2003, provisions of Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) Regulations, 2011 and General Conditions of Tariff and Schedule of Tariff, may be taken.

(b) The impugned Commercial Circular No. 29/2015 issued by PSPCL, may be set aside being

contrary to amendment dated 01.06.2015, carried out by the Commission in Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) (5th Amendment) Regulations, 2015 and in violation of the provisions of Electricity Act, 2003, provisions of Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) Regulations, 2011 and General Conditions of Tariff and Schedule of Tariff.

(c) During the pendency of the present petition before the Commission, the operation of the impugned Commercial Circular No. 29/2015 may be stayed, in the interest of justice.

(d) Any other order or direction which the Commission may deem fit and proper may also be passed.

- 3 The petition was admitted vide Commission's order dated 19.08.2015 and PSPCL was directed to file reply to the Petition by 15.09.2015, with copy to the Petitioner.
4. PSPCL submitted its reply to the Petition vide letter dated 15.09.2015, which is summarized as under:-
 - i) The demand surcharge has been imposed by PSPCL to restrain the open access consumers from drawing more power than the admissible drawl/entitlement, thereby ensuring the healthiness and stability of the power system network. Northern Regional Load Dispatch Centre (NRLDC) sanctions

the corridor keeping in view the scheduled power. Over drawl by open access consumers may force the utility to impose power cuts on the other categories of consumers.

The provision of the demand surcharge has been clarified in clause 31(2)(a) of Open Access Regulations, 2011, approved by the Commission in the case of a consumer where PSPCL consumer draws power more than admissible limits. The ibid clause has been reproduced by PSPCL as under:

“When the recorded drawl of a consumer exceeds the admissible drawl or sanctioned contract demand as the case may be, the consumer will be liable to pay demand surcharge.”

Likewise, the demand surcharge has been incorporated in Commercial Circular 29/2015, i.e. in case, a consumer crosses its admissible limits as per 5th amendment to Open Access Regulations 2011, then the demand surcharge shall be levied.

PSPCL has denied that that the demand surcharge has not been mentioned in the Open Access Regulations, 2011. Trishala Alloys Pvt. Ltd. is trying to mislead the Commission.

- ii) The Commission has amended the Open Access Regulations, 2011 vide its 5th amendment dated 01.06.2015, to ensure that the open access consumers don't go beyond their admissible drawl, as the overdrawl affects the system adversely, and

ensuring this without any measure is not possible. As such, a demand surcharge @ ₹750 per kVA (as approved in the Tariff Orders of relevant financial year) would be charged only in that case, where a consumer crosses its admissible drawl. Purpose of demand surcharge is to discourage the consumers to draw more power beyond their admissible drawl.

- iii) The 5th amendment has no meaningful application without levying the demand surcharge. It would not be possible to control over drawl of a consumer without the application of any restraining measure and it has been denied that the 5th amendment to Open Access Regulations, 2011 has been misinterpreted.
- iv) The 5th amendment to Open Access Regulations, 2011, issued by the Commission is self explanatory and it is applicable to open access consumers and incorporated to forbid the over drawl of power by such consumers. Demand surcharge has been charged to restrain the open access consumers from over drawl than the admissible limits.
- v) The commercial circular has been issued in line with the 5th amendment to Open Access Regulations, 2011, approved by the Commission. The sole purpose of which is to discourage the open access consumers from unscheduled overdrawl than the admissible drawl.

- vi) The Open Access Regulations, 2011 are duly approved by the Commission. The commercial circular No. 29/2015 has been issued to interpret the 5th amendment carried out by the Commission.
- vii) The commercial circular No. 29/ 2015 is in line with the 5th amendment as approved by PSERC. The provision in the circular has been reproduced by PSPCL as under:

“3. Demand Surcharge, Peak Load Exemption Charges and penalty for Peak Load Violation:

(i) During 1st April to 30th September:

The Open Access Industrial Consumers exceeding the sanctioned Contract Demand/admissible drawl/entitlement shall be levied a demand surcharge as approved by the Commission from time to time (presently charged @ ₹750/kVA/month). The demand surcharge shall be levied on the maximum increase in the demand beyond sanctioned contract demand or admissible drawl/entitlement under Open Access during a billing period, whichever is more. In addition, in case of failure to follow the Peak Load Restriction/Exemption Instructions, penalty for Peak Load Violation will be levied as approved by the Commission from time to time and as provided in the instructions issued by PSPCL.

- (ii) *During 1st October to 31st March (next year) :*
- (a) *LS category of Industrial Consumers who do not opt for ToD tariff shall be governed as per 3(i) above.*
- (b) *LS category of Industrial Consumers (who opt for ToD tariff) shall be levied a demand surcharge as approved by the Commission from time to time (presently charged @₹750/kVA/month) and as provided under Schedule of Tariff approved by the Commission, if an Open Access consumer exceeds his sanctioned Contract Demand.*

In addition, an Open Access Customer shall also pay penalty for Peak Load violation at the rates approved by the Commission and as provided in the instructions issued by PSPCL, if this demand exceeds the sanctioned Contract Demand.”

- viii) The 5th amendment in Open Access Regulations, 2011 has been carried out by the Commission to discourage the Open Access consumers from over drawl so that grid security/stability is maintained.
- ix) The Petitioner is just revolving around the demand surcharge imposed on over drawl of the admissible drawl as per 5th amendment in Open Access Regulations, 2011, approved by the Commission. Without Demand surcharge, there will be no control

on the consumers to regulate the admissible drawl and the amendment will have no fruitful applications.

x) It has been submitted by PSPCL that the Petition is liable to be dismissed in view of submissions made by it.

5. During hearing of the Petition on 23.09.2015, Trishala Alloys Pvt. Ltd. sought time to file rejoinder to the reply of PSPCL. The Commission vide its order dated 24.09.2015 directed Trishala Alloys Pvt. Ltd. to file the same by 14.10.2015, with a copy to PSPCL. Next date for hearing the arguments of the parties was fixed for 20.10.2015.

6. The Commission vide its order dated 23.10.2015 observed and ordered as under:

“The petitioner had sought time to file rejoinder to the reply of PSPCL and was given time vide Order dated 24.09.2015 to do so by 14.10.2015. No rejoinder has been filed. The parties, however, argued the case and after hearing, the Commission directed them to hold a meeting and file proposal(s) by 03.11.2015 suggesting solution to the problems brought out by them during course of hearing for consideration of the Commission. The parties agreed to do so.

The petition shall be taken up for hearing on 10.11.2015 at 11.30 A.M.”

7 The Commission vide its order dated 13.11.2015 observed and ordered under:

“The parties were directed vide Order dated

23.10.2015 to hold a meeting and file proposal by 03.11.2015 suggesting solution to the problems brought out by them during hearing on 20.10.2015 for the consideration of the Commission. In this context, PSPCL has submitted vide memo no. 5899 dated 09.11.2015 as under :-

The subject cited petition is listed before the Hon'ble Commission on 10.11.15. In this context it is intimated that in compliance to Hon'ble Commission order dated 23.10.15, a meeting was arranged on 06.11.15 at 3 PM in the chamber of CE/PP&R, but counsel of petitioner could not attend the meeting due to some unavoidable circumstances. It is mentioned that the counsel in this petition is also representing the petition no. 47 of 2015 in which Open Access Users Association had submitted their proposal, which is under consideration of higher authorities and likely to take another 2 weeks. Matters in petition no. 47/2015 & 48/2015 are almost similar.

In view of the above it is requested that Hon'ble Commission may kindly grant 2 weeks time for submission of proposal/comments and accordingly postpone the date of hearing."

Accordingly, the petition shall be taken up with petition no. 47 of 2015 on 24.11.2015 at 11.30 AM."

8. The Commission vide its order dated 02.12.2015 observed and ordered as under:

"The Commission had directed parties vide orders

dated 23.10.2015 and 13.11.2015 to hold a meeting to discuss the issues and file a proposal suggesting solutions to the problems faced by the parties. PSPCL has prayed vide memo No. 5083 dated 01.12.2015 for time of two weeks for filing the proposal. PSPCL shall file the proposal by 11.12.2015 and ensure to supply a copy of the same to the petitioner who may file its comments on or before 15.12.2015. The petition shall be taken up for hearing on 15.12.2015 at 11.30 A.M.”

9. The Commission vide its order dated 18.12.2015 observed and ordered as under:

“PSPCL was directed vide Order dated 02.12.2015 to file the proposal by 11.12.2015 and ensure to supply a copy of the same to the petitioner who may file comments by 15.12.2015. PSPCL again prayed for more time vide Chief Engineer/ARR & TR memo no. 5251 dated 15.12.2015. PSPCL is directed to file reply by 21.12.2015 with copy to the petitioner. The petition shall be taken up for hearing on 22.12.2015 at 3.30 P.M.”

10. PSPCL vide its letter dated 22.12.2015 has filed proposal in the above Petition as ordered by the Commission, which is summarized as under:

- i) As per the orders of PSERC, a meeting was held with Open Access Users Association (OAUA). Subsequently after the meeting, the OAUA conveyed their proposal vide e-mail dated 08.11.2015, in which

they put up the issues during discussion with PSPCL representatives.

The proposal submitted by OAU was further examined by PSPCL during meeting dated 13.11.2015 and was put up to the Management for approval.

ii) The comments of PSPCL on the various issues raised by OAU are as under:

a) Purchase of Power under STOA under Bilateral Agreement:

In case of curtailment of already approved schedule by NRLDC, Open Access Consumer starts over drawl of power from PSPCL, for which PSPCL has to arrange additional power all of a sudden, for which PSPCL need to be compensated as per over drawl provisions of Open Access Regulations,2011

b) Selection of Power Factor of 0.9:

The normative power factor of 0.9 has been used as per General Conditions of Tariff, Supply Code and Grid Code. Therefore, following a different value of power factor only for the purpose of Open Access would not be justified. However, the Commission may review value of power factor to be considered as such for any category of consumers and his sanction CD be worked on the basis of the new normative value of the power factor thus considered.

c) Banking of Power :

The Banking of Power and its compensation be worked out as per relevant clause of the Open Access Regulations, 2011.

d) Peak Load & Demand Violation Charges:

i) The applicability of demand surcharge for drawing power more than CD or admissible/actual drawl for the day should be applicable throughout the year.

ii) All Open Access consumers need to compensate PSPCL for all such violations carried out during the month on daily basis and suitable charges should be levied.

e) Date of implementation of CC 29/2015:

CC no.29/2015 was issued in line with the spirit of the directive issued by the Commission vide 5th amendment in Open Access Regulations, 2011 dated 01.06.2015, which has come in to force from the date of publication in the official Gazette of the State.

11. The Commission vide its order dated 15.01.2016 observed and ordered as under:-

“PSPCL had filed a proposal vide C.E./ARR & TR memo No.5308 dated 22.12.2015 in compliance with Orders dated 23.10.2015, 13.11.2015, 02.12.2015 and 18.12.2015. During last hearing held on 22.12.2015, the petitioner Association sought time to

file its response to the proposal of PSPCL. The petitioner was directed to file the same by 04.01.2016 with copy to PSPCL. The petition was listed for hearing on 06.01.2016 which was re-listed for 13.01.2016 vide No.10316/18 dated 05.01.2016.

After hearing the petitioner and PSPCL, the Commission observed that issues involved have not been properly comprehended/ appreciated by the parties in the light of the relevant Regulations of Commission applicable in the case and meeting shall be held with the staff of the Commission on 19.01.2016 at 2.30 P.M. to comprehend the issues.

The petition shall be taken up for further hearing on 27.01.2016 at 11.30 A.M.”

12. The Commission during hearing of the Petition on 27.01.2016 heard both the parties at length. The hearing of the matter was closed and order was reserved.

13. Findings and Decision:

After going through the submissions made by Trishala Alloys Pvt. Ltd, PSPCL and deliberations held in the meeting of PSPCL & representatives of Trishala Alloys Pvt. Ltd, with the staff of the Commission, the Commission observes and decides as under:-

- i) The Petitioner has prayed in the Petition that the impugned Commercial Circular 29 of 2015 dated 22.07.2015 issued by PSPCL may be set aside, being contrary to 5th amendment notified on 01.06.2015 by the Commission, in the Punjab State Electricity Regulatory

Commission (Terms and Conditions for intra-State Open Access) Regulations, 2011 and in violation of the provisions of Electricity Act, 2003, provisions of the Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access) Regulations, 2011, General Conditions of Tariff and Schedule of Tariff. The only issue raised by the Petitioner in support of its contention for setting aside the ibid Commercial Circular is that in case the total drawl of electricity under open access and from distribution licensee exceeds sanctioned contract demand, then in that situation only, demand surcharge can be recovered as per para SI.6 of the Schedule of Tariff, otherwise it is not recoverable by the licensee. We are accordingly confining our decision only on this issue.

- ii) The 5th amendment in PSERC (Terms and Conditions for intra-State Open Access) Regulations, 2011, vide which clause 28(3) has been added to the ibid regulations issued by the Commission, states as under:

“28(3) The quantum of drawl of electricity by an Open Access Consumer from the distribution licensee during any time block of a day shall not exceed the admissible drawl of electricity by the Open Access Consumer from the distribution licensee in such time block wherein the Schedule for Open Access drawl is the maximum.”

This amendment was issued by the Commission keeping in view the problems being faced by PSPCL in

drawl of power by Open Access consumers from Power Exchanges and keeping in view the interest of the consumers, as prior to this amendment, the sudden variation in drawl by Open Access consumers in various time slots of a day certainly affected the quality of power supply to other consumers. Besides, it was not practically possible for PSPCL to manage the supply efficiently in such load varying conditions. If we go by the contentions of the Petitioner, the very purpose of notifying 5th amendment in the PSERC (Terms and Conditions for intra-State Open Access) Regulations, 2011 will be defeated. This very amendment (5th amendment) has been made specifically to do away with the sudden variations in drawl by the Open Access consumers.

- iii) Regulation 31(2) of PSERC (Terms and Conditions for intra-State Open Access) Regulations, 2011, specifies as under:

“Open Access customer who is a consumer of the licensee:

A consumer will be allowed to draw the total load equivalent to the sum of scheduled entitlement as an Open Access customer, limited to actual injection, and sanctioned Contract Demand as a consumer of the distribution licensee (sum of these two being admissible drawal), provided the Open Access consumer has taken permission to draw the open access power above the sanctioned contract demand.

Out of the recorded drawal, the scheduled entitlement as an Open Access customer will first be adjusted and the balance will be treated towards sanctioned Contract Demand of the consumer. The recorded maximum drawal will be accounted for/charged as under:

(a) When the recorded drawal of a consumer exceeds the admissible drawal or sanctioned contract demand as the case may be, the consumer will be liable to pay demand surcharge.

(b) When the recorded drawal of a consumer is less than the schedule entitlement as an Open Access customer, it will be treated as a case of under drawal as per 1 (b) above.

The consumer will, however, be governed by the General Conditions of Tariff and relevant Schedule of Tariff approved by the Commission.”

It has been clearly brought out in regulation 31(2) that when the drawal of an Open Access consumer exceeds the admissible drawal or sanctioned contract demand, as the case may be, the consumer will be liable to pay demand surcharge and the Open Access consumer will be governed by General Conditions of Tariff and relevant Schedule of Tariff approved by the Commission. To understand and interpret the meaning of a particular clause of a Regulation, the regulations are to be read in whole and are not to be read in part(s). The Commission finds that the levy of demand surcharge for exceeding

admissible drawal as per regulation 28(3) of the Open Access Regulations, 2011 or for exceeding sanctioned contract demand, as the case may be, is in Order.

The Petition is dismissed.

Sd/-

(Gurinder Jit Singh)
Member

Sd/-

(Romila Dubey)
Chairperson

Chandigarh

Dated: 01.02.2016