

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Review Petition. 06 of 2022
In Pt No. 37 of 2021
Date of Order: 20.07.2023

Petition under Section 94 (1) (f) of the Electricity Act, 2003, read with Regulation 64 of the Conduct of Business Regulations, 2005 of the PSERC Conduct of Business Regulations seeking review of the Order dated 04.05.2022 passed by the Commission in Petition No. 37 of 2021.

AND

In the matter of: Punjab State Power Corporation Ltd, having its office at the Mall, Patiala Through its Chairman-Cum-Managing Director.

Review Petitioner.....

Vs

M/s Nawanshahar Power Private Ltd. Nawanshahar Sugar Mills, Banga Road, Nawanshahar Distt. SBS Nagar Punjab-144514.

Respondent.....

Commission: Sh. Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

PSPCL: Sh. Anand K Ganesan, Advocate

Nawanshahar: Sh. Aditya Grover, Advocate on behalf of Ms. Meenakshi Gupta, Advocate

ORDER

1.0 Punjab State Power Corporation Ltd (PSPCL) has filed the present petition seeking review of the judgment and order dated 04.05.2022 passed by the Commission in Petition No. 37 of 2021 to the limited extent of the methodology given by the Commission for calculation of maximum demand on a 30 minutes time block basis.

1.1 PSPCL has submitted that the Commission has directed PSPCL to revise the Bill of M/s Nawanshahar Power Private Ltd (NPPL) by taking the average of two 15 minutes time blocks in a period of 30 Minutes starting from 00:00 hours during the time periods for which the Tariff Order mandates to consider the maximum demand as the highest average load measured in Kilovolt Ampere (kVA) during a block of 30 minutes period. PSPCL is facing difficulty in the implementation of the direction of the Commission due to metering arrangement that existed in the premises of the respondent at the relevant time. The metering equipment that was installed was ABT compliance meter (which measures average minute MDI in a 15-minutes slot). The data from the said meter is to be recorded on a monthly basis with the historical data in the meter available for a period of maximum 70 days. While the meter records the import of electricity on a 15-minutes time block basis, the data recorded from the said meter on a monthly basis does not segregate the consumption of electricity for every 15-minutes time block. The maximum demand as recorded by the Meter during any 15 minutes time block during the month is captured and is available in the recorded data. The meter, however, does not capture the demand that is recorded in every 15 minutes time block. It is technically impossible to make available the import data for the period in question on every 15 minutes time block basis with the meters that were installed during the relevant time. PSPCL had issued General Conditions of Tariff and Schedules of Tariff vide commercial circular No. 28 of 2020 which was applicable from 01.06.2020 to 31.03.2020. The said conditions in Regulation 10.3 lay down that maximum demand for any day or month shall be considered as the highest average load measured during a block of 30 minutes or 15 minutes period as applicable. The interest charges of Rs. 542096/- have been adjusted in compliance of the Order of the Commission in the

bill of the month of June, 2022. PSPCL had also sought details from its metering contractors as to the data that can be made available to implement the directions of the Commission. However, it is not technically possible to derive the data for every 15-minute time block. Therefore, in view of the technical impossibility, it is not possible to compute the data as directed by the Commission and revise the maximum demand as sought by NPPL. PSPCL has further prayed for condonation of delay of 07 days in filing the review petition.

2. Vide order dated 19.09.2022, the respondent was directed to file its reply on the maintainability of the petition. NPPL filed its reply on the maintainability of the petition submitting that PSPCL cannot be permitted to agitate that the data in terms of 30 minutes time is not available with PSPCL. PSPCL was fully aware of the fact during the adjudication of petition No. 37 of 2021, as to whether the historical data for the entire period of more than 70 days was available or not. The Review Petition is an Appeal in disguise. PSPCL failed to make out any case of review by way of pointing out any error on the face of the record. The Commission has already considered that PSPCL is using ABT meter data which records parameters in 15 minutes block periods and has directed PSPCL to revise the bill by taking an average of two 15 minutes time blocks in a period of 30 minutes starting 00:00 hours in accordance with para 4 of the commercial circular No. 29 of 2015 dated 22.07.2015. Moreover, the review of a decision is permissible only when the error in the order is apparent on the face of the record and not one which has to be fished out and searched. The Review Petitioner is seeking rehearing of the matter and that of is a misuse of the process of law and thus the Review Petition is not maintainable. The respondent has relied in this regard on the judgment in case of Parsion Devi V. Sumitri Devi [(1.997) 8 SCC 715], Lily Thomas V. Union of India, (2000) 6 SCC 224, Kamlesh Verma

V. Mayawati & Ors. (2013) 8 SCC 320 & Print Wizards & Ors. V. Tata Power Delhi Distribution Limited & Anr. (2019) SCC Online APTEL 79

3. PSPCL filed its rejoinder to the reply filed by PSPCL and has reiterated its earlier submissions. The respondent also filed a reply to the rejoinder filed by PSPCL, reiterating its earlier submissions. During the hearing, on the request of the parties, the parties were allowed to settle the issue through negotiation. Consequently a meeting was held between the parties. PSPCL submitted the minutes of the meeting alongwith MDI data of import of energy by NPPL from PSPCL wherein it has been mentioned that NPPL expressed its disapproval regarding the amount charged as demand surcharge and interest. NPPL further filed a reply to the rejoinder filed by PSPCL and minutes of the meeting filed by PSPCL. NPPL has submitted that PSPCL has submitted data for the period of non-crushing season of the sugar mill which cannot be compared with the date for the period of the crushing season. Vide order dated 12.05.2023, PSPCL was allowed to file data for the crushing season as well as written submissions and NPPL was also permitted to file its reply to such submissions made by PSPCL. After hearing the parties, Order was reserved.

Observations and Decision of the Commission:

4. The Commission has examined the submissions made by PSPCL in the petition, reply of M/s Nawanshahr Power Private Limited (NPPL), subsequent rejoinders and information submitted by the parties during the course of hearings and has heard the respective counsel. The observations of the Commission are as under:

The provisions of calculation of maximum demand as per clause 10.3 of the General Conditions of Tariff in the Tariff Orders for various years are as

under:

- **In the Tariff Order for FY 2017-18 & FY 2018-19**
*“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**.”*
- **In the Tariff Order for FY 2019-20 (applicable up to 31.05.2020)**
*“The maximum demand for **any day or month** shall be considered as highest average load measured in kilovolt Ampere (kVA) during a block of **30 minutes period**.”*
- **In the Tariff Order for FY 2020-21 & FY 2021-22**
*“The maximum demand for **any day or month** shall be considered as the highest average load measured in kilovolt Ampere (kVA) during a block of **30/15 minutes period as may be applicable**.”*

From the above clauses of the Tariff Orders, it is observed that up to May 2020, PSPCL was required to consider the maximum demand for any month as the highest average load measured in kilovolt Ampere (kVA) during a block of 30 minutes period however, PSPCL has been working out the maximum demand based on the highest average load measured during a block of 15 minutes period which is not in line with the provisions of the Tariff Order.

Further, Vide Order dated 04.05.2022 in petition No. 37 of 2021, the Commission directed PSPCL to revise the bill of NPPL by taking average of two 15 minutes time blocks in a period of 30 minutes starting from 00:00 hrs. during the time periods for which the Tariff Order mandates to consider the maximum demand as highest average load measured in kilovolt Ampere (kVA) during a block of 30 minutes period.

5. While dealing with Petition No. 37 of 2021, it was noted that M/s Nawanshahr Power Private Limited, has prayed that the demand surcharge was required to be calculated on basis of TVM (TriVector Meter) meter which stores MDI on 30 minutes average. However, PSPCL has considered MDI of ABT meters installed on its premises having MDI average on 15 minutes basis that was in contravention to the provisions of the Tariff Order. The Commission accordingly, in light

of its earlier observations in Petition No. 44 of 2015, directed PSPCL to revise the bills of NPPL by taking the average of two 15 minutes time blocks in a period of 30 minutes starting from 00:00 hrs. During the entire proceedings of the Petition No. 37 of 2021, PSPCL never brought up any issues/ technical constraints to capture the 15 minutes historical data. Further, PSPCL has infact requested the Commission to decide on the methodology for levy considering the metering scheme in the present case. However, in the current Review Petition, PSPCL has raised a new concern that as per the metering arrangement with NPPL, though the data from the ABT compliant meter is recorded on a monthly basis, however, the historical data in the meter is available for a period of maximum 70 days only due to which the historical data for every 15 minutes time block is not available due to technical constraints, PSPCL has not been able to implement the Commission's order in Petition No. 37 of 2021. Accordingly, PSPCL has prayed before the Commission to review the ibid order dated 04.05.2022 in Petition No. 37 of 2021 to the limited extent of issuing a direction to compute the data on a 30 minute time block basis.

6. On the request of PSPCL, the Commission, vide interim order dated 10.02.2023, directed both the parties i.e PSPCL and NPPL to settle the issue through negotiation, if possible. However, both the parties could not reach any consensus. PSPCL submitted that it has conveyed to NPPL that there is almost no difference in meter readings taken in a 30 minutes time blocks and in 15 minutes time blocks on the basis of the data from August 2022 to November 2022 to which NPPL responded that data is for the non-crushing season period which cannot be compared with the period of the crushing season. PSPCL also subsequently submitted the data from December 2022 to February 2023 but it would be inappropriate to consider the same to determine the

consumption pattern pertaining to a period which is more than two years earlier.

7. Further, PSPCL in its submissions has given reference of various judgments citing that mistakes on part of a court, including mistake in the nature of the undertaking, may call for a review and that the scope of “sufficient reason” is wide enough to include a misconception of fact or law by a court. In this regard it is pointed out that PSPCL vide commercial circular No. 29 of 2015 dated 22.07.2015 had issued the following instruction:

4. *The calculation of drawl of power is to be taken as average drawl in 30 minutes time block as provided in Clause 10.3 of the General Conditions of Tariff and approved by the Commission. For ABT meters provided for accounting of Open Access Power, the calculation of drawl of power will be done by taking average of two 15 minutes time blocks in a period of 30 minutes, starting from 00:00 hours.*

The mistake, if any, is not on part of this Court but on behalf of the Review Petitioner which failed to point out its technical difficulties if it was aware of them and earlier failed to capture and store data for the entire period if it was aware that the meter could store data only for a period of 70 days as it points out now. Quoting citations relating to mistakes on the part of the Court to cover up its own lapses is not fitting. Also, the Commission in its Order dated 02.12.2015 in Petition No. 44 of 2015, had directed PSPCL to consider the average of two 15 minutes time blocks in a period of 30 minutes starting from 00:00 hours. Even in light of NPPL’s specific request to implement the decision given in Petition No. 44 of 2015, PSPCL did not object or point out any technical difficulties when the Commission decided on the methodology for levy considering the metering scheme in the present case. The dispute raised in the said petition pertains to FY 2017-18 to FY 2021-22, which is well after the directions of the Commission issued vide Order dated 02.12.2015. PSPCL was well aware of the fact that it has ABT meters having MDI of average 15 minutes basis installed on the premises of NPPL. Also, PSPCL was aware of the Commission’s Order dated 02.12.2015 and was completely

cognizant of the methodology to be adopted in such cases to compute maximum demand. The Commission in its ibid Order dated 04.05.2022 has made no error in judgment. The observations and directions were given by the Commission after considering all the facts and figures laid before it during the proceedings of Petition no. 37 of 2021. Rather, PSPCL has been in continuous violation of the Tariff Orders. PSPCL ought to have known the fact that it has recorded no historical data. Had it taken the process and submissions in Petition No. 37 of 2021 conscientiously, it would have brought the technical lacunae to the notice of the Commission during the proceedings. The Commission agrees with the submissions of NPPL that a review petition cannot be used as a means to become an appeal in disguise and the issue at hand cannot be reargued based on new submissions.

8. Clause (1) of Regulation 64 of PSERC (Conduct of Business) Regulations, 2005 specifies as under:

“64. Review of the decisions, directions and orders:-

Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decision/order was passed by the Commission or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision/order of the Commission.”

Regulation 64(1) specifies the grounds on which review petitions can be sought by a person aggrieved by the decision or the Order of the Commission and the grounds are:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the person or could not be produced by him at the time when the decision or order was passed by the Commission or
- (ii) Mistake or error apparent on the face of record or

(iii) For any other sufficient reason.

Thus, the scope of an application for review is restricted and can be exercised only within the limits prescribed above.

The petitioner PSPCL, has produced no new and important matter which was not within its knowledge or could not be produced at the time when the decision or order was passed by the Commission. The review petitioner has only prayed to re-hear the matter on the same issue which was brought out in petition No. 37 of 2021 and against which the Commission had already passed an order dated 04.05.2022. No mistake apparent on record or new matter except showing its inability now to implement the Order has been proposed by PSPCL. PSPCL has also not been able to provide any other convincing sufficient reason to justify a review of the original order of the Commission. Accordingly, the submissions of the petitioner do not fulfil the conditions for review as laid down in the above referred Regulations. In view of the above, the instant Review Petition does not merit admission and is accordingly dismissed.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: **20.07.2023**