

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

**Review Petition No. 06 of 2019
In Petition No. 02 of 2019
Date of Order: 05.12.2019**

Review Petition under Section 94 of the Electricity Act, 2003 against tariff order dated 27.05.2019 for FY 2019-20 (in petition no. 02 of 2019).

AND

In the matter of: Punjab State Power Corporation Limited, The Mall,
Patiala.

... Petitioner

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjali Chandra, Member

ORDER

Punjab State Power Corporation Limited (PSPCL) filed the present petition seeking a review of the tariff Order dated 27.05.2019 passed by the Commission in Petition No. 02 of 2019. PSPCL submitted that some changes are required to be made in the Review Petition and filed a revised Review Petition. The revised review petition was admitted vide Order dated 30.09.2019 further directing PSPCL to publish a public notice inviting the objections/comments from the Public/Stake holders. PSPCL filed additional submissions vide memo no. 4073 dated 03.10.2019 in the petition regarding the issue of excess subsidy of Rs. 83.52 Crore.

1. The Public notice was published on 11.10.2019 in Ajit and Spokesman (Punjabi), The Tribune (English) and Dainik Bhaskar (Hindi).

The petition was taken up for hearing as well as public hearing on 30.10.2019. During the public hearing one objection was received and a copy of the same was supplied to PSPCL to file its reply to the objection. PSPCL was further directed to submit the information as under.

- a) Details annexed at –Annexure ‘B’ regarding AP subsidy in Review Petition No. 06 of 2019, do not appear to have been provided in Petition No. 02 of 2019. Hence, please explain the same and also state how the same falls within the purview of the present review petition.
- b) PSPCL may state the accounting procedure/standard under which interest income earned on delayed subsidy amount and disallowances made in the previous year have been considered as a part of income of Agriculture Supply (Tariff Compensation from State Government) in subsequent years.
- c) Documents of loans sanctioned at interest rate of 11.29% by Banks for working capital of each Generating Station and Distribution System, do not appear to have been provided in the original Petition No. 02 of 2019. Hence, please explain how it falls within the purview of the present review petition.

PSPCL filed its reply to the queries raised by the Commission, vide memo no. 4802 dated 12.11.2019. After hearing the representatives of PSPCL, Order was reserved vide Order dated 14.11.2019.

2. Observations and Decision of the Commission.

The petition has been filed by PSPCL for review of the Tariff Order for FY 2019-20 issued vide the Commission’s Order dated 27.05.2019 in Petition No. 02 of 2019. The Commission has examined the review petition, reply and submissions made during the hearing and all other

documents adduced on the record. The Commission observes that in addition to seeking review of the true-up of FY 2017-18, PSPCL is also seeking review of APR of FY 2018-19 and Revised Estimates for FY 2019-20, carried out in the Tariff Order for FY 2019-20. The Commission is of the view that since the figures approved in the review of FY 2018-19 and Revised Estimates for FY 2019-20 are only projections which are to be trued-up on the basis of actual/audited figures of PSPCL during the true-up of the respective years, hence, PSPCL may file its submissions regarding the same, if any, during the true-up exercise of the respective years. Thus, the Commission decides to analyse the submissions made by PSPCL with respect to the true-up of FY 2017-18 only. The issue wise summary of submissions made by PSPCL for review, objections/comments received, PSPCL's reply to thereof and the Commission's analysis are discussed in the following paragraphs:

3. Power Purchase Cost

3.1 Additional UI Charges and Interest on Delayed Payment to UI account

PSPCL's Submission:

- a) The Commission has disallowed Rs 29.16 Crore of additional UI charges paid to NRLDC under CERC's UI Regulations for over-drawl of power when frequency is below 49.5Hz. The Commission in the order has not analysed the reasons for such marginal over-drawls. During day-to-day operations of the grid system, no utility has total control over the frequency and there is always a slight over/under drawl, however the system gets under control after sudden/slight variations. To provide quality power to its consumers and to maintain grid stability in the region, UI charges are unavoidable and should be allowed by the Commission on actual

basis, as this is a legitimate expense borne by PSPCL. It is stated that there is no deliberate attempt on the part of PSPCL to draw power when the frequency is below 49.5 Hz. However, due to sudden practical load variations, PSPCL is constrained to make and pay for such drawl. It is also relevant to mention that there is no consistent over-drawl of electricity by PSPCL and the UI mechanism is not used as a source of power purchase by PSPCL. It is only due to the load variations and marginal over-drawls that these charges are payable. In the circumstances mentioned above, it is submitted that that PSPCL ought to be allowed to recover the same from the consumers.

- b) Disallowance of Rs 2.06 Crore as interest on delayed payments to UI account. The payment was delayed by PSPCL only due to the severe financial crisis. Consequent to the delay in the payments the interest cost was incurred. It is respectfully submitted that the delay was only due to resource crunch with PSPCL, and in the circumstances, the late payment surcharge/interest paid needs to be allowed by the Commission as it is beyond the control of PSPCL.

Commission's Analysis:

The Commission refers to the para 2.8.2 (i) of the Tariff Order for FY 2019-20, wherein the issues of "Additional UI charges" and "Charges for delayed payment to UI account" are dealt as under:

"i) UI/ Additional UI charges and Charges for delayed payment to UI account:

PSPCL has submitted that it has paid Rs. 29.16 Crore as additional UI charges during FY 2017-18. Further, an amount of Rs. 2.06 Crore has also been paid due to delayed payment to UI account/Regional deviation pool account fund during FY 2017-18. This is a part of the Rs. 83.15 Crore

mentioned under UI charges at Sr. No. 67 on prepage. In this regard the Commission would like to emphasize that:

a) The Commission understands that during day to day operations, a utility may take some time to react to system exigency and there may be marginal over/under draws by it. Accordingly, the Commission does allow the UI charges.

b) The Hon'ble APTEL in its Judgment dated 10.02.2015 in Appeal No. 171 of 2012 in the matter of Tata Power Delhi Distribution Ltd. Versus Delhi Electricity Regulatory Commission has also observed as under:

“We do not want to give any relaxation in decision of the State Commission not allowing the penal UI charges, as we do not want to interfere in the matter relating to security of the grid in real time operation. The Appellant has to take necessary steps required to avert over-drawl under low frequency benchmark. Accordingly, this issue is decided against the Appellant.”

Further, the Hon'ble APTEL in its Judgment dated 20.07.2016 in Appeal No. 271 of 2013 in the matter of Tata Power Delhi Distribution Ltd. Versus Delhi Electricity Regulatory Commission) has clearly observed that over drawal or under-drawal does not depends on the scheduled generation.

The relevant extract is reiterated below:

“...We are totally unable to accept the contention of the appellant that the appellant has taken all the necessary steps to ensure compliance with the requirements of UI Regulations, over-drawal from grid below 49.5 Hz frequency is inevitable despite efficient management of the appellant. These are the problems which are to be sorted out by a Discom by making efficient management, proper scheduling of power and procurement etc. What is provided under the Regulation is that the State Commission is bound to follow those Regulations, without giving any dilution or relaxation in the provisions of Act or Rules. We are unable to accept the appellant's contention that over-drawal or under-drawal depends on the scheduled generation available, since, the generation available changes constantly and further due to loss of

generation the schedules are affected resulting in overdrawal by Discoms. In view of the above discussions, we do not find any merit in the contentions of the appellant and hence, this Issue No.8 is decided against the appellant..”

c) The Commission is of the firm view that the PSPCL needs to control its drawl, when frequency is lower. If no control is exercised by PSPCL, the purpose of the regulations to enforce discipline in the grid will be lost. The additional expenses incurred by the Utility for non-performance regarding the timely action required to stabilize the grid and Rs. 2.06 Crore on account of delayed payments to UI account/Regional deviation pool account fund cannot be passed on the consumers.”

The Commission observes that, the issues of additional UI and interest on delayed payment of the same has been already dealt in detail in the para 2.8.2 (i) of the Tariff Order, specifying the rationale for not allowing the said charges. Also, the Hon’ble APTEL in its recent judgment dated 30.09.2019 in Appeal No. 246 of 2014 and I.A. No. 56 of 2015, in the matter of Tata Power Delhi Distribution Limited and Delhi Electricity Regulatory Commission, has also observed as under:

*“Having regard to the contentions of both the parties, we note that **penal/additional UI charges are applicable only due to severe indiscipline in drawal of power affecting grid frequency/stability which is entirely undesirable.** Therefore, we opine that the **State Commission has correctly held to not allow such penal charges which are ultimately passed through to the consumers who are at no fault.** Hence, the issue is, as such, decided against the Appellant.”*

The Commission observes that no new and important matter or evidence has been produced (which was not within the knowledge of the PSPCL at the time when the decision/order was passed by the Commission) nor is there any mistake or error apparent on the face of the record. As such the prayer for review of the earlier

Order on this issue is not admissible.

3.2 Late Payment Surcharge

PSPCL's Submission:

The Commission has disallowed an amount of Rs. 32.81 Cr. on account of Late Payment Surcharge (LPS) of power purchase bills. The Commission has held that since working capital is allowed and the utility is expected to pay the bills in time, the late payment surcharge is to be disallowed. PSPCL submitted that, the LPS has arisen only due to the severe financial crisis and the consequent delay in the payment of the bills in time. PSPCL was then not in a position to pay all the charges immediately due to which the interest cost was incurred. It is submitted that the working capital is allowed only on normative basis and only for a limited period of time. The delay was only due to resource crunch with PSPCL, which the Commission has appreciated over the years. In these circumstances, the late payment surcharge/interest paid needs to be allowed by the Commission as it is beyond the control of PSPCL.

Commission's Analysis:

The Commission refers to the para 2.8.2 (ii) of the Tariff Order for FY 2019-20, wherein the issue of "Late Payment Surcharge (LPS)" is dealt as under:

"...The Commission observes that it has been allowing working capital to PSPCL in the Tariff Order. The revenue gap along with carrying cost, if any, is also being allowed in the Tariff Order in a timely manner without creating any regulatory asset. The basic financial principle also says that it is the responsibility of the utility to arrange funds and to make timely payments to the generators based on contracts /regulations, especially when all prudent

expenses are being allowed by the Commission on regular basis. Thus, passing of delayed payment surcharge on to the consumers shall be unfair to the consumers. Moreover, by its very nature late payment surcharge is a charge for default in making timely payments and the expenditure incurred on such penal charges cannot be passed on to consumers. Hence the Commission disallows the payment of LPS of Rs. 32.81 Crore made on account of delayed payment of power purchase bills by the utility.”

The Commission observes that, the issue has been already dealt in detail in the para 2.8.2 (ii) of the Tariff Order, specifying the rationale for not allowing the said charge. Neither any new and important matter or evidence has been produced (which was not within the knowledge of the PSPCL at the time when the decision/order was passed by the Commission) nor is there any mistake or error apparent on the face of the record. As such the prayer for review of the earlier Order on this issue is not admissible.

3.3 Disallowance of excess power purchase on account of normative T&D losses

PSPCL’s Submission:

The Commission has disallowed a sum of Rs. 495.17 Cr. towards alleged excess power purchase quantum. The actual power purchase cost of PSPCL should be fully allowed by the Commission. PSPCL is already under severe financial crunch and when the actual cost of power purchase is not recovered, it only results in further deterioration of the financial health. It was submitted that the power purchase of 42786.91 MUs is as per the audited accounts, against which the Commission has only allowed quantum of 41426.55 MUs, based on the normative T&D losses

allowed. Also, the Commission has not fully considered the AP consumption in the State of Punjab. The quantum of power claimed by PSPCL to be procured is as per its audited accounts and has been actually incurred by PSPCL. The entire power has been used only for the supply of electricity to the consumers in the State of Punjab.

Commission's Analysis:

The Commission has dealt with the issue in detail under Paras 2.2.1, 2.3, 2.6 and 2.8.3 of the Tariff Order. The actual distribution losses of PSPCL have been assessed as 14.19% against the target of 12.05%. The inefficiency of the distribution licensee in reducing its losses cannot be sought as a ground for claiming the excess power purchase. Moreover, the disallowance in the power purchase quantum was primarily due to the correction of its Metered Energy Sales. PSPCL has initially submitted the incorrect sales data in the ARR petition, considering the sales figures of kVAh in place of kWh. On query by the Commission, PSPCL submitted the revised metered sales data vide letter no. 578/ARR/Dy. CAO /254/ Deficiency Vol. II dated 28.03.2019 for FY 2017-18 as 34065.11 MU instead of the earlier figure of 35117.83 MU.

The Commission observes that no new and important matter or evidence has been produced (which was not within the knowledge of the PSPCL at the time when the decision/order was passed by the Commission) nor is there any mistake or error apparent on the face of the record. As such the prayer for review of the earlier Order on this issue is not admissible.

3.4 AP Sales (Kandi area feeders)

PSPCL's submission:

The Commission has not fully allowed the quantum of sales as submitted by PSPCL. It was submitted that, the Commission has reduced the quantum of sales of PSPCL, primarily because of reducing the quantum of supply by PSPCL in the Kandi areas. The Commission has approved the AP consumption of Kandi area feeders at 30% against 45% as submitted by PSPCL along with detailed calculations. The details provided for by PSPCL in this regard are based on the actual data as available and ought not to have been reduced based on assumptions of the share of AP load out of the total load, without any supporting data in this regard. The Commission has not examined the detailed justifications given by PSPCL towards the quantum of agricultural load in the Kandi areas. In the circumstances, the Commission may review the impugned order on this ground and allow PSPCL the sales at 45% towards agricultural consumption in the Kandi areas.

Commission's Analysis:

- a) The Commission has already dealt with the issue in detail under para 2.2.2 in Tariff Order for FY 2019-20. The relevant extract of the Tariff Order is reproduced below:

“Mixed Kandi Area Feeders: For assessment of AP consumption fed from Kandi Area mixed feeders, the pumped energy for agriculture load is being considered as 30% of the total pumped energy, as per the percentage of AP load in the total load of consumers fed from Kandi Area mixed feeders, furnished by PSPCL vide its letter No. 2944 dated 23.12.2013. The request of PSPCL to consider 45% of the total pumped energy of Kandi Area mixed feeders as AP consumption, with the plea that although the percentage of sanctioned load of AP consumers fed from Kandi Area mixed

feeders is around 30% however, the billed energy of the consumers is around 45% of the total pumped energy, was not found convincing by the Commission. During the processing of ARR for FY 2014-15, PSPCL was asked to submit comments on the observations of the Commission in the matter vide letter No. 702 dated 20.01.2014. Since, PSPCL had not submitted any comments in the matter; it was presumed that PSPCL had nothing more to say in the matter.

Further, in order to ensure more accurate assessment of agriculture consumption of Kandi Area feeders, directions were issued to PSPCL in the Tariff Order for FY 2013-14 that AP load of Kandi Area feeders fed from mixed feeders should be segregated and in case of any practical difficulty due to difficult terrain in certain areas, all AP motors of such feeders should be metered. These directions were reiterated in the successive Tariff Orders of the Commission. Also, in the Tariff Order for FY 2015-16, the Commission directed PSPCL specifically to utilise Deendayal Upadhyaya Gram Jyoti Yojana (DDUGJY) for segregation of mixed Kandi Area feeders and/or achieve 100% metering on these feeders. However, PSPCL has so far neither completed segregation of the mixed Kandi area feeders nor achieved 100% metering of AP consumers on such feeders.

The contention of PSPCL that, the share of AP energy can be deduced by reducing the amount of energy billed to metered consumers from the total pumped energy of the mixed feeder after accounting of losses of feeders also does not find favour with the Commission as it would result in loading of theft by other categories also onto the AP consumption.

Thus, pending implementation of its directive, the Commission has no option but to continue determining the AP consumption of mixed Kandi Area feeders as per the existing approach of considering the pumped energy for agriculture load as 30% of the total pumped energy, in line with the percentage of AP load in the total load of consumers fed from Kandi Area mixed feeders.”

The rationale for not allowing the AP sales has already been stated in the Order. No new and important matter or evidence has been produced (which was not within the knowledge of the

PSPCL at the time when the decision/order was passed by the Commission) nor is there any mistake or error apparent on the face of the record. As such the prayer for review of the earlier Order on this issue is not admissible.

3.5 Disallowance on account of non-fulfillment of RPO

PSPCL's Submission

The Commission has disallowed an amount of Rs. 50 Cr., which includes Rs. 8 Cr. for the year 2017-18 and Rs. 42 Cr. for FY 2014-15 to 2016-17, because of non-availability of power from the hydro generating stations of PSPCL. The Commission has held that the fund of Rs. 50 Crore has not been invested in an interest bearing deposit, nor utilized for renewable purchase obligation and therefore is deducted. In this regard, it was submitted that:

- a) PSPCL has been taking all possible measures to fulfill its RPO. In fact, PSPCL has been consistently bringing down the RPO backlog, and has been over-achieving the yearly targets.
- b) The Commission has already mandated that PSPCL is bound to fulfill the RPO including the carry forward quantum. Therefore, it is not that the amounts are not invested in procurement of renewable energy or RECs. Therefore, it is not correct for the amounts to be deducted at this stage.
- c) The amount of Rs. 50 Crore cannot be treated as penalty under Section 142 of the Electricity Act. This is not authorized under Section 142.

Commission's Analysis

The amount of Rs. 50 crore has not been deducted as a penalty under Section 142 of the Electricity Act, 2003. The Commission

refers to para 2.8.4 of the Tariff Order for FY 2019-20, wherein the issue of RPO compliance for FY 2017-18 is dealt with as under:

“.....Accordingly, an amount of Rs.1699.51 Crore for purchase of renewable energy and Rs. 9.26 Crore for purchase of RECs (Non-Solar) is allowable. However, since neither the separate fund as directed by the Commission has been confirmed to be created nor the amount of Rs.50 Crore confirmed to have been kept in a separate interest bearing instrument and utilized for RPO compliance, the Commission is constrained to deduct the amount of Rs. 50 Crore from the allowable amount. Thus, the Commission allows an amount of Rs. 1649.51 Crore (Rs. 1699.51 Crore – Rs. 50 Crore) for purchase of power from renewable energy sources and Rs. 9.26 Crore for RECs purchased by PSPCL for RPO compliance.”

The Commission observes that no new and important matter or evidence has been produced (which was not within the knowledge of PSPCL at the time when the decision/ order was passed by the Commission) nor is there any mistake or error apparent on the face of the record. As such the prayer for review of the earlier Order on this issue is not admissible.

4. Fuel Cost

PSPCL's submission:

The Commission has allowed the fuel cost for the generating stations of PSPCL based on the normative Station Heat Rate, auxiliary consumption, specific fuel oil consumption etc. whereas, PSPCL had claimed the fuel cost parameters on actual basis, considering the ground situation of the working of the thermal

generating units and the grid situation. It was submitted that:

- a) Station Heat Rate, Auxiliary Consumption and other performance parameters as approved are incapable of being achieved in the present scenario, in view of on-going scenario of frequent backing downs and shutdown/start-up of units. There are numerous backing downs of the generating stations, coupled with seasonal demand curves in the State of Punjab. The generating stations, running at less than optimum load factor, cannot achieve the normative parameters.
- b) The Central Commission has also allowed relaxation to the central sector generating stations running at sub-optimal load factor. The running of units at partial load increases the Station Heat Rate. Under these circumstances, the Commission ought to have allowed the Station Heat Rate as per actual to the PSPCL.
- c) The generating stations of PSPCL are of vintage and cannot operate at the latest normative parameters, which are designed for new generating stations. In addition to the above, the grid conditions, the backing down instructions, the operation of the generating stations at lower PLF only increases the operating parameters.

Commission's Analysis:

The Commission observes that, it has already dealt the issue of relaxed parameters raised by PSPCL in detail under para 2.7 (read with para 2.4.2) in the Tariff Order. The relevant extract of the Tariff Order is reproduced below:

“2.4.2...

Commission’s Analysis

.....

- ii) *The Commission observes that Regulation 6.3B of CERC (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 is an amendment in the Indian Electricity Grid Code Regulations (not in Tariff Regulations) and the same has not been adopted by the Commission in its State Grid Code. The Hon’ble APTEL in its Judgment dated 22.08.2016 in Appeal No. 34 of 2016 in the matter of Jaiprakash Power Ventures Limited versus Madhya Pradesh Electricity Regulatory Commission and others has held that there is no legal mandate as per IEGC for a Intra-State Generating Station to maintain the Technical Minimum as per the provisions of IEGC and in the absence of any such mandatory provisions the obligation to schedule power is traceable only to PPA entered between the parties. The relevant extract is as under:*

“...In the absence of any mandatory provision either under the IEGC notified by the Central Commission or the State Grid Code notified by the State Commission or under any other statutory Regulation, the obligation of Respondent No. 3 to schedule power is traceable only to the PPA executed between Respondent No. 3 and the Appellant. Clause 6.3B (4) of the IEGC also affirms the above in respect of the generating stations other than the Central Sector Generating Stations and Inter State Generating Stations

The provisions of the PPA do not contain any mandate on Respondent No. 3 to schedule a specific quantum of electricity, though it provides for payment of fixed charges for any unscheduled available capacity within the contracted capacity. On the other hand, Clause 7.1.1 of the PPA specifically provides that the Appellant shall be responsible to operate and maintain the generating station in accordance with the legal requirements and in particular, the Grid Code.

As per IEGC 2016, in order to claim compensation because of lower schedule, provision under Clause 6.3 B (4) provides that

“In case of a generating station whose tariff is neither determined nor adopted by the Commission, the concerned generating company shall have to factor the above provisions in the PPAs entered into by it for sale of power in order to claim compensations for operating at the technical minimum schedule”

In view of above in the absence of any statutory requirement or PPA conditions mandating the Respondent No. 3 to schedule minimum quantum of power from the generating unit of the Appellant, the Respondent No. 3 cannot be compelled to schedule at near constant load or the quantum of power to reach the Technical Minimum of 140 MW for the generating unit of the Appellant to operate. The Appellant must have made necessary arrangements for sale of balance power (other than the contracted capacity of 70 % with the Respondent No 3) so as to avoid any such situations where the unit has to operate below technical minimum causing difficulties in the operation of the Unit and causing financial distress to the Appellant.

We do not find any error on the related issues raised by the Appellant in the Impugned Order issued by the State Commission.

Hence all the issues as above are decided against the Appellant...”

- iii) *The Commission also observes that, Proviso (vi) to the Regulation provides that “the compensation so computed shall be borne by the entity that has caused the plant to be operated at schedule lower than corresponding to Normative Plant Availability Factor up to technical minimum based on the compensation mechanism finalized by the RPCs”. Since, PSPCL has tied up 100% of the generation of its plants for own use and PSPCL is also managing both the businesses, of generation and distribution in the State, as such, PSPCL itself is responsible for the coordinated*

operation of its plants as well as scheduling of power from the same. Also, PSPCL has entered into PPAs with other generators including IPPs being well aware of its own generation capacity. PSPCL also purchases power from outside sources (including short-term power) even at the cost of backing / shutting down its own units after evaluating all commercial aspects including deterioration of operating parameters of its own units.

- iv) *With regards to PSPCL's request to invoke powers under Regulation 66 and 67 of the PSERC MYT Regulations, 2014 for relaxation of norms, the Commission notes that the Hon'ble APTEL vide its Judgment dated 18.09.2015 in Appeal No. 196 of 2014 and 326 of 2013 in the matter of Haryana Power Generation Corporation Ltd. versus Haryana Electricity Regulatory Commission and others has observed as under:*

"..... Further if the relaxation of the norms is not in public interest the same is bound to be rejected. Further, if the said contention of the appellant is accepted it will result in further increase in tariff which will cause additional burden on the respondents and ultimately the end consumers of the electricity. ...In the case in hand the State Commission has rightly and legally refused to exercise the power to relax in favour of the appellant on this aspect while passing the impugned order...."

No doubt discretionary power is vested with the State Commission but the discretion should be exercised judicially and judiciously that needs recording of special reasons in writing for the exercise of such power to relax."

2.7.1

Commission's Analysis

- i) *PSERC Tariff Regulations, 2014 specifies as under:*

“36. NORMS FOR PERFORMANCE PARAMETERS

The norms for performance parameters for a generating company i.e. availability, load factor, station heat rate, specific oil consumption, auxiliary consumption etc. Shall be as per the CERC norms or as determined by the Commission...”

Thus, the Commission is considering the normative parameters for Station Heat Rate (SHR) and Secondary fuel consumption as per norms specified by CERC in its Tariff Regulations.

- ii) *PSPCL’s plea for relaxation/compensation as per Regulation 6.3B of CERC (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016, has been already discussed by the Commission under para 2.4.2 (Auxiliary Consumption) of this tariff Order.*
- iii) *The Commission further notes that, the contention that factors like ageing and backing down instructions caused higher station heat rate has been rejected by the Hon’ble APTEL vide its Judgment dated 18.09.2015 in Appeal Nos. 196 of 2014 and 326 of 2013 in the matter of Haryana Power Generation Corporation Limited versus Haryana Electricity Regulatory Commission and others has observed as under:*

“The appellant contends that the State Commission ought to have considered relaxation in the station heat rate of the aforesaid generating stations of the appellant due to frequent backing down instructions, poor quality of coal and since GCV has been accepted as an uncontrollable factor, hence, the station heat rate caused by deterioration on GCV is also to be allowed in tariff. On our careful consideration on this contention, we do not agree to the same because this Appellate Tribunal has rejected the same contention vide its judgment dated 12.12.2013 in Appeal No.168 of

2012 in the Indraprastha Power Generation Company Limited vs. Delhi Electricity Regulatory Commission & Ors. Observing as under:

*“.....31. By way of filing the present appeal in this Tribunal, the appellant has sought relaxation of the norms prescribed in DERC Tariff Regulations, 2011 under various counts on the ground that the appellant’s power stations have not achieved the same norms due to the various factors (which we have mentioned in the upper part of the judgment) and it was not at all possible for the appellant’s power generating stations to achieve the said norms. The reasons advanced by the appellant before us and also raised before the learned State Commission have been cited by us above and the repetition of the same is not proper. **The appellant has not been able to make out any case for relaxation of the norms specified for that purpose, hence the appellant is not entitled to the relaxation** of DERC, Tariff Regulations 2011 in the case in hand before us considering the circumstances of the matter. **The learned State Commission in support of its findings has cited proper, cogent and valid reasons for arriving at the correct conclusion to which we are in full agreement. The appellant has miserably failed to establish that the relaxation of the norms prescribed under DERC Tariff Regulations, 2011 as sought by the appellant is in the public interest. The learned State Commission has not found the said relaxation in the public interest and rightly rejected the said contention of the appellant.***

*32. After going through the impugned order of the learned State Commission, we find that the learned **State Commission has rightly and correctly not allowed the request of relaxation***

of the norms for the power generating stations of the appellant....

...35. The appellant has also failed to give any reason whatsoever justifying the relaxation of the operation norms fixed in the MYT Regulations. The only reason argued before us, that the station is an old station and is envisaged to be closed down in near future, is not acceptable....”

In view of the above, the Commission finds no justification/reason to deviate from the normative parameters for working out fuel cost of Thermal Generating Stations of PSPCL for FY 2017-18. Thus, the Commission decides to continue with the normative Station Heat Rate and secondary fuel oil consumption for all three thermal generating stations, as approved in the Tariff Orders for FY 2017-18 and FY 2018-19, in accordance with the provisions of PSERC/CERC Tariff Regulations.”

The rationale for not allowing the fuel cost has been given already. The Commission observes that no new and important matter or evidence has been produced (which was not within the knowledge of PSPCL at the time when the decision/order was passed by the Commission) nor is there any mistake or error apparent on the face of the record. As such the prayer for review of the earlier Order on this issue is not admissible.

5. Capital Expenditure

PSPCL's submission:

For FY 2017-18, the Commission has provisionally approved the capital expenditure of Rs. 1487.18 Crore against approved schemes. The Commission has disallowed funding for specific

schemes, which is not mentioned clearly in the order. In the circumstances, PSPCL is unable to determine the nature of the disallowances and the reasons thereof. Further, the Commission has limited the Capital expenditure for all three years up to Rs. 3,580.64Crores. The capital expenditure is for creation of assets in the State of Punjab, which is for the ultimate benefit of the consumers in the State. Therefore, the Commission may not disallow the capital expenditure as claimed by PSPCL, whose impact needs to be allowed with carrying cost.

Commission's Analysis

The Commission has dealt with the issue of capital expenditure in para 2.9 of the Tariff Order. It is reiterated that the PSPCL had submitted the CAPEX for FY 2017-18 as Rs. 1562.69 Crore which included Rs. 75.51 Crore for Shahpur Kandi hydro power project (SKPP). With regard to SKPP the Commission had observed as under:

“...This excludes CAPEX of Rs. 75.51 Crore claimed for Shahpur Kandi hydro power project (SKPP), which will be taken into consideration after its COD...”

Thus, the Commission had provisionally allowed capital expenditure of FY 2017-18 of Rs. 1487.18 Crore, as asked for by PSPCL for FY 2017-18 excluding Shahpur Kandi which will be taken into consideration after COD.

6. Billet Heaters

PSPCL's submission:

In clause 4.8 of the Chapter-4 'Tariff Related Issues' of Tariff Order 2019-20, the Commission had directed that Small Billet Heaters having Contract Demand up to 100 kVA shall not be considered as

PIU load.

- a) In this regard, some clarification was sought from the Commission vide office memo dt.1173/DD/SR-62 dt. 26.06.19 on whether the load of billet heater in different cases of mixed industrial loads should be treated as PIU load or not. In response, the Commission vide memo no. 744 dated 03.07.19 had clarified that total Contract Demand upto 100 kVA of billet heater(s) whether in conjunction or without other PIU Load shall not be considered as PIU Load.
- b) However, it is still apprehended that Industrial Consumer having Billet Heaters with installed capacity greater than 100 kVA may also declare CD of 100 kVA or less than 100 kVA, which cannot be measured/ assessed separately. Thus, for a particular Industrial connection having mixed Industrial load (Billet/PIU + General), there cannot be any separate metering for confirmation of total demand of Billet Heater(s) & other General Industrial Load being used by the consumer. Accordingly, it was proposed vide memo no. 1315-16/DD/SR-62 dated 16.07.19 that the Commission may consider and approve that the total connected load/kVA rating of billet heater(s) be considered as Contract Demand and load /CD upto 100 kVA of Billet Heater(s) shall not be considered as PIU. However, the Commission vide memo no. 960 dated 30.07.19 stated that no amendment is required at this stage.
- c) It is kindly submitted that there cannot be a separate arrangement for metering of Billet Heater(s) load and other General Industrial Load. It is possible that a consumer may declare Contract Demand of Billet Heater which is less than the actual. In such cases, consumer may use a demand within the overall limit of total sanctioned demand (sum of Billet Heater Demand and General

Industrial Demand) but may be exceeding the demand authorized for billet heater(s). In view of above, it is requested to review the matter so as to avoid the misuse of this relaxation given to Small Billet Heater(s). In cases of industries having mixed load, the consumer may not be allowed to declare a lesser Contract Demand less than the installed/connected Billet Heater Load in kVA. The declaration of Contract Demand of Billet Heater(s) for the industries having mixed load should only be commensurate with the connected load of billet heater(s).

Objection/Comments by Sh. Padamjit Singh

During the public hearing held on 30.10.2019 Sh. Padamjit Singh submitted as under:

- a) The decision to include billet heaters and surface hardening machine under PIU category in the year 2014-15 was taken by the Commission after detailed participation and interaction of all stakeholders including public as well as CPRI and PSPCL. However, now in the latest Tariff Order the above decision has been taken without following the, due process of technical examination by CPRI or public participation.
- b) That the decision taken by the Commission in the Tariff Order for FY 2019-20 of charging lower tariff on specific category of induction heater/billet load has been taken without assessment of the resulting financial loss caused to PSPCL and the overall annual loss suffered by PSPCL.
- c) The reduction of tariff as indicated in Para 4.8 of the Tariff Order for FY 2019-20 is limited to a particular category with induction heater load of less than 100 kVA and is supposed to be applicable from 1.06.2019 onwards but there is no safeguard or condition

against claim of arrears for previous years.

- d) The action of reducing the tariff for one category of industrial consumers clearly goes against the tariff policy and National Electricity Policy and would result in additional tariff burden on the other categories of consumers such as domestic.

PSPCL's reply to the objection

PSPCL, vide its memo no 4802-dated 12.11.2019 submitted as under:

- a) The Commission vide Order dated 28.10.2013 in Petition No. 03/2012 decided to treat all induction billet heaters as Power Intensive Units (PIU), which decision was based on the technical findings of the Report of CPRI, Bangalore. The billet heaters generate excess harmonics in the power system which leads to power quality issues irrespective of their demand. Therefore, to the extent of the objection raised that no exemption ought to be granted by the Commission for Billet heaters the same may be considered and decided by the Commission.
- b) However, in case the Commission decides to grant exemption to billet heaters having contract demand upto 100 kVA as being considered as PIU, the Commission may impose penalty on harmonics generated in excess of specified limits for small Billet Heaters. Thus, the said provision be amended as “ *henceforth billet heaters having total installed/connected kVA rating upto 100 kVA shall not be considered as PIU load.*”

Commission's Analysis

The Commission observes that only one objection has been raised. The same also does not pertain to the submission

made/issue raised by PSPCL in the review petition. However, in order to put the record straight, the Commission clarifies as under:

- a) Billet heater(s) as a whole have not been declared non-PIU. As brought out in para 4.8 of the Tariff Order, the Commission has tried to address the environmental concerns by encouraging industries having small billet heating loads to shift to cleaner mode of technology i.e. from furnace oil to electricity. This will also help in increasing the productive use of surplus power available with PSPCL to some extent.
- b) The impact of the same on PSPCL's revenue, if any, is a pass through in the ARR and shall be taken care of during the true up exercise of the relevant period. PSPCL in the hearing on 13.11.2019 has informed that the total number of such consumers is 34 and the financial impact of this decision amounts to Rs. 2.36 lac per year.
- c) Tariff determination and cross-subsidization of consumers is the prerogative of the Commission and it is not necessary to have prior consultation with the consumers before deciding on any concession.

Further, in reference to PSPCL's submission that the Commission may impose penalty on harmonics generated in excess of specified limits for small Billet Heaters, the Commission observes that it has already issued a directive in the Tariff Order for FY 2019-20, directing PSPCL to submit a complete plan regarding installation of necessary power quality meters for measurement of harmonics levels along with time frame for recording the harmonics. PSPCL may also submit a proposal for penalty to be recovered from the PIU consumers contributing harmonics in

excess of the specified standards. PSPCL was directed to submit the proposal by 1st August, 2019. However, PSPCL's proposal is still awaited.

Accordingly, in view of PSPCL's submission the Commission clarifies that in Para 4.8 and schedule SI.3.6 of Tariff Order for FY 2019-20 billet heaters having total installed/connected kVA rating upto 100 kVA shall not be considered as PIU load. Where rating in kVA is not available, rated load in kW shall be converted into kVA considering unity power factor.

7. Depreciation:

PSPCL's Submissions

PSPCL has sought a review of the order dated 27.05.2019 on postponement of the decision on the impairment loss of the assets of the GNDTP generating station to the extent of Rs. 492.59 Crores. PSPCL stated that the Hon'ble Tribunal has not disturbed any of the findings of the Commission in the previous tariff order. Therefore, there is no impediment for the Commission to decide this issue.

Commission's Analysis:

M/s Mawana Sugar Ltd filed an Appeal with the Hon'ble APTEL in its Appeal No.74 of 2018, inter alia challenging the allowance of fixed cost in relation to GNDTP for the period FY 2017-18 to FY 2019-20. The Hon'ble Appellate Tribunal of Electricity, New Delhi vide Order dated 08.03.2019 disposed of the said Appeal no. 74 of 2018 and Appeal no.113 of 2018, decided as under:

"..In view of the submission of the learned counsel for the Appellants and the Respondents and in the light of the

statement made in Memo dated 28.01.2019 filed on behalf of the Appellant, Mawana Sugars Ltd., and also statement made in the Memo dated 08.03.2019 filed on behalf of second Respondent, PSPCL in Appeal No. 74 of 2018 and in terms and for the reason stated in the aforesaid memos, as stated supra, the instant two appeals, being Appeal No. 74 of 2018 and 113 of 2018, are hereby disposed of with the directions to the first Respondent/State Commission to reconsider the matter afresh and in the light of the statements made in the Memos dated 28.01.2019 filed by Appellant and dated 08.03.2019 filed by the second Respondent in Appeal No. 74 of 2018 and for the reason stated therein, pass an appropriate order afresh in accordance with law after affording reasonable opportunity of hearing to the Appellants, Respondents and the interested parties as expeditiously as possible..”

Accordingly, the Commission has vide Memo No. PSERC/Reg./3349-3351 dated 29.03.2019 in Petition No 90 of 2016 issued notice to the concerned parties to make their submissions. The said petition is under process. The issue of expenses (including impairment loss) of GNDTP Bhatinda will be decided in Petition No. 90 of 2016 by the Commission as remanded by the Hon’ble APTEL. The impact of the decision will be provided in the next Tariff Order as has already been stated in the Tariff Order sought to be reviewed.

8. Interest on working capital for generation business

PSPCL’s submission:

FY-2017-18

PSPCL has submitted that the Commission has allowed interest

on working capital on normative basis in terms of the Regulations. However, the Commission has not considered the claim of weighted average rate of interest i.e. 11.29% p.a. For computation of working capital requirement, PSPCL has considered the fuel cost based on actual availability, which is consistent with the contention of PSPCL after considering the nature of the grid and operation of the generating stations, the Station Heat Rate, Auxiliary Consumption and other operating parameters which needs consideration on actual basis and also the actual fuel cost.

FY 2018-19 and FY 2019-20

PSPCL further urged that the grounds and contentions raised by PSPCL for the year FY 2017-18 would equally be applied to the subsequent years FY 2018-19 and FY 2019-20 and the same are reiterated.

Commission's Analysis

The Commission has rightly determined the normative working capital requirement based on the various parameters viz a viz auxiliary consumption, station heat rate and other operating parameters as per MYT Regulation 2014.

As regards rate of interest on working capital requirement, the Commission directed PSPCL in order dated 01.11.2019 to provide documents of loans stated to be sanctioned @ 11.29%. PSPCL failed to provide the said documents. However, Deputy Financial Advisor, PSPCL during the hearing on 13.11.2019 explained that the claim of weighted average rate of interest @11.29% is based on new loans introduced for working capital after conversion of old working capital loans under UDAY Scheme. Loans taken for working capital requirement upto the date of conversion under

UDAY Scheme have not been considered for determining weighted average rate of Interest.

The Commission had determined working capital requirement of FY 2015-16 in True-Up of FY 2015-16 in Tariff Order for MYT control period FY 2017-20 as Rs 2689.82 crore. The loans upto 30.09.2015 have been converted under UDAY Scheme at the weighted average rate of Interest @ 8.36%. Further, the Commission had determined working capital requirement for FY 2016-17 as Rs 2887.16 Crore in the True-up of FY 2016-17 in the tariff order of FY-2018-19. For FY 2017-18 the working capital requirement was determined as Rs 3010.18 Crore in the True-up of FY2017-18 in the tariff order for FY 2019-20. There was net increase of Rs 197.34Crore in Working capital requirement during FY 2016-17 and Rs 123.02 Crore during FY 2017-18.The increase of Rs 320.36 (197.34 +123.02) Crore of working capital requirement from 1.4.2016 to 31.3.2018 has been taken by PSPCL @ 11.29%as per statement of Dy. Financial Advisor. Accordingly, the weighted average rate of interest, based on the submission of PSPCL is worked out as under:

Sr. No.	Particulars	Loan Amount (Rs. in crore)	Weighted average rate of interest
1	Working Capital requirement upto 31 st March,2016	2689.82	8.36%
2	Additional working Capital Requirement from 1 st April,2016 to 31 st March,2018	320.36	11.29 %
3	Total Working Capital Requirement upto 31 st March,2018	3010.18	8.67 %

The Commission had allowed interest @9.36% based on weighted average loan of all outstanding loans of FY 2017-18. The re-determined rate of interest will be given effect in to the next Tariff Order.

The Commission had provisionally allowed the capital expenditure and its fund requirement for FY 2017-18 in the Tariff Order for FY 2019-20 as Rs. 1487.18 Crore. There will be an impact on working capital requirements of FY 2017-18 viz a viz A & G and R & M expenses after finalization of true-up of capital expenditure and its capitalization for FY 2017-18. The Commission will consequentially re-determine working capital requirements and its interest thereafter.

The impact, if any, on interest on working capital requirements for FY 2017-18, FY 2018-19 and FY 2019-20 will be given after finalization of capital expenditure and its capitalization in the respective years.

9. Non-tariff income:

PSPCL's submission

FY 2017-18

PSPCL submitted that the Commission has considered the rebate on timely payment of Rs. 139.23 Crores and Rs. 271.23 Crores of late payment surcharge in the non-tariff income of FY 2017-18 of PSPCL which is erroneous.

It was further submitted that the delay in the recovery of amounts is funded by PSPCL from its own sources and the actual working capital loans are presently not allowed to be serviced by the Commission. Similarly, the rebate on early payment also has the

same effect. The early payment results in loss of interest for the time when the amounts could have been retained. The rebate is provided to compensate for this.

PSPCL quoted the decision of Hon'ble Appellate Tribunal in its judgment dated 4.10.2007 in Appeal no 223/2006 which states that delayed payment surcharge may not be taken in the ARR of the utility. Further, several other SERCs and utilities such as MP, Delhi, and Bihar also follow the same approach with respect to income from late payment surcharge.

The PSPCL further submitted that PSERC in Petition No. 16 Of 2017 filed vide its order dated 10.07.2018 and thereby in the 2nd Amendment to the Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Generation, Transmission, Wheeling and Retail Supply Tariff) Regulations 2018 on dated 8th August 2018 had substituted as under

a. Amendment to Regulation 28 – Non-Tariff Income Sub-Clauses (d) and (q) under Clause 28.1 of Regulation 28 shall be substituted as under:

(d) Net revenue from late payment surcharge (late payment surcharge less financing cost of late payment surcharge).

(q) Any other income not included above. Provided that only 50% of the rebate for timely payment of power purchase" received by the licensee shall be considered as non –tariff income.

The Amended Regulations as above had come into force from 1.10.2018

Accordingly, as per the current MYT Regulations, 50% of rebate on timely payment of Rs. 139.23 crores i.e. Rs. 69.61crores need to be considered as part of non- tariff income in place of Rs. 139.23 Crores.

Similarly, the part of late payment surcharge of Rs. 271.23 Crores be considered as non-tariff income after deducting the financing cost of late payment surcharge.

FY 2018-19 and 2019-20

PSPCL further urged that the grounds and contentions raised by PSPCL for the year 2017-18 would be equally applied to the subsequent years 2018-19 and 2019-20 and the same are reiterated

Commissions' Analysis

FY 2017-18

The Commission observed that receipts of FY 2017-18 on account of Late Payment Surcharge and rebate for timely payment of power purchase are to be treated as Non-Tariff Income as per Regulation 28 of PSERC MYT Regulations, 2014. The amendment in Regulation 28 is effective from 1.10.2018. Therefore, the true-up of FY 2017-18 is not affected by the amendment.

The Commission had rightly determined Non-Tariff Income for FY 2017-18 as per prevalent Regulations for FY 2017-18. Moreover, interest on working capital is allowed to the utility on normative basis notwithstanding that the licensee has not taken working capital loan from any outside agency or has exceeded the working capital requirements worked out on normative basis.

For FY 2018-19 and FY 2019-20, Non-tariff income will be considered with respect to the relevant Regulation applicable during that period.

10. SYL Impairment Loss

PSPCL's Submission

PSPCL submitted that SYL impairment loss to the extent of Rs. 96.25 Crores disallowed by the Commission on the plea that the work was stopped 30 years back and the cost cannot be passed on to the consumers which is erroneous.

PSPCL further submitted that accounts of erstwhile PSEB were prepared and got audited under the provisions of The Electricity Supply (Annual Accounts) Rules, 1985. However, there was no provision in the rules for recognition of impairment of assets. As such, it was not possible to provide for the same till unbundling of erstwhile PSEB i.e. 16-04-10. Thereafter, the Opening Balances to the successor entities were vested by the State Govt. on 24-12-12.

The progress of SYL project is suspended due to inter-state water dispute and approximately Rs. 100 Crores of company are stuck under work in progress. PSPCL decided to recognise the impairment loss during 2017-18. Even if the loss was to be recognized earlier, it would have been passed on the consumers. Loss on account of impairment of the asset ought to be recognized in accordance with the accounting standards. It prayed that the Commission may review the above decision.

Commission's Analysis

The Commission has rightly disallowed impairment loss of SYL project in its Tariff Order after duly considering the facts. Impairment loss on assets, which have not been used for the benefit of consumers of State, cannot be passed on to the consumers.

11. Carrying Cost

PSPCL's submission (FY 2017-18)

- (a) PSPCL submitted that the Commission has not considered an amount of Rs. 312.48 Crores relating to the impact of carrying cost for the financial years 2010-11 and 2011-12, on the plea that delay in the finalization of the balance sheet should not be burdened on the consumers for FY 2017-18. The delay was not on account of PSPCL, since restructuring is a complex and time-consuming process and finalization of the accounts takes time. Further, PSPCL had requested to Government of Punjab to sanction and release the carrying cost determined by the Commission. The Principal Secretary, Power, Government of Punjab vide its Memo No. 11/31/2015-PE(2)/436 dated 27 February 2017 had apprised the Commission that both Government of Punjab and PSPCL had tried their best to expedite the finalization of the Opening Balance sheet as on 16.04.2010. The delay caused in this regard is mostly attributable to the non-completion of audit of accounts of PSEB upto 16.04.2010 and series of discussions/meetings with consultants and legal experts for finalizing the FRP, Opening Balance Sheet and Transfer Scheme. The unbundling job is a complex one and it takes time to complete it in compliance of the provisions of the Act. Therefore, neither Government of Punjab nor PSPCL can be blamed for the delay in the finalization of opening balance sheet. It has also been stated that Government of Punjab viewed that No benefit was accrued to State Government for the delay in Notification of opening balance sheet. Since, the benefit was enjoyed by the consumers; hence they should be made liable to pay the carrying cost.

PSPCL had included the amount of Rs. 312.48 Crore towards impact of carrying cost for FY 2010-11 and FY 2011-12. PSPCL submitted that in any event, the delay is not attributable to PSPCL.

It may be allowed to recover the amounts in its Annual Revenue Requirements.

- (b) The Commission has approved a revenue surplus of Rs. 1546.52 Crores after true-up. However, the revenue surplus of Rs. 1323.92 Crores has already been passed through in Tariff Order for FY 2018-19. (Table 3.53 of Tariff Order for FY 2018-19). For computation of carrying cost for FY 2017-18, the differential amount of surplus is only Rs. 222.60 Crores (i.e., 1546.52-1323.92). Hence, carrying cost should have been computed on revenue surplus of Rs. 222.60 Crores for six months of FY 2017-18, full year of FY 2018-19 and for six months of FY 2019-20. Similarly, carrying cost should be computed on revenue surplus of Rs. 1323.92 Crores for six months of FY 2017-18 and for six months of FY 2018-19. The same may be corrected in the present review petition which seems to be an arithmetical mistake.

Commissions' Analysis

FY 2010-11 and FY 2011-12

- (a) The Commission had already replied vide memo No.1998/P SERC/M&F dated 16.11.2018 to Principal Secretary, Power, in response to the memo No.11/31/2015-PE(2) dated 27-02-2017(referred in the submission) as under:

“the issue of carrying cost was contested by PSTCL before the Hon'ble APTEL in Appeal No.262 of 2014(i.e. appeal against Tariff Order of FY 2014-15). The Hon'ble APTEL in its judgement dated 14-01-2016 decided the issue against PSTCL. The relevant extract from Hon'ble APTEL's judgement is as under:-

“23) Carrying Cost:

*According to the appellant, the carrying cost allowed by the Commission in the impugned order is not a compensatory one as it is limited to simple interest while the appellant is paying carrying cost with monthly rest and further the State Commission has not computed the carrying cost for FY 2014-15 correctly **and wrongly passed on the impact of carrying cost of Rs. 39.05 crores to the Government of Punjab...***

..... The State Commission has assumed the carrying cost of Rs.39.05 crores from the Government of Punjab on the premise that the appellant was unable to furnish audited accounts for the FY 2010-11 for true up in time i.e. for the true up of FY 2012-13, due to the late finalization of pending balance sheet under the provisions of transfer scheme is prerogative of the Government and is not open to the State Commission to question the same and disallow the expenditure resulting in such reorganization. Therefore, the revenue gap as determined by the State Commission out to be allowed to be recovered through tariff along with carrying cost. Further submission of the appellant on this issue is that the State Commission ought not to have directed the appellant to re-cover the money from Government of Punjab.

.....25) Our consideration and conclusion:

*.....Since in the present matter there is no provision in Regulation-32 of the State Tariff Regulations-2005 to gross up the carrying cost, the same has **legally and correctly not been allowed by the State Commission and the rulings***

cited by the appellant, namely, the paragraph vii(f) above, of this present judgement they do not ensure to the benefit of the appellant, In view of the above discussions, we decide this issue against the appellant.”

- (b) The Commission had not recovered carrying cost of surplus of Rs 1323.92 crore for FY 2017-18 at the time of review of FY 2017-18 in Tariff Order of FY 2018-19. The Commission has approved revenue surplus of Rs. 1546.52 Crores of FY 2017-18 after true-up (Table 2.50) of FY 2017-18 in Tariff Order of FY 2019-20.

Accordingly, the Commission has rightly calculated carrying cost as recoverable on the revenue surplus of Rs. 1546.52 Crore (True-up of FY 2017-18) for six months of FY 2017-18, full year of FY 2018-19 and for six months of FY 2019-20 @9.36% as Rs. 289.51 Crore in Tariff Order of FY 2019-20.

12. Subsidy

PSPCL's Submission

- (a) Free power supply to Mushroom farming
PSPCL in the instant review petition has submitted that for FY 2017-18, the Commission has not considered an amount of Rs. 0.03 Crores on account of the free/concessional power supplied to the mushroom farming consumers which required to be included in the subsidy amount payable by the Government of Punjab.

- (b) Error in calculation of Fuel Cost Adjustments

PSPCL prayed that the Commission has considered and allowed an amount of Rs. 6084.17 Crores (including FCA) against free/concessional power supplied to AP consumers corresponding to 11849.96 MU for FY 2017-18. The actual amount against the above to be allowed by the Commission works out to Rs. 6000.65

Crores (11849.96 MU @5.06/unit + Estimated FCA Rs. 4.57 Crores) which is due to an arithmetical error. Correspondingly the balance amount of Rs. 83.52Crores (6084.17-6000.65) needs to be reduced from the amounts recoverable from the Government of Punjab and needs to be included in the revenue Gap of PSPCL for 2017-18, recoverable by PSPCL with carrying cost.

Chief Engineer/ARR&TR, vide Memo No. 4703/TR-4/199 dated 03.10.2019 submitted that for the year 2017-18, PSPCL has booked the total subsidy of Rs.6291.89 crore in its Books of accounts as under:

Sr. No.	Particulars	Consumption (MUs)	Amount (Rs.Crore)
1	AP /Tube well	12253.78	6200.41
2	FCA		4.73
3	AP subsidy disallowed for AP 2016-17 True Up		-221.04
4	Interest allowed on delayed payment		307.79
5	Total AP Subsidy booked		6291.89

PSPCL further stated that above the data was based on the consideration of the total AP consumption of 12253.78 MUs. However, while truing up for FY 2017-18, the Commission considered the AP consumption as 11849.96 MUs. Therefore, while considering 11849.96 MUs as AP consumption the subsidy amount works out to Rs. 5996.08 Crore with corresponding FCA of Rs.4.57 Crore, aggregating as Rs.6000.65 Crore. The Commission has considered the subsidy amount to Rs.6084.17 Crore(including FCA) in the Order. Correspondingly, the revenue requirement to

that extent needs to be met from the retail supply along with carrying cost, for which consequential effect may be given by the Commission.

(c) Pending amount of Rs 178.82 crore on account of subsidy

The PSPCL submitted that the Commission while calculating the balance subsidy of previous years in the Para no. 8.5.2 at page no. 283 in T.O. 2017-18 has mentioned that there was a surplus of subsidy of Rs.655.55 Crores up to FY 2011-12. Whereas after taking the impact of the amount of Rs.178.82crore pending from GOP for FY 2011-12, this amount of surplus subsidy has to be taken as Rs.476.73 (655.55-178.82) crore.

PSPCL summarized the issue of pending amount of Rs. 178.82 crore for FY 2011-12 and related year wise details follows:-

Government of Punjab (GoP) Memo No. 11/68/2010-EB2/4175 dated 16/12/2011, had decided to waive off the outstanding electricity bills against the tube well consumers and grant subsidy of Rs. 357.64 crore (as claimed by the Appellant in its Commercial Circular 9/2012) to be paid to PSPCL in six equated monthly instalments. Only three installments i.e. Rs. 178.82 Crore (@Rs. 59.61 crore per month) were considered to be payable during FY 2011-12 by GoP to PSPCL. Balance amount of subsidy of Rs. 178.82 crore was required to be paid by GoP to PSPCL during FY 2012-13. Therefore, the amount to be considered for the year 2011-12 was to be restricted only to Rs. 178.82 crore and the balance amount of Rs. 178.82 crore were to be considered during the FY 2012-13. However, the Commission in the following Tariff Orders considered and treated as under:

Tariff Order FY 2012-13

In the Tariff Order for FY 2012-13, the State Commission has allowed the abovementioned subsidy amounting to Rs.178.82 crore (i.e first 3 installments) while reviewing the year 2011-12 (at para 3.15.1) of the said Tariff Order. Further, in Para 6.4.1 of the same Tariff Order, the State Commission had allowed the balance amount of Rs. 178.82 crores on account of waiver of outstanding amount against the AP consumers.

TARIFF ORDER FOR FY 2013-14

The State Commission in Tariff Order for FY 2013-14 had observed that three instalments of Rs 178.82 Cr were considered to be payable to PSPCL by Government of Punjab for FY 2011-12. True-up of 2011-12 was not carried out in this Tariff Order.

TARIFF ORDER FOR FY 2014-15

True up of the year 2011-12 was carried out in Tariff order for FY 2014-15. The balance amount of Rs 178.82 Crore (first installment was already allowed in review of 2011-12) was required to be allowed in the true up of 2011-12 in the Tariff Order.

The PSPCL had also submitted the formats for provisional True up for FY 2012-13 in its ARR petition for FY 2014-15. Accordingly, the Appellant, in its ARR petition (i.e. petition no 63/2013) for 2014-15, had included the total amount of Rs 357.64 Crore (i.e. 178.82 Cr for true up of FY 2011-12 + Rs 178.82 Cr for True up of FY 2012-13) which was required to be allowed as per Punjab Govt. Notification dated 16/12/2011.

Since True up for FY 2011-12 was carried out in Tariff Order 2014-15, the Commission had not considered the amount of Rs 178.82 Cr which was already allowed in the review of 2011-12 in Tariff order for FY 2012-13 and also considered by the State Commission in the Tariff Order for FY 2013-14.

TARIFF ORDER FOR FY 2015-16

PSPCL in ARR Petition No. 71 of 2014 for FY 2015-16 asked PSERC to allow the total amount of Rs 357.64 Cr i.e. Rs 178.82 Cr for 2011-12 and Rs 178.82 Cr for 2012-13. However, the true up of the financial years 2011-12 and 2012-13 were not taken up in Tariff order for FY 2015-16.

TARIFF ORDER FOR FY 2016-17

PSPCL n its ARR for FY 2016-17 submitted to allow the full amount of Rs. 357.64 Crore (Rs. 178.82 Crore pertaining to FY 2011-12 and Rs. 178.82 Crore pertaining to FY 2012-13). However, the Commission allowed the amount of Rs. 178.82 Crore pertaining to FY 2012-13 only.

PSPCL filed Review Petition No. 5 of 2016 against the Tariff Order for FY 2016-17 wherein the issue of non-allowance of subsidy for FY 2011-12 was raised before the Commission which was disposed of vide PSERC Order dated 14/07/2016 holding that the year 2011-12 was not part of the tariff order and only 2012-13 was considered. In the said Review Petition and observed as under:

“The Petitioner has filed the present Review Petition against Commission’s order dated 27.07.2016, which does not cover True-Up of FY 2011-12. The order dated 27.07.2016, only deals with True-Up for FY 2012-13 & FY 2013- 14, Review of FY 2015-16 and ARR determination for FY 2016-17”.

PSPCL further states that the Commission, while accepting the claim in principle subsequent to the Tariff Order for FY 2014-15, could not allow the same for the year 2011-12 only for the reason that the year in question was not part of the proceedings before the Commission. Accordingly, this amount of 178.82 crore may be considered and impact of the above amount be taken on the surplus subsidy of Rs. 655.55 crore upto 2011-12 and net amount of surplus subsidy taken as Rs.476.73(655.55-178.82) crore. PSPCL urged that amount of Rs.178.82 crore be allowed to be recovered as subsidy from the Govt. of Punjab.

Commission's Analysis

(a) Free power supply to Mushroom farming

The plea of PSPCL for including Rs. 0.03 Crores on account of the free/concessional power supplied to the mushroom farming consumers in the subsidy amount payable by the Government of Punjab is not acceptable as it is the prerogative of the State Govt. to allow free/subsidized power supply to any category of consumers and pay for the same. Since the State Government had not included the mushroom farming consumers in its subsidized categories therefore Rs.0.03 crore was not included in the subsidy amount payable by Govt. of Punjab during FY 2017-18.

(b) Error in calculation of Fuel Cost Adjustments

PSPCL has claimed Rs. 83.52 (6084.17-6000.65) Crore due to wrong booking in its accounts. PSPCL had not submitted the details of wrong booking of previous subsidies in the accounts of FY 2017-18 in petition No 02 of 2019.

The Commission observes that FCA amounting to Rs. 4.57 crore booked for the 2nd Quarter is wrong as the actual amount of FCA is Rs. 20.59 crore as per calculation approved by the BoD for non-metered supply for the 2nd Quarter.

Similarly, the impact of FCA determined by the Commission for fourth quarter has not been considered in the book of accounts. The Commission in its order dated 20.07.2018 determined that FCA for the 4th Qtr of FY 2017-18 is chargeable at Rs.0.08 per unit. As per information supplied by the Dy. FA, PSPCL, supply of AP category for the months of Jan,18 to March,18 works out to 1577.50 MU. FCA chargeable for the 4th Quarter therefore works out to Rs 12.62 crore.

Accordingly, FCA for AP supply for FY 2017-18 works out to Rs. 33.21 (12.62+20.59) crore. In view of the detail of FCA now provided by PSPCL, the AP subsidy of Rs. 6029.29 $\{(11849.96 \times 5.06 = 5996.08) + 33.21\}$ Crores is required to be considered against Rs. 6084.17 Crore approved by the Commission for FY 2017-18 resulting into excess booking of Rs. 54.88 Crore. Decrease in subsidy will result in a consequential decrease in interest on subsidy and increase in the revenue gap for FY 2017-18. The impact of this will be included in the coming Tariff Order.

(c) Pending amount of Rs 178.82 crore on account of subsidy

The issue of non-allowance of subsidy for FY 2011-12 was raised before the Commission in the Review Petition No. 5 of 2016 filed by PSPCL against the Tariff Order for FY 2016-17. In the said Review Petition, the Commission observed as under:

“The Petitioner has filed the present Review Petition against Commission’s order dated 27.07.2016, which does not cover True-Up of FY 2011-12. The order dated 27.07.2016, only deals with True-Up for FY 2012-13 & FY 2013- 14, Review of FY 2015-16 and ARR determination for FY 2016-17”.

The relevant part of the Order of the Hon’ble APTEL dated 18 May, 2015 in Petition No. 180 of 2013, in some other case, is reproduced below:

“We feel that this issue cannot be raised in the present Appeal as these were decided by the State Commission in the respective tariff orders. No Appeals were filed against those orders and since attained finality. We do not find any reason to interfere with the findings of the State Commission on this issue.”

The Hon’ble Supreme Court in 2009(6) SCC 235 in UP Power Corporation Limited vs. NTPC has held that:

“In a fact situation obtaining herein, we are of the opinion that the claim of the respondent - corporation was not justified as the Central Commission should not have been asked to revisit the tariff after five years and when everybody had arranged its affairs.”

In view of the above, FY 2011-12, whose True-Up has already been concluded cannot be re-opened.

Moreover, It is stated that the issue of so called pending Subsidy to the tune of Rs.178.82 relating to the year 2011-12 has already been contested by PSPCL before Hon’ble APTEL in other Petitions. As and when the decision of the Hon’ble APTEL, is received further action will be taken accordingly.

13. Interest and finance charges

PSPCL's Submission

For FY 2017-18

PSPCL has submitted that Commission has disallowed an amount of Rs. 1,539.29 Crores as interest charges on the distribution business. The actual loan taken by PSPCL is Rs.1,656.56 Crores, however PSERC has approved the net requirement of long-term loans towards approved capital expenditure of Rs. 1,487.18 Crores and after deducting the consumer contributions and assistance from Central Government schemes, net requirement of long-term loan is derived at Rs. 774.45Crores.

PSPCL further submitted that an amount Rs. 196.91 Crores was disallowed on account interest charges for generation. PSPCL has prayed for review of the same, since PSPCL had requested the Commission to approve the Interest & Finance charges on actual basis, considering the funds requirements of PSPCL. However, the same has not been considered.

PSPCL has further stated that the Commission has considered opening balance of loan as Rs. 8976.81 Crores as approved after True-up for FY 2016-17. Therefore, all past disallowances are being carried forward and PSPCL is being prejudiced for the future as well. There is also a disallowance of Rs. 882.11 Crores of new loans. The mismatch in actual loan taken, actual capital expenditure and consumer contribution/grants was already identified at time of filing of Petition. The Commission may therefore review this particular issue.

Further, the Commission has also not considered interest on State Government loans of Rs. 1306.95 Crores which are still outstanding in the books of PSPCL on which interest is payable.

PSPCL urged the Commission to provide the computation of the rate of interest of 10.84% for the Generation business and 9.60% for Distribution business.

FY 2018-19

PSPCL had claimed interest of Rs. 2147.44 Crores for the year 2018-19. PSPCL had raised/intended to raise long term loans of Rs. 2209.25 Crores for the year against the annual plan of Rs. 2409.26 Crores. However, the Commission allowed the interest of Rs. 836.51 Crores by allowing capital expenditure of Rs. 1700 Crores (on provisional basis) which is erroneous. PSPCL has sought for the interest and finance charges on the actual loans taken for asset created.

Further, the Commission has considered the assistance from Govt. sponsored schemes of Rs. 149.05 Crores in place of Rs. 78.14 Crores. This appears to be an inadvertent mistake and needs to be corrected.

The Commission has allowed Finance charges of Rs. 21.19 Crores on proportionate basis. Finance charges of Rs. 55.6 Crores should also be allowed on actual basis.

The Commission has not allowed interest on working capital loans of Rs. 657.72 Crores. These loans have been necessitated to fund the operations of PSPCL.

PSPCL also expressed the view (in further submissions) that GPF amount should not be considered for calculating the weighted average rate of interest. As such it is requested that Hon'ble Commission may reconsider the facts and allow the interest for

distribution business with 10% p.a weighted average rate of interest

As for the year 2017-18, the Hon'ble Commission has not provided the computation of rate of interest of 11.79% for Generation and 9.60% for Distribution, which may be provided.

FY 2019-20

PSPCL submitted that for the year 2019-20, PSPCL intends to raise Long Term Loans of Rs. 2,290.43 crores against the Annual Plan of Rs 2,490.43 crores. However, in the impugned order, the Commission has allowed the interest of Rs. 703.33 Crores by considering the provisionally allowed capital expenditure of Rs. 1,055.46 Crores.

It has further submitted that the Commission ought not to have considered the repayment of Rs. 2,246.77 Crores of GoP loans because PSPCL has assumed the repayment of GoP loans to be made on the last day of the Financial year 2019-20 i.e. 31-03-2020. This has however not been considered by PSPCL in the computation of interest and finance charges for the year 2019-20.

It has further requested that PSPCL made the projection of interest on long term loans during this year by taking the repayment of Rs. 18,783.39 crore which includes the repayment of Rs. 15,628.26 crore of GOP loans and Rs. 2,400 crore repayable against the DISCOM bonds. The Commission has considered the repayment of Rs. 5401.09 crore which includes Rs. 2,246.77 crore of GOP loans under UDAY scheme and Rs. 2400 crore repayable against DISCOM bonds. PSERC should not have considered the repayment of Rs. 2,400 crore because issuance/raising of DISCOM bonds of Rs. 5209.42 crore has not been considered by

Commission and also not have considered the repayment of Rs. 2246.77 crore as stated before. As such the repayment of loan should be considered as Rs. 754.32 Crores (Rs. 5,401.09 Crores - Rs. 2,400 Crores - Rs. 2,246.77 Crores) and interest on long term loans should be allowed accordingly.

Further, the Commission has disallowed the Finance charges of Rs. 200 crores as guarantee fee against DISCOM bonds and the remaining finance charges have been allowed on proportionate basis.

Further, similar to FY 2018-19, the Commission has not allowed interest on working capital loans and partly allowed interest on State Government loan claimed. As in the previous years, the Commission has not given the computation of rate of interest of 11.79% for Generation and 9.60% for Distribution, which may be reviewed.

Commission's Analysis

FY 2017-18

The opening balance quoted by PSPCL include loans taken to cover disallowances and deficiencies of PSPCL. Interest of Rs. 1306.95 Crore on State Govt. loans consist of interest on long term loans and working capital loans to cover its disallowances. Interest of Rs. 184.98 Crore on long term loans has been considered by the Commission as per annexure- B. Once PSERC has disallowed certain expenses and the same have not been allowed in review or appeal, the loans taken for such matters and interest thereon cannot be reconsidered and loaded on the consumer. The Commission allows normative working capital and capex loans as per capital expenditure allowed. The Commission in its order has

not considered the actual long term loan addition for FY 2017-18 of Rs. 1656.56 Crore as submitted by PSPCL since the Commission had provisionally allowed capital expenditure of Rs. 1487.18 Crore for FY 2017-18. The Commission allowed 100% financing through loans after deducting funds raised through grants and Consumer Contribution. The requirement of loan is determined at Table 2.13 of para 2.10.3 of Tariff Order for FY 2019-20.

The Commission will re-determine long term loans requirements and its interest after finalization of capital expenditure. The view expressed by PSPCL regarding interest on GPF amount will also be considered during final true-up of respective years. The impact, if any, on interest on long term loans for FY 2017-18, FY 2018-19 and FY 2019-20 will be given after finalization of capital expenditure of respective years.

The calculation of weighted average rate of interest for FY 2017-18 in the Tariff Order for FY 2019-20, as desired by PSPCL, for generation business @ 10.84% is annexed at A and weighted average rate of interest @ 9.60% for distribution business is annexed at B.

The said weighted average rate of interest have been used for provisional true-up of FY 2017-18 in the Tariff Order for FY 2019-20.

FY 2018-19 and FY 2019-20

The Commission in its Tariff order for FY 2019-20 had rightly decided the issue of Guarantee fees as under:-

“The Bonds of Rs.5209.42 crore were to be issued during FY 2016-17 but could not be issued during FY2017-18 and

FY2018-19. The Commission disallows Rs. 200 Crore as guarantee fees for FY 2019-20 as claimed by the PSPCL at this stage. However, the Commission will consider guarantee fee after issuance of DISCOM Bonds”.

The issue of guarantee fee will be finalized at the time of True up of FY 2018-19 and FY 2019-20.

The Commission had approved the capital expenditure and its Capitalization based on MYT order dated 23.10.2017 for FY 2018-19 and FY 2019-20 respectively in the Tariff order of FY 2019-20.

Capital expenditure and its capitalization for FY 2017-18, FY 2018-19 and FY 2019-20 will be trued up at the end of the first control period (FY 2017-18 to FY 2019-20). Accordingly, actual long term loan requirement and its interest will be re-determined for FY 2017-18, FY 2018-19 and FY 2019-20.

The petition is disposed of accordingly.

Sd/-
(Anjali Chandra)
Member

Sd/-
(S.S. Sarna)
Member

Sd/-
(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: 05.12.2019

[Click here for Annexure](#)