

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

Petition No. 40 of 2022
Date of Order: 21.07.2023

Petition filed under Section 86, 142, 146 and 149 of the Electricity Act, 2003 read with Regulation 10 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 against Punjab State Power Corporation Limited for Non-compliance of this Commission's Order dated 22.03.2022 passed in petition no. 14 of 2021

AND

Indian Railways, through Sr. DEE/TRD, Northern Railways, DRM Office, Ambala Cantt., Haryana-133001

Petitioner

Versus

Punjab State Power Corporation Limited, through its Chief Engineer, PSEB Head Office, The Mall, Patiala-147 001.

Respondent

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

Indian Railway: Sh. Pulkit Agarwal, Advocate

PSPCL: Ms. Suparna Srivastava, Advocate
Ms. Tejasvita Dhawan, Advocate
Sh. Tushar Mathur, Advocate

ORDER

Indian Railways has filed the present Petition seeking directions against Punjab State Power Corporation Limited (PSPCL) for non-compliance of Order dated 22.03.2022 passed by the Commission in

Petition No. 14 of 2021. The Submissions of Indian Railways are summarized as under:

1.1 Indian Railways had filed Petition No. 14 of 2021 against PSPCL and Punjab State Transmission Company Limited (PSTCL) seeking directions/clarification as regards (1) liability of Indian Railways to pay Energy Charge, Fixed Charge and Demand Surcharge for the power over drawn by it beyond the power under Open Access when power under Standby Agreement was neither procured nor scheduled (2) liability to pay Additional Surcharge on the power being sourced through Open Access by Indian Railways in its status as a Deemed Distribution Licensee (3) addition of new Traction Substation in the existing Long Term Access of Indian Railways and (4) issuance of 'No- Objection Certificate' for Short Term Access to Indian Railways to enable it to procure power including green and conventional power through Open Access from Power Exchanges.

1.2 The Commission had disposed of the aforesaid petition vide order dated 22.03.2022 wherein it was held that Indian Railways shall be liable to pay additional surcharge on the power sourced by it under the open access. As regards the issue of liability of Indian Railways to pay Energy Charge, Fixed Charge and Demand Surcharge for the power over drawn by it beyond the power under Open Access when power under Standby Agreement was neither procured nor scheduled, the Commission held that the power drawn should be treated as standby power and hence for these 86 time blocks charges as specified in Regulation 27 (A) shall be applicable. The Commission had further held that for the rest of the period wherein Railway had overdrawn/under drawn, it cannot be charged under the standby mode as Railway has already paid deviation charges and directed PSPCL/PSTCL to revise and adjust invoices/bills

raised against Northern Railways alongwith interest/late payment surcharge in accordance with Open Access Regulation.

1.3 The respondent was to charge for the standby charges including demand surcharge for drawal of power on 7 days (19.03.2020, 29.06.2020, 30.06.2020, 01.07.2020, 02.07.2020, 08.07.2020 and 09.01.2021- 86 time blocks) when there was zero schedule for Railways and no demand surcharge was payable for the remaining period. Purportedly, PSPCL sent a revised invoice dated 29.04.2022 in compliance of order dated 22.03.2022 passed by the Commission demanding Rs. 214.76 Crores towards Standby Charges, Additional Surcharge, Cross-Subsidy Surcharge and Demand Charges. Indian Railways objected to the demand raised by PSPCL towards demand surcharge and Cross Subsidy Surcharge vide letter dated 05.05.2022, on the ground that it was contrary to directions given by the Commission vide its order dated 22.03.2022. Indian Railways also raised its claim for the excess amount paid by it @ 18% at par with the interest rate claimed by PSPCL towards interest on demand surcharge, which was rejected by PSPCL vide letter dated 06.05.2022. Deviation charges (DSM charges) for 86 time blocks totaling to Rs. 27,47,338/- were calculated by PSTCL in compliance of order dated 22.03.2022. Said amount was adjusted from the invoice dated 02.05.2022 issued by PSTCL. Vide its letter dated 12.04.2022, PSTCL had stated that PSPCL had to work out standby charges for 86 time blocks only.

1.4 Indian Railways filed Appeal No. 186 of 2022 before Hon'ble APTEL. Vide this appeal, Indian Railways had challenged order dated 22.03.2022 passed by the Commission on the ground that there cannot be any imposition of additional surcharge if the conveyance of electricity is sought by Indian Railways as a Deemed Distribution Licensee and

that the Commission has erred in holding that the power is being conveyed by the Indian Railways to its distribution system only under Section 42 of the Electricity Act, 2003 even, though power is being sourced by the Indian Railways in its status as a Deemed Distribution Licensee and not as a consumer of PSPCL. Hon'ble APTEL has granted stay against order dated 22.03.2022 vide order dated 30.05.2022, in so far as liability of the Indian Railways to pay additional surcharge is concerned.

1.5 Indian Railways has filed this petition on the following grounds:-

- i That PSPCL has willfully defied order dated 22.03.2022 passed by the Commission whereby PSPCL was directed to raise bill towards Energy Charge, Fixed Charge and Demand Surcharge for the power overdrawn by Indian Railways beyond the power under open access for 7 days (19.03.2020, 29.06.2020, 30.06.2020, 01.07.2020, 02.07.2020, 08.07.2020 and 09.01.2021- 86 time blocks) when there was zero schedule for Railways.
- ii That PSPCL is falsely claiming in the invoices raised by it that said demand is in accordance with Regulation 28 (3) of the open access Regulations framed by the Commission.
- iii That Railways being a deemed licensee is not a consumer of PSPCL, therefore, is liable to pay demand surcharge only as prescribed under Regulation 27 (A) Open Access Regulation, 2011 for the time period allowed by the Commission vide order dated 22.03.2022.
- iv That PSPCL has claimed to levy these charges under Regulation 28 (3) which provides for the charges to be in term of Regulations 31 (1) (a) of the Open Access Regulations which again refer to

Regulation 27 (A) of the Open Access Regulation. As mentioned in the order dated 22.03.2022, Demand Surcharge could have been charged for 7 days (86 time blocks) as per Regulation 28 (3) and PSPCL cannot be permitted to charge Demand Surcharge by referring to Regulation 28(3) which indirectly refers to Regulation 27 (A).

- v That incompliance of order of the Commission, even PSTCL has refunded DSM Charges paid by Indian Railways for 86 time blocks and as per PSTCL also Standby Charges are to be charged for the 86 time blocks only implying thereby that the Demand Surcharge could have also been charged as provided under Regulation 27 (A).
- vi That as regards levy of Additional Surcharge which was allowed by the Commission, Hon'ble APTEL vide order dated 30.05.2022 has granted stay against insistence of payment of additional surcharge by PSPCL, therefore, at present there is no liability upon Indian Railways to pay such charges.
- vii That PSPCL claim towards Cross Subsidy Surcharge is incorrect because no direction regarding levy of Cross Subsidy Surcharge on Indian Railways was given by the Commission. Further, PSPCL in its reply filed before Hon'ble APTEL in Appeal No. 170 of 2019 has admitted that no provision has been made in Regulations to enable the Distribution Licensee to meet the Cross Subsidy requirement in the area.
- viii That Indian Railways had made payments against the invoices raised by PSPCL towards demand surcharge for the period from 24.11.2019 to 30.06.2020. Therefore, Indian Railways is also

entitled to interest for the excess amount paid by it at par with the interest rate claimed by PSPCL towards interest on demand surcharge i.e. @ 18%.

2. In the facts and circumstances mentioned above, petitioner has prayed to:

- (a) admit the present petition and hold that the Respondent has failed to comply with this Commission's order dated 22.03.2022 passed in Petition No. 14 of 2021;
- (b) take appropriate action against the Respondent for non-compliance of this Commission's order dated 22.03.2022 passed in Petition No. 14 of 2021 more particularly in terms of Sections 142, 146 and 149 of the Electricity Act, 2003;
- (c) direct the respondent to revise its invoice dated 29.04.2022 as regards demand surcharge and to charge the same for drawal of power on 7 days (19.03.2020, 29.06.2020, 30.06.2020, 01.07.2020, 02.07.2020, 08.07.2020 and 09.01.2021 - 86 time blocks) when there was zero schedule for Petitioner as directed by this Commission in its order dated 22.03.2022;
- (d) direct the respondent to revise its invoice dated 29.04.2022 by not charging amounts towards Cross Subsidy Surcharge;
- (e) direct the respondent to give interest on the amounts paid by the Petitioner in excess towards demand surcharge at the rate of 18% per annum as being charged by it from the Petitioner; and pass such further order or orders as this Commission may deem just and proper in the circumstances of the case and in the interest of justice

3. After considering the averments made by the petitioner, the petition was admitted vide order dated 19.09.2022 with direction to PSPCL to file reply and the petitioner to file rejoinder to the reply filed by PSPCL.

4. On 04.11.2022, PSPCL submitted its reply stating as under:

- a) That in compliance of Order dated 22.03.2022 passed by the Commission, the invoice dated 29.04.2022 has been raised by PSPCL. Therefore, this petition is not maintainable as is liable to be dismissed by the Commission.
- b) That vide order dated 22.03.2022, the Commission had directed PSPCL to revise and adjust invoices raised on Indian Railways (alongwith interest/late payment surcharge) in accordance with Regulation 27 (A) of the Open Access Regulations by treating power drawn for 86 time blocks (on 7 days i.e. 19.03.2020, 29.06.2020, 30.06.2020, 01.07.2020, 02.07.2020, 08.07.2020 and 09.01.2021) as standby power. In view of findings of the Commission recorded in order dated 22.03.2022, additional surcharge was also leviable on Indian Railways on the power being sourced by it through Open Access.
- c) That vide letter dated 29.04.2022, PSPCL issued a revised invoice amounting to Rs. 214.76 Crore upon Indian Railways for the period 24.11.2019 to 31.01.2022 towards standby charges, additional surcharge, demand surcharge and Cross Subsidy Surcharge. The details of the charges so raised were provided to Indian Railways vide letter dated 06.05.2022.

- d) That vide the aforesaid letter dated 06.05.2022, it was made clear that the power overdrawn for 86 blocks for 7 days was treated as standby power and fixed charges, energy charges and demand surcharge were billed accordingly (by adjusting 5 MW standby power); for the rest of the period, additional surcharge, Cross Subsidy Surcharge on open access units and demand surcharge were billed as per Regulation 28 (3) of 2011 Open Access Regulation. Further, as per order dated 01.06.2015 passed by the Commission in Petition No. 16 of 2013, demand surcharge for maximum over drawl above the admissible drawl/entitlement in the billing period are to be levied as per the rates approved by the Commission in the schedule of the Tariff, in case an Open Access customer exceeds its admissible drawl/entitlement during any part of the day. Indian Railways has overdrawn power from 23 MW to 51 MW in the Month of July 2021, which had blocked the TTC of PSPCL resulting in Power Cut imposed on its consumers, thus the demand surcharge levied on Indian Railways was totally justified.
- e) That the petitioner is liable to pay Cross Subsidy Surcharge as per Section 42 (2) which grants statutory right to PSPCL to make provision for grant of open access into the distribution system subject to payment of Cross Subsidy Surcharge and Additional Surcharge. Submission made by Indian Railway that there is no provision existing in Open Access Regulation, 2011, which prescribes for the levy of Cross Subsidy Surcharge is incorrect and is liable to be rejected. Under Regulation 26 Open Access Regulation, 2011, a provision has been made for payment of Cross

Subsidy Surcharge by an open access customer *“if open access facility is availed on by a subsidizing consumer of a distribution licensee of the state”*. Further, the issue of Cross Subsidy Surcharge has not been challenged by the Petitioner in Petition No. 14 of 2021, which is the reason that no finding to this effect was given by the Commission.

- f) That a consumer whose premises are situated within the areas of supply of distribution licensee, seeks power supply from a person other than the distribution licensee of his area supply, is required to apply for open access under Open Access Regulations, 2011. Such, Open Access customer is liable to pay charges against the Open Access.
- g) That the claim for interest on the excess amount paid towards demand surcharge is totally inadmissible as no excess amount was ever paid by Indian Railways and no such interest is payable to them.
- h) That the Petitioner is seeking to reopen and re-agitate the issues already adjudicated by this Commission vide Order dated 22.03.2022 passed in Petition No. 14 of 2021. This is more so when the petitioner has already challenged Order dated 22.03.2022 passed by the Commission vide Appeal No. 186 of 2022 before Hon'ble APTEL. Hon'ble Tribunal vide its Order dated 30.05.2022 has granted stay against insistence of payment of Additional Surcharge from the petitioner. Thus, the petitioner is liable to pay balance amount except Additional Surcharge (Rs. 56.72 Crore) raised by PSPCL, vide invoice dated 29.04.2022, in compliance of order dated 22.03.2022 passed by the Commission.

- i) Therefore, in view of the submissions narrated above, the petition is liable to be dismissed by the Commission and the petitioner is liable to be directed to pay the sums under the invoice dated 29.04.2022 except Additional Surcharge to the extent it has been stayed by the Hon'ble Tribunal in Appeal No. 186 of 2022.

5. On 15.11.2022, Indian Railway submitted its rejoinder reiterating its earlier submissions and further adding:

- a) That the Regulation 28 (3) of the Open Access Regulation, which has been relied upon by the petitioner applies only on a 'consumer' of PSPCL drawing power through Open Access. Said Regulation is not applicable on Indian Railways because it is procuring power through Open Access in its status as a Deemed Distribution Licensee. Therefore, the reliance of PSPCL on Order dated 01.06.2015 in Petition No. 16 of 2013 is wholly misplaced. Further, Regulation 28 (3) is applicable only on an entity having a contract demand i.e. who is a consumer of PSPCL. As regards, the overdrawal done by the petitioner, the Commission vide order dated 22.03.2022 has already decided that stability and grid security has not been hampered by the petitioner in any manner. PSPCL is trying to impute certain submissions as regard maximum ATC blockage The Commission has neither made any observation as regard maximum ATC blockage nor has it permitted PSPCL to charge any demand surcharge under Regulation 28 (3).
- b) Indian Railways is procuring power for its traction use in its status as a Deemed Distribution Licensee as per provisions

of the Electricity Act, 2003 and the STU is obligated (under Section 39 (2) (d) (i) of the Electricity Act, 2003) to provide non-discriminatory Open Access to its transmission system for its use by the Indian Railways on payment of necessary transmission charges. Indian Railways for the purposes of its traction use is neither connected to distribution network nor is using the same in any way for the purpose of distributing electricity to its traction sub-stations in the State of Punjab. Indian Railways is distributing electricity of its own use with a distinct area of supply other than that of Distribution Licensee i.e. PSPCL. The Cross Subsidy Surcharge is leviable in terms of provisions of Section 42 (2) read with Section 38 (2) (d) (ii), Section 39 (2) (d) (ii) and Section 40 (c) (ii) only when the Open Access is sought for the conveyance of electricity to a 'consumer'. Thus, procurement of power by a licensee/deemed licensee does not attract any surcharge including Cross-Subsidy Surcharge. Section 42 (2) of Electricity Act 2003 only provides for applicability of Cross Subsidy Surcharge on wheeling charges on consumers of Distribution Licensee who are seeking Open Access in the area of licensee and not on other Distribution Licensees who are neither connected to nor using their distribution network.

- c) The purpose of Cross Subsidy Surcharge is to compensate financially the Distribution Licensee of an area in regard to the prevalent extent of the cross-subsidization of one category of consumers by another category. Since, Indian Railways as the Distribution Licensee is not supplying Power to any consumers of Distribution Licensees in the State of Punjab, therefore, Indian Railways is not liable to

pay Cross Subsidy Surcharge to another Distribution Licensee i.e. PSPCL.

6. After hearing the Ld. Counsel for the petitioner, the petition was admitted on 20.01.2023. Since, both the parties were interested in an amicable resolution of the issues, therefore, vide Order dated 20.01.2023, the Commission observed that the parties may convene a meeting and intimate the Commission regarding the outcome of the meeting before the next date of hearing.

7. PSPCL vide memo No. 5534 letter dated 06.03.2023, informed the Commission about the meeting between the parties held on 28.02.2023 regarding the implementation of order dated 22.03.2022 passed by the Commission in Petition No. 14 of 2021. The Senior Officers from both the sides attended the meeting and the minutes of meeting were signed by them. In this meeting, Indian Railway was apprised about Revised Billing Statement No. 40/2022 dated 29.04.2022 issued in compliance of order dated 22.03.2022. The relevant contents of the said minutes of the meeting are as under:

- 1) *“Indian Railway was apprised that Additional Surcharge was levied as per orders of the Commission and also Cross-subsidy was levied by default. Indian Railways admits that Additional Surcharge was charged as per the orders of Commission.*
- 2) *Indian Railway was apprised about open access units for the period of 24.11.2019 to 31.01.2022 and there is no issue regarding the same.*
- 3) *Indian Railways was apprised about Fixed Charges, Energy Charges and Standby Power Units for 86 time Blocks, Railway acknowledge the same.*
- 4) *Indian Railway was also apprised that Demand surcharge for 86 Blocks times have been charged after adjusting 5 (MW) standby power drawn for these days.*
- 5) *Indian Railways was also apprised that as per orders of the Commission, standby power is charged for 86*

Blocks of time instead of whole overdrawl power as earlier.

- 6) *Indian Railway was apprised that as per the orders of the Commission, Revised Billing Statement was issued along with Interest/Late payment surcharge in accordance with open access Regulation.*
- 7) *Indian Railway raised the issue that interest on payment made by then is not paid. Regarding same they were informed at no point payment made by them is in excess to bill raised after Revision, so no interest is payable to them.*
- 8) *Railway raised the issue of levying demand surcharge. In this regard Indian Railway is apprised that & quot; Demand surcharge is levied as per Regulation 28(3) as per open access Regulations. Northern Railway regularly paid the demand surcharge upto 30.06.2020 under protest. It is also pertinent to mention that PSERC in its order has never barred PSPCL from raising demand surcharge as per Regulation 28(3) and Indian Railway was also informed earlier vide letter no. 314 dated 06.05.2022.”*

8. After hearing Ld. Counsel of both the parties, Order was reserved on 29.05.2023 with permission to parties to file their written submissions within two weeks.

9. On 09.06.2023, Indian Railways has filed its written submissions wherein it has reiterated its earlier submissions and further made certain additional submissions as given below:

- a) That the use of words “in accordance with Open Access Regulations” cannot be construed to mean that the Commission has permitted PSPCL to levy Demand Surcharge for over drawls in terms of Regulations 28 (3). Regulations 28 (3) is applicable upon a consumer of PSPCL who seeks to procure power through open access and not on an entity who is procuring power

through open access in its status as Deemed Distribution Licensee.

- b) That the Petition No. 16 of 2013 filed by PSPCL before the Commission was with regard to the problems being faced by PSPCL in cases where the Consumers of PSPCL were procuring power through open access as well as through PSPCL (being their consumers) as per the prevailing market conditions i.e. if the power exchange price was lower than PSPCL's then power was procured through open access from power exchange and vice-versa and if the price was higher then the power was procured through PSPCL as a consumer against its contract demand. Regulation 28 (3) is applicable only on an entity having a contract demand i.e. who is a consumer of PSPCL and not on an entity like Railway who is a Deemed Distribution Licensee.
- c) That the contention of PSPCL that 'Open Access Consumer' and 'Open Access Customer' are one and the same is wrong. The Commission while notifying the Regulation has intentionally created a distinction between 'Open Access Consumer' and 'Open Access Customer' to mean 'Consumer of Distribution Licensee availing Open Access' and 'any person including licensee availing Open Access'. Thus, Indian Railways falls under the definition of 'Open Access Customer'.
- d) The Regulation 28 (3) will only come into play when an entity over draws from the admissible limit of drawl from the Distribution Licensee. In this case, Indian Railways does not have any admissible drawl limit/contract

demand with PSPCL, thus, in absence of such admissible limit, the question of exceeding that limit does not arise. Hence, there can be no levy of demand surcharge in terms of Regulation 28 (3).

e) That it is an admitted case of PSPCL before Hon'ble Appellate Tribunal in Appeal No. 170 of 2019 that no provision has been made in Regulations to enable Distribution Licensee to levy the Cross Subsidy requirements from a Deemed Distribution Licensee i.e. Indian Railway.

f) That there is no provision in the Regulations, which lays down automatic recovery of Cross Subsidy Surcharge in case Additional Surcharge, is recoverable as contended by PSPCL. Regulations 27 (1) cannot be interpreted to mean that a person who is paying Additional Surcharge is liable to pay Cross Subsidy Charges. Even, as per Regulation 26, Cross Subsidy Surcharge is already payable by a 'consumer' of PSPCL and in this case Indian Railways who is sourcing power through open access in its status as a Deemed Licensee is not a 'consumer'.

10. On 20.06.2023, PSPCL has filed its written submissions while reiterating its earlier submissions it added certain additional points as given below:

a) That the ongoing proceedings before Hon'ble Appellate Tribunal in Appeal No. 170 of 2020 does not impose any embargo on PSPCL to raise a demand for Cross Subsidy Surcharge upon to

Indian Railways. PSPCL has relied upon certain judgments on this issue.

- b) A meeting was held on 28.02.2023 between the parties regarding the implementation of order dated 22.03.2023 passed by the Commission in Petition No. 14 of 2021. The minutes of the meeting shows that except for the levy of demand surcharge and payment of Late Payment Surcharge, no issues were raised by the petitioner against the revised billing statement dated 29.04.2022 issued by PSPCL in compliance of order dated 22.03.2022 passed by the Commission.

Observations and decision of the Commission

The Commission has examined the submissions made by Railways in the petition, reply of PSPCL, subsequent rejoinders and information submitted by the parties during the course of hearings and has also heard the respective counsel for parties.

The Commission vide its Order dated 22.03.2022 in Petition No. 14 of 2021 has decided upon the following issues:

- i) Liability of Indian Railways to pay Energy Charge, Fixed Charge and Demand Surcharge for the power over drawn by it beyond the power under Open Access when power under Standby Agreement was neither procured nor scheduled.
- ii) Liability to pay Additional Surcharge on the power being sourced through Open Access by Indian Railways in its status as a Deemed Distribution Licensee

- iii) Addition of new Traction Substation in the existing Long-Term Access of Indian Railways
- iv) Issuance of 'No-Objection Certificate' for Short Term Access to Indian Railways to enable it to procure power through Open Access from Power Exchanges.

In light of the directions passed by the Commission in the aforesaid Order, PSPCL sent a revised invoice to Railways and raised a demand of Rs. 214.76 Crore towards Standby Charges, Additional Surcharge, Cross-subsidy Surcharge and Demand Charges. Railways has prayed for relief as indicated in Para 2 of this order.

Vide Interim Order dated 20.01.2022, it was observed as under:

“The learned counsel for PSPCL submitted that the issue involved in the petition can be amicably resolved by way of a meeting of the parties. The learned counsel for the petitioner has no objection in this regard. The parties may convene a meeting for settlement of the dispute and intimate to the Commission in this regard well before the next date of hearing”

PSPCL vide letter dated 06.03.2023 intimated the Commission that the meeting with Northern Railways on the said issues was held on 28.02.2023. However, no consensus was reached on the issues of levy of demand surcharge, interest on excess payment made by Northern Railways and cross subsidy surcharge. Therefore, the analysis and decision of the Commission is limited to the said issues only, which remain unresolved.

Issue No. 1 Revision of Invoice as regards Demand Surcharge alongwith direction to PSPCL to give interest on the amount paid by Northern Railways in excess towards demand surcharge at the

rate of 18% per annum as being charged by PSPCL from Northern Railways.

With regard to applicability of Standby Charges, the Commission vide Order dated 22.03.2022 in Petition No. 14 of 2021 has observed as under:

“After examining the submissions made by Railways and PSTCL/SLDC with regards to drawal of power on 7 days (19.03.2020, 29.06.2020, 30.06.2020, 01.07.2020, 02.07.2020, 08.07.2020 and 09.01.2021 –86time blocks) when there was zero schedule for Railways, it is held that Railways ought to have been aware that its schedule had been revised to zero in these time blocks on account of reduction in its entitlement from the generator as the information was available in public domain. Since, Railways has failed to make alternate arrangements of power by scheduling power under STOA/Scheduling power under Standby power, it is held that the power drawn should be treated as standby power and hence for these 86 time blocks charges as specified in Regulation 27(A) shall be applicable. For the rest of the period wherein Railways has overdrawn/underdrawn, Railways has already paid deviation charges and cannot be charged under the standby mode. Accordingly, PSPCL/PSTCL are directed to revise and adjust Invoices/bills raised on Northern Railways alongwith interest/Late payment surcharge in accordance with open access Regulation...

...

It has been observed that Railways have been paying UI charges to SLDC, while PSPCL, as State Discom has settled/paid for the deviations at State level with NRLDC including for the deviations made by Railways as Railways is an embedded customer in the State of Punjab. Hence, the principle of natural justice demands that PSPCL be compensated for the same. Thus, the Commission directs SLDC to transfer the amount collected from Northern Railways in lieu of UI/DSM charges to PSPCL.”

PSPCL in its submissions have agreed on the fact that for specific 86 time blocks provisions pertaining to standby power as per Regulation 27(A) were to be implemented however for the rest of the duration, PSPCL has relied upon Regulation 28(3) read with Order dated 01.06.2015 passed by the Commission in Petition No. 16 of 2013 for levying demand surcharge. Regulation 28(3) of the PSERC Open Access Regulations (upto 8th Amendment) provided as under:

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

Provided that in case of variation in Admissible drawal due to curtailment in approved schedule of bilateral and collective transactions under Force Majeure condition(s), if the open access customer over draws power above the admissible drawal for the day from the 4th time block, then such

consumer shall be charged as per Regulation 31(1)(a) for the excess power drawn from distribution licensee during the period of curtailment. The certification of such an event along with duration of curtailment shall be done by SLDC.”

Further, the Commission vide Order dated 01.06.2015 in Petition No. 16 of 2013, with example, clarified the above provision of Regulation 28(3) as incorporated in the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011:

“Example: If an open access consumer with a contract demand of 10 MVA has scheduled 8 MVA, 5 MVA and 2 MVA power through open access in different time blocks of the day, say 2-3 hours, 9-11 hours and 18-22 hours respectively, then the entitlement of open access customer during time blocks when there is no schedule or less schedule of power than maximum scheduled power under open access, shall be 2 MVA from the distribution licensee, for that day.”

It is a well-recognized rule of construction that the meaning must be collected from the expressed intention of the legislation and bare reading of the above provisions clearly spells that Regulation 28(3) is applicable in case of consumers having contract demand with the licensee. Further, PSPCL has repeatedly claimed in its submissions that it has charged Northern Railways with demand surcharge as per Regulation 28(3) of the PSERC OA Regulations which is not in line with the Regulations as Railways have no contract demand with PSPCL. Since the words being clear and without any ambiguity, PSPCL ought

not have independently innovated to broaden up the scope of the Regulations to suit itself

PSPCL's further argument that the Commission in its Order has never barred PSPCL from raising demand surcharge as per Regulation 28(3) is misplaced since the Commission has explicitly pointed out that for rest of the period Railways has already paid deviation charges and has nowhere specified that PSPCL shall levy demand surcharge for the rest of the period. If PSPCL had any doubts regarding the interpretation of the Commission's Order, it always had the option to approach the Commission for clarifications.

PSPCL's submission in its letter dated 06.05.2022, addressed to the Northern Railway, that the Commission in the aforesaid order has held that for rest of the period except these 86 time blocks of 7 days directed PSPCL to revise and adjust bills alongwith interest late payment surcharge in accordance with the open access regulation is factually not correct. Further, with regard to interest on the excess amount paid by Railways towards demand surcharge, PSPCL submitted that the claim of Northern Railways is unacceptable as no excess amount was ever paid by Northern Railways and only the due amount was paid by it to PSPCL. The Commission, in the aforesaid Order, had made amply clear that for the specific 86 time blocks of 7 days, charges as specified in Regulation 27(A) shall be applicable. For the rest of the period, wherein Railways has overdrawn/underdrawn, Railways has already paid deviation charges and cannot be charged under the standby mode. Since, Railways is not a consumer of PSPCL, as such Regulation 28(3) is not applicable on them.

In view of the clarification and direction given above, PSPCL is once again directed to revise and adjust Invoices/bills raised on

Northern Railways alongwith interest/Late payment surcharge in accordance with open access Regulations.

Issue No. 2: Revise the invoice by not charging amounts towards cross-subsidy surcharge

Northern Railways has alleged that since there is no direction by the Commission regarding levy of Cross Subsidy Surcharge on Northern Railways, hence, PSPCL's claim towards cross subsidy surcharge is also not correct and without any order. PSPCL in its submissions exhibited that the Commission in its Order dated 22.03.2022 has held that additional surcharge is recoverable from the Petitioner and as such, cross subsidy surcharge is also automatically recoverable from it.

The Commission notes that Railways in its prayers in Petition No. 14 of 2021 had not raised the issue of Cross Subsidy Surcharge. Hence, the Commission in its order dated 22.03.2022 has not dealt with the issue of cross-subsidy surcharge. However, as per Clause 26(5) of the Open Access Regulation 2011, Cross Subsidy Surcharge is applicable for consumer's availing Open Access through dedicated lines even without involving the licensee's transmission and/ or distribution system. The relevant clause is as under:-

"1) If open access facility is availed of by a subsidizing consumer of a distribution licensee of the State, then such consumer, in addition to transmission and/or wheeling charges, shall pay cross subsidy surcharge determined by the Commission. Cross subsidy surcharge determined on Per Unit basis shall be payable, on monthly basis, by the open access consumers based on the actual energy drawn during the month through open access.

Provided that such surcharge shall not be leviable to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Provided further that such surcharge shall not be leviable on power available with consumer(s) through open access to the extent of regulatory measures imposed due to shortage of power, other than peak load hour restrictions put by the distribution licensee, on the consumer(s) through advance notification.

...

- 3) The surcharge shall be paid to the distribution licensee of area where the premises of the consumer availing Open Access are located. In case of more than one licensees supplying in the same area, the licensee from whom the consumer was availing supply shall be paid the amount of surcharge.*
- 4) The consumers availing Open Access exclusively on interstate transmission system shall also pay the same surcharge as determined under this Regulation.*
- 5) The consumers availing Open Access through dedicated lines even without involving licensee's Transmission and/or Distribution System shall be liable to pay same surcharge as determined under this Regulation."*

The PSERC OA Regulations provide that any subsidizing open access consumer shall pay to the distribution licensee cross subsidy surcharge in addition to transmission and/or wheeling charges. The only exception to this is a person who has established a captive generation plant for carrying the electricity to the destination of his own use, which is not the present case. **Further, as per Sub-Regulation 4 and 5 of the**

above Regulation, the cross subsidy surcharge is leviable even if open access is being availed only on interstate transmission system or through dedicated lines. Therefore, it is clear that as per Regulation, cross subsidy surcharge is applicable even without using licensee's transmission and/or distribution system and as such cross subsidy surcharge is leviable even when the consumer is not using the distribution network.

The Commission also observes that the Hon'ble Supreme Court vide its order dated 25.4.2014 in Civil Appeal No. 5479 of 2013 (M/s. Sesa Sterlite Ltd vs Orissa Electricity Regulatory Commission) has ordered that a deemed distribution licensee cannot avoid payment of Cross subsidy surcharge. The extract of the order dated 25-4-2014 of Hon'ble Supreme Court in Civil Appeal No. 5479 of 2013 (M/s. Sesa Sterlite Ltd vs Orissa Electricity Regulatory Commission) is submitted below:

“ ...

By merely being authorized to operate and maintain a distribution system as a deemed licensee, would not confer the status of distribution licensee to any person. The purpose of such establishment is for supply of power to consumers. Mere fact that the Appellant claims to be a deemed distribution licensee is of no consequence at all since admittedly, the entire power purchased by the Appellant is for its own use and consumption and not for the purpose of distribution and supply/sale to consumers.

To recapitulate briefly, in the present case no doubt by virtue of the status of a developer in the SEZ area, the Appellant is also treated as deemed Distribution Licensee. However, with this, it only gets exemption from specifically applying for licence under Section 14 of the Act. In order to avail further benefits under the Act, the Appellant is also required to show that it is in fact having distribution system and has number of consumers to whom it is supplying the electricity.

...

44. Having regard to the aforesaid factual and legal aspects and keeping in mind the purpose for which CSS is payable, as explained in detail in the earlier part of this judgment, we are of the view that on the facts of this case it is not possible for the Appellant to avoid payment of CSS to WESCO. We, therefore, do not find any merit in this Appeal which is accordingly dismissed.”

Similarly, in the present case Railways does not supply to any consumer but uses power for its own use, hence, it is held that Railways is liable to pay cross subsidy surcharge to PSPCL.

Further, the Commission notes that the current petition has been filed by Northern Railways under Section 142, 146 and 149 of the Electricity Act, 2003 for non-compliance of the Commission's Order dated 22.03.2023 in Petition No. 14 of 2021. After contemplating on the issues involved and averments made by the parties thereon, the Commission observes that, as directed by the

Commission, PSPCL has revised the invoices of Northern Railways, although, it has wrongfully levied demand surcharge on Northern Railways based on some misplaced interpretation. However, there has been no wilful disobedience of the Commission's Order dated 22.03.2022 by PSPCL, therefore, no action under Section 142 is established nor maintainable against the respondent.

The petition is disposed of in view of the above observations and directions.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: 21.07.2023

