

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

Petition No. 66 of 2021
Date of Order: 06.10.2023

Petition under Section 94 and other relevant provisions of the Electricity Act, 2003 read with condition No. 24 of the General Conditions of Tariff passed by this Commission and other relevant rules and Regulations as approved by the Commission including 64,68,69,70,71 and 72 and other relevant provisions of Chapter XIII of the Conduct of Business Regulations 2005 as amended up to date for clarifying/Interpreting the applicability of provisions of the tariff orders regarding charging 25% increase energy charges from the petitioner for the period 2010 onward.

In the matter of: M/s International Hospital Ltd. having its registered office at Fortis Memorial Research Institute, Sector 44, Gurgaon 122001 and having a Multi-specialty Hospital at Amritsar under name of Fortis Escorts Hospital, situated at Majitha Verka Bypass, Amritsar through its authorized signatory, Mr. Deepak Narang.

.....Petitioner

Versus

1. Punjab State Power Corporation Limited, through its Chairman cum Managing Director, The Mall, Patiala.

..Respondent

And

2. Mohan Dai Oswal Cancer Treatment and Research Foundation, GT Road, Sherpur Bypass, Ludhiana.
3. Sh. Nihal Singh Pahwa Charitable Hospital, situated at Industrial Area-B, Ludhiana.
4. Dayanand Medical College and Hospital, Civil Lines Ludhiana.

.....Intervener Applicants

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

Petitioner: Sh. Tajender Joshi, Advocate

PSPCL: Sh. Anand K Ganesan, Advocate

Mohan Dai
Cancer
Hospital: Sh. Alok Jagga, Advocate

Nihal Singh
Pahwa
Charitable
Hospital: Sh. Aditya Grover, Advocate

Dayanand
Medical
College: Sh. Aditya Grover, Advocate

ORDER

The Petitioner has filed this petition under Section 94 of the Electricity Act, 2003 read with Condition No. 24 of the General Conditions of Tariff passed by the Commission and relevant provisions of the Conduct of Business Regulations, 2005 for clarification/interpretation of the applicability of provisions of the tariff order regarding charging 25% increased energy charges from the Petitioner for the period 2010 onwards.

Submissions of the Petitioner

1.0 The Petitioner is a hospital under the name of M/s Fortis Escorts Hospital at Amritsar, operational since 2002. The Petitioner had applied for a license for electricity connection to the erstwhile PSEB for total load of 1678KW. After inspection, the Feasibility Clearance was granted to the Petitioner vide letter dated 07.02.2002 on the condition that the release of load shall be subject to

usual power cuts/restrictions imposed by PSEB. Vide letter dated 17.07.2002, PSEB further imposed the condition that the whole cost of the 11KV feeder and all equipments will be borne by the Petitioner. As per the estimate dated 13.09.2002, the Petitioner deposited Rs. 19,23,556/-, after which the feeder was erected and the connection was released under 'Bulk Supply' category. As the connection released to the Petitioner was under the 'Bulk Supply' category, it was subject to extra charges including the 'Peak Load Charges'. Since, the Petitioner has been running a hospital, providing essential services involving public good, therefore, the Petitioner submitted a request vide letter dated 31.01.2003 to PSEB to change the nature of electricity connection from 'Bulk Supply' (BS) to 'Essential Service' (NRS) and exemption from payment of 'Peak Load Charges'.

1.1 After inspection of the electricity connection of the Petitioner, PSEB changed the nature of electricity connection of the Petitioner from 'BS' to 'NRS'. The Petitioner had been paying the electricity bills regularly under the 'NRS' category since the year 2004. On visits for checking the electricity connection on 15.07.2011 and 05.04.2019, everything was found to be in order by the officials of PSEB/PSPCL. On 28.10.2020, the hospital was again inspected by Addl. Supdt. Engineer, Enforcement, on the basis of which vide letter dated 26.11.2020, PSPCL raised a demand of Rs. 6,48,05,617/- on account of old pending dues for the period 01.02.2010 to 22.10.2020 by levying additional 25% extra tariff for obtaining continuous supply through an independent feeder under NRS connection. The Petitioner immediately submitted a letter dated 04.12.2020 and thereafter, a reminder dated 24.12.2020 to PSPCL to discontinue the alleged 'Continuous Supply' of the Electricity Connection and not to charge addl. 25% energy charges.

1.2 The Petitioner, aggrieved against the said illegal demand, approached PSPCL Consumer Grievance Redressal Forum (CGRF), Ludhiana on 29.01.2021 for withdrawal of the aforesaid demand and issuance of fresh bills on the normal rates only without the 25% escalation. The Petitioner had specifically mentioned in its petition filed before CGRF that it had deposited the complete cost of the line and had never requested for an independent feeder or 'Continuous Supply'. Further, the power supply was never regular (uninterrupted), therefore, the Petitioner had no option but to install backup power generators. The details of the use of these generators alongwith the details of power cuts faced by the Petitioner and the diesel consumed for the running of the Gen-sets was also submitted before CGRF. The connection was also regularly checked by the PSPCL officials who had never reported any irregularity. 'Continuous Supply' was for the first time mentioned in the bill issued after 22.10.2020. However, Ld. CGRF, Ludhiana vide its order dated 22.09.2021 held that the amount of Rs. 6,48,05,617/- as claimed by the PSPCL is correct and recoverable. Subsequently, PSPCL vide letter dated 29.09.2021 asked the Petitioner to pay the dues of Rs. 6,15,65,336/- (being the 95% of the total demand raised vide supplementary bill dated 26.11.2020) alongwith an addl. amount of Rs. 47,68,681/- on account of the interest accrued on the demand raised from the date of period of the notice (11.12.2020 being 15 days after the issuance of the notice on 26.11.2020).

1.3 The issue involved is regarding interpretation of Tariff and as per clause 24 of the General Conditions of Tariff, the Commission is the final authority to decide the issue regarding applicability of tariff to any class of consumer or interpretation of various clauses of tariff or general conditions of tariff. The Petitioner has impugned the demand raised by the PSPCL vide letter dated

26.11.2020 and has requested the Commission to set aside the same on the grounds:-

A. That in the letter dated 07.02.2002 whereby feasibility clearance was granted to the Petitioner, it was nowhere mentioned that the Petitioner had applied for an independent feeder or 'Continuous Supply' rather one of the release condition was that the release of the load shall be subject to usual power cuts/restrictions imposed from time to time.

B. That the technical feasibility clearance granted to the Petitioner vide letter dated 17.07.2002 was subject to the condition that the whole cost of the 11 kV Feeder and all equipments would be borne by the Petitioner. Hence, the Petitioner deposited Rs. 19,23,556/- towards the cost of 11kV feeder.

C. That although, the Petitioner vide letter dated 31.01.2003 had requested PSPCL to declare its hospital as 'Essential Services' on payment of Peak Load Exemption Charges (PLEC) it had never agreed to pay 25% extra charges for getting power as 'Essential Service'. The reliance by Ld. CGRF on the letter dated 31.01.2003 to arrive at a conclusion that the Petitioner was given 'Continuous Supply' from independent feeder is wrong and misconceived.

D. That the supply to the Petitioner has neither been 'continuous' nor 'un-interrupted' since the release of the Electricity Connection. The Petitioner's Hospital has been facing power cuts leading to the 'interruptions' in the supply of the electricity, due to which the Petitioner had to install diesel generator sets. Thus, the contention of the PSCPL as to the supply being "continuous and un-interrupted" is wrong. The details of use of the said generators alongwith the details of power cuts faced by

the Petitioner and the diesel consumed for the running of those Gen-sets were also submitted before Ld. CGRF. However, Ld. CGRF, Ludhiana, brushed aside aforesaid evidence/data submitted by the Petitioner by stating that tripping in supply has no relevance in this case because there was no power cut imposed on the feeder giving supply to the Petitioner's Hospital and held that the amount of Rs. 6,48,05,617/- as claimed by the PSPCL is correct and recoverable vide its order dated 22.09.2021, which is wrong and is liable to be set aside by the Commission.

E. That by applying for the status of 'Essential Service' subject to the condition of PLEC, the Petitioner had never agreed to pay 25% extra charges for getting power as 'Essential Service'. Despite being covered under 'Essential Services', the Petitioner had to invest a huge amount to create and maintain the 'in-house power generation capacity' and the same had to be run on regular basis in times of the power cuts. Hence, the contention of PSPCL that the consumer could get better quality of 'Continuous Supply' of power instead of making investments for creating 'in-house generation capacity' is devoid of any merit.

F. That the Petitioner was never informed about the tariff order dated 08.09.2009 issued by the Commission in Petition No. 01 of 2009 filed by PSEB and Commercial Circular No. 7 of 2010. The Petitioner had never exercised the option given to consumers under aforesaid tariff order and circular to obtain the status of an essential service to get un-interrupted power on payment of 25% extra tariff. Thus, the impugned demand raised by the respondents is totally wrong and illegal.

G. That, on the receipt of the impugned demand letter dated 26.11.2020, the Petitioner immediately requested PSPCL to discontinue

the 'Essential Service' status of the Hospital, which clearly proves that in case the PSPCL has earlier informed the Petitioner about any such extra charges it would not have opted for 'Essential Service' Status. The Petitioner had never filed any objections before PSEB/PSPCL/PSERC against the aforesaid 25% extra tariff as the same were charged for the first time.

H. That the intention of the Commission as reflected in Para 5.6 of the tariff order was to provide uninterrupted supply of electricity and saving of investment 'to create in-house generation capacity' and not about imposing any power cuts etc.

I. That in the Petition No. 05 of 2009 PSPCL (erstwhile PSEB) had admitted that the additional 25% tariff are recovered by private hospitals by transferring the same onto their patients but in the case of Petitioner, the said huge demand of Rs. 6,48,05,617/- raised by PSPCL after 10 years, cannot be recovered from the patients treated and discharged during that time. The Petitioner cannot be penalized for the fault of PSPCL.

J. That neither any amount on account of alleged 'Continuous Service' was ever charged/reflected in the bills issued by the PSPCL during the disputed period nor it was anywhere mentioned in the bills that the Petitioner was getting a continuous uninterrupted supply of power. It is only in the bills issued after 22.10.2020, the PSPCL has mentioned the same as "NR Category Hospital Continuous Supply FOR NRS > 100". It clearly proves that there was a fault on the part of the PSPCL and the Petitioner cannot be allowed to suffer on account of the fault of the

PSPCL. Thus, the impugned order and the demand raised by PSPCL are liable to be set aside by the Commission.

K. That the electricity connection of the Petitioner's Hospital was checked by PSPCL on 15.07.2011 and 05.04.2019 but no directions were issued regarding charging of 25% extra tariff.

L. That as per Instruction No.104 of the Electricity Supply Instructions Manual, PSPCL is liable to conduct mandatory checking every six months, which was not done by official of PSPCL, due to which now after a gap of 10 years, PSPCL has raised the said huge demand. In case, the same would have brought to the notice of the Petitioner in time, it would have applied for change of status from 'Essential Services' to the normal connection without a dedicated line so as to avoid the additional 25% charges which are now being forced upon them. Despite, submission of an application for change of status from 'Essential Services' to the normal connection without a dedicated line, PSPCL has not changed the status of the Petitioner till date.

M. That the impugned demand is barred by section 56(2) of the Electricity Act, 2003 which states that 'notwithstanding anything contained in any other Law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum become first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.' Identical provision is contained in Clause 93.2 of the PSPCL Electricity supply instruction manual as well.

N. That the Petitioner has been providing public service to various categories of patients since last 19 years and took lead to start the Covid vaccination during the Covid-19 pandemic, therefore, a considerate view should be taken. Burdening the Petitioner with the 25% addl. charges will have an adverse effect on the ongoing treatment of the patients and the smooth functioning of the Petitioner's Hospital.

1.4 The Petitioner has prayed: -

- a) that necessary clarifications/ interpretation may kindly be issued and the Impugned demand raised by the respondent/ PSPCL vide supplementary bill/ letter memo No. 1451 dated 26.11.2021 asking the Hospital to pay Rs. 6,48,05,617/- on account of 25% extra tariff, being NRS consumer allegedly getting continuous supply from independent feeder, for more than 10 years i.e. for the period from 1-02-2010 to 22-10-2020, may be set aside, in the interest of justice.
- b) that the impugned order dated 22-9-2021 passed by the CGRF, Ludhiana, vide which the above said demand raised vide supplementary bill/ letter dated 26-11-2021 was upheld, may be set aside, in the interest of justice.
- c) that the PSPCL's letter no 1158 dated 29-09-2021 for demand of interest on the said demand amount may be set aside, in the interest of justice.
- d) that the PSPCL may kindly be instructed not to charge the alleged demand or any further interest on the said demand pending the final adjudication of the present petition, before the Commission.
- e) that the PSPCL may be instructed to stop the charging of the 25% addl. levy with immediate effect and the amount already

recovered on this account since 23-10-2020 may be refunded to the petitioner, in the interest of justice.

- f) that in case the Commission feels the need for any addl. charges for the service of 'continuous and un-interrupted power supply', the quantum of 25% is very high and steep. As there are other charges and taxes which are further added on top of the addl. Charge of 25%, the effective increase for the consumer (Hospital) is even higher. Since the Hospitals provide an essential service and it is not possible to pass on the addl. charges to the patients, hence the same shall be minimum and the quantum of any addl. charge should be reduced.
- g) that the PSPCL may be instructed not to disconnect or suspend the electricity connection of the hospital till the final adjudication of the present petition, before the Commission in the interest of patients & public at large.

1.5 The Petitioner filed IA No. 24 of 2021 in this petition for early hearing and grant of interim stay against disconnection and suspension of electricity connection in the interest of patients and public at large, on the ground that Supdt. Engineer, Amritsar had directed officials of PSPCL vide notice dated 30.11.2021 to disconnect electricity connection of the Petitioner which will adversely affect the functioning of medical services and severely hamper ongoing patient care. The Petition was taken up for hearing on admission on 07.12.2021. Vide order dated 15.12.2021, the Commission, took note of the submissions of the Petitioner and restrained PSPCL from disconnecting or suspending the electricity connection of the Petitioner till the next date of hearing.

Submissions of PSPCL

- 2.0 In its reply, PSPCL has stated that although the category of connection at the time of release was 'Bulk Supply' but on the receipt of application from the Petitioner, the same was changed to uninterrupted/continuous power supply. The Petitioner was willing to pay extra charges to avail the said facility. During the checking on 23.01.2004, Additional S.E. Enforcement, Batala detected the supply being used for commercial purposes, therefore, the tariff of the Petitioner was changed from 'Bulk Supply' to 'Commercial Category' (NRS) and the difference of connection security (deposited against 'Bulk Supply' connection) amounting to Rs. 13,42,400/- was refunded to the Petitioner. PSPCL has clarified that on 15.07.2011 and 05.04.2019, the Mobile Metering Testing Squad (MMTS) wing had only checked the working of electricity meter.
- 2.1 On the receipt of request letter dated 31.01.2003 from the Petitioner, the connection of the Petitioner was declared as 'Essential Services'. The Petitioner had also agreed to pay extra charges to avail the continuous power supply. The request of the Petitioner was accepted by the department and no power cuts were imposed on its feeder and the Petitioner has been availing continuous power through the same feeder since, 2003 (as confirmed by sub-station authority vide letter dated 20.11.2020). It has also been observed that power outage on other feeders is much higher in comparison to the feeder of the Petitioner. The record of 132 kV sub-station Verka from where the supply to 11kv feeder

of the Petitioner is being fed, clearly indicates that the electricity supply to the consumer is 'continuous' and 'uninterrupted'.

- 2.2 The connection of the Petitioner was checked by Addl. S.E., Amritsar, who vide its checking report dated 28.10.2020 reported that continuous power was being supplied to the Petitioner through 11kV independent feeder, therefore, the energy charges should be enhanced by 25% as per tariff schedule note SV3 (iii) of SV (NRS) category as mentioned in electricity supply instruction manual and Commercial Circular 07/2010 dated 01.02.2010. Consequently, demand of Rs. 6,48,05,617/- was raised against the Petitioner vide notice dated 26.11.2020. The Petitioner requested PSPCL to discontinue the facility of continuous power which was forwarded to concerned authority for approval of withdrawal of continuous power and for stoppage of charges being levied in this regard.
- 2.3 PSPCL has quoted para no. 8 of judgment dated 18.02.2020 passed by Hon'ble Supreme Court in CA No. 1672 of 2020 titled as A.E., Ajmer Vidyut Vitran Nigam Limited and Anr. vs. Rahamutullah Khan wherein it was observed that section 56(2) does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years, nor does it restrict other mode of recovery, which may be initiated by the licensee company for recovery of a supplementary demand. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the expiry of the period of limitation of two years.
- 2.4 During the hearing on 19.01.2022, Ld. Counsel for PSPCL stated that the reply filed by them was incomplete and requested for time to file an additional affidavit. PSPCL filed its additional affidavit on 18.02.2022

wherein it has reiterated its earlier submissions and further made certain additional submissions as given below:

- i. That 11 kV independent feeder was erected at the sole request of the Petitioner, therefore, the Petitioner cannot wriggle out of any responsibility from the ancillary charges arising on account of availing an independent 11 kV feeder.
- ii. That the Commission does not have the jurisdiction to entertain the individual dispute between a consumer and a licensee under the Electricity Act, 2003. The Commission can adjudicate only on the disputes arising between licensees and generating companies and not that of an individual consumer. The sole and exclusive jurisdiction is that of the forum created under Section 42(5) of the Electricity Act, 2003, subject to appeal by the consumer before an Ombudsman under Section 42 (6). It is relevant to mention that the said right of appeal is granted only to the consumer under Section 42 (6) and not to the licensee. In case the licensee is aggrieved by the decision of the forum, there is no appellate remedy. Further, the decision of the Ombudsman is final without any appellate remedy, only subject to the jurisdiction of the High Court under Article 226 of the Constitution of India. It has been settled by Hon'ble APTEL as well as by Hon'ble Supreme Court that the Commission has neither any appellate nor any supervisory powers over the said bodies. The Petitioner vide present petition has also interalia prayed for setting aside the Order of Ld. CGRF which is wrong since the Commission is not the appellate body to entertain appeals arising out of the orders of Ld. CGRF. Thus, the present petition is not maintainable on the ground of lack of jurisdiction. PSPCL has relied in this regard on the judgment passed in case of Maharashtra Electricity

- Regulatory Commission vs. Reliance Energy Limited (2007) 8 SCC 381, Himachal Pradesh State Electricity Board v. Gujarat Ambuja Cements Ltd. (Civil Appeal No. 2005 of 2011 dated 22.02.2011 and Polyplex Corporation Limited vs. Uttaranchal Power Corporation Ltd. & Ors. 2007; APTEL 115.
- iii. The contention raised by the Petitioner that the demand raised by PSPCL is barred by limitation in terms of Section 56 (2) of the Electricity Act, 2003 is misconceived. The limitation under Section 56 (2) is applicable only when PSPCL seeks to disconnect supply of electricity of a consumer in default of payment. Section 56 does not in any manner restrict the right/ ability of PSPCL to recover its dues, without resorting to disconnection of electricity, or otherwise limit or restrict the period for which dues could be recovered by PSPCL. PSPCL has cited judgments in support of their argument that the limitation with respect to disconnection, does not apply to raising a supplementary demand upon realizing a mistake in billing in the first instance and that the limitation of two years would only commence from the date of discovery of such mistake, which in the present case is 26.11.2020. PSPCL further stated that even the general principle of limitation only bars the remedy and not the right itself. The fact that a petition is barred by limitation would only mean that the claim cannot be enforced through judicial proceedings. The Limitation Act or the principles underlying thereof would only prevent PSPCL from initiating recovery proceedings against any person, where the amounts are due for more than 3 years and even this only applies to adjudicatory proceedings and not to tariff. PSPCL requested the Commission to dismiss the petition and direct to the Petitioner to pay the demand raised by them alongwith interest and

to pay the 'Enhanced Energy Charges' till the time it uses the 11kV independent feeder to take supply of power from PSPCL. PSPCL has relied in this regard on the judgments in case of Ajmer Vidyut Vitran Nigam Ltd. Vs. Rahamatullah Khan (2020) 4 SCC 650, M/s Prem Cottex v.s Uttar Haryana Bijli Vitran Nigam Ltd. & Ors. (2021 SCC On line SC 870, CIT vs. Sugauli Sugar Works (P) Ltd. (1999) 2 SCC 355, Punjab National Bank Vs. Surendra Prasad Sinha (1993) Supp 1SCC 499 in support of its contention.

3. The Petitioner filed their rejoinder on 19.04.2022 wherein it has reiterated its submissions and further made additional submissions that the Commission has jurisdiction to entertain the present petition, as it is not an appeal but instead, it has been filed under Condition No. 24 of the general conditions of Tariff framed by the Commission. The Petitioner also relied on the judgment in case of LPA No. 734 of 2010 titled as PSEB vs. Tagore Public School passed by the Hon'ble Punjab and Haryana High Court that liability cannot be fastened on the Petitioner belatedly due to the mistake on the part of PSPCL itself.

4. M/s Mohan Dai Oswal Cancer Treatment and Research Foundation filed IA No. 15 of 2022 in this petition on 06.05.2022 and Sh. Nihal Singh Pahwa, Charitable Hospital filed IA No. 19 of 2022 on 30.06.2022 requesting the Commission to allow the applicants to become interveners in the present case on the ground that the issues involved in the case of the applicants and this petition are similar and the applicants are interested parties and would be affected by the decision of this case. The Commission taking note of the order dated 20.03.2022 passed in Petition No. 20 of 2021 and 39 of 2021 whereby liberty was granted to the Petitioners to raise the issues of not getting uninterrupted supply on continuous basis and still being charged 25% additional tariff allowed these interveners to be impleaded vide order dated 12.05.2022 in

the case of M/s Mohan Dai Oswal and vide order dated 21.07.2022 in the case of Nihal Singh Pahwa Charitable Hospital, Ludhiana. Dayanad Medical College was also impleaded as intervener in the present petition in the interest of justice vide order dated 21.07.2022 since their issue was similar. Vide order dated 25.08.2022, the Commission allowed the intervener applicants to file additional submissions.

5. The Petitioner filed IA No. 20 of 2022 for taking necessary action against officials of PSPCL for filing a false reply and for trying to mislead the Commission and for restraining PSPCL from charging 25% extra tariff from the Petitioner. The Petitioner has submitted that PSPCL in Para 11 of its reply had specifically stated that the status of connection of the Petitioner has been changed from 'Continuous Supply' and that they have stopped charging 25% extra of the applicable tariff but actually PSPCL is still issuing monthly bills mentioning the same status and charging 25% extra tariff. During the hearing on 19.07.2022, the IA was taken up for hearing when PSPCL raised objections regarding maintainability of the IA filed by the Petitioner. After hearing arguments of both parties, the Commission disposed of IA No. 20 of 2022 vide its order dated 21.07.2022 with an observation that, as also held in its previous order, PSPCL is restrained from charging 25% additional tariff till the disposal of the petition and directed PSPCL to implement the order of the Commission correctly.

6. M/s Nihal Singh Pahwa Charitable Hospital (intervener) and M/s Dayanand Medical College (intervener) filed additional submissions on 27.09.2022 and 29.09.2022 wherein they have submitted that PSPCL has failed to provide uninterrupted supply to the interveners, therefore, it is not entitled to levy 25% extra charges and the impugned demand raised by PSPCL deserves to be set aside. The Intervener also submitted that levy of additional 25% charges by

PSPCL has defeated the efforts/steps taken by the Commission to utilize the surplus power of PSPCL.

7. The petitioner (International Hospital), Intervener applicants (Mohan Dai Cancer Hospital, Nihal Singh Pahwa Charitable Hospital and Dayanand Medical College & Hospital) and PSPCL has submitted the outage details as per their record as under:

A) M/s International Hospital

Year	As per International Hospital		As per PSPCL
	Power cut Nos.	Hours	Hours
2010	511	537	No submission
2011	203	168	
2012	436	472	
2013	386	367	
2014	453	305	3.29
2015	211	232	19.23
2016	435	229	16.29
2017	336	191	8.38
2018	332	266	22.14
2019	232	157	4.46
2020	211	179	No submission
2021 (up to June 21)	92	85	No submission

B) DMCH Ludhiana

As per DMCH Ludhiana			As per PSPCL		
Period	outage Nos.	Hours	Period	Outage Nos.	Hours
2018-19	143	115.16	01.01.2019 to 01.11.2022	77	165.18
2019-20	156	112.42			
2020-21	121	96.67			

C) Mohan Dai Oswal Hospital

As per Mohan Dai Oswal Hospital			As per PSPCL
Period	outage Nos.	Hours	No submission
2018-19	301	128.18	
2019-20	287	145.33	

D) Nihal Singh Pahwa Hospital

As per Nihal Singh Pahwa Hospital			As per PSPCL		
Period	Outage Nos.	Hours	Period	Outage Nos.	Hours
2018	62	72.95			
2019	117	56.4	2019	3	6.57
2020	70	38.36	2020	0	0
2021	111	42.38	2021	2	5.8
2022 (up to 23.05.2022)	53	25.01	2022	0	0

8. PSPCL filed its reply to the additional submissions made by intervener applicants i.e. Nihal Singh Pahwa Charitable Hospital, Ludhiana and Dayanand Medical College and Hospital, Ludhiana on 20.12.2022, wherein, it submitted that as already held by the Commission vide order dated 22.03.2022 in the main petitions filed by intervener applicants, that the Enhancement of Energy Charges is applicable to all Private Hospitals and MRI/CT Scan Centre etc. without any exemptions including the Private Charitable Hospitals. Since, no appeal against order dated 22.03.2022 has been filed, therefore, the said order has become final and binding. Thus, the applications filed by interveners in this case with identical prayers is not maintainable. PSPCL has further submitted that revision of general condition of tariff and schedule of tariff was issued by the Commission for financial year 2019-20, which was incorporated in Commercial Circular No. 25 of 2019 and the same was made available for all its consumers including the interveners by publishing it on the website of PSPCL. PSPCL has disputed the correctness of Annexure-4 submitted by the interveners with additional submissions. PSPCL has stated that as per the correct information provided by SSE Miller Ganj, PSPCL, there was only small break down due to valid reasons like storm, accident and internal fault of intervener, which was immediately rectified. There were no scheduled power cuts imposed by PSPCL during the FY 2019-20, therefore, the intervener was enjoying 'Continuous

Supply' status and the demands raised by PSPCL upon interveners on account of 25% increased energy charges are correct. On 28.08.2023, PSPCL submitted its written submissions reiterating its earlier submissions.

9. After hearing the parties on 10.08.2023, Order was reserved.

10. Observations and Decision of the Commission

The Commission has examined the submissions made by M/s International Hospital Ltd. in the petition, Mohan Dai Cancer Hospital Intervener applicant, Nihal Singh Pahwa Charitable Hospital Intervener Applicant, Dayanand Medical College Intervener Applicant, reply of PSPCL, subsequent rejoinders and information submitted by the parties during the course of hearings and has heard the respective counsel. The prayers of the above-mentioned petitioner / interveners have been examined. Since most of the prayers are common, as such, the analysis and decision of the Commission will apply to all the petitioner, interveners and the respondent.

10.1 a) Necessary clarifications/ interpretation may be issued and to set aside the Impugned demand raised by PSPCL on account of 25% extra tariff, being NRS consumer allegedly getting continuous supply from an independent feeder, for more than 10 years i.e. for the period from 01.02.2010 to 22.10.2020.

b) Prayer of Intervenors (Mohan Dai Cancer Hospital, Nihal Singh Pahwa Charitable Hospital and Dayanand Medical College & Hospital) for disallowing PSPCL to charge these 25% additional charges due to their hospitals not getting uninterrupted electric supply on continuous basis.

Mohan Dai Cancer Hospital, Nihal Singh Pahwa Charitable Hospital and Dayanand Medical College & Hospital were also impleaded as interveners

with regard to this issue as these hospitals have asserted that they have not been getting uninterrupted supply on continuous basis and still being charged 25% additional energy charges.

The Commission notes the petitioners' (petitioner and intervener applicants) submission that the power supply was never regular (uninterrupted) and that they had to regularly and repeatedly revert to self installed backup power generators. However, PSPCL is still charging them 25% additional charges on account of a false claim of providing uninterrupted supply.

The Commission notes the PSPCL submission that the Commission does not have the jurisdiction to entertain the individual dispute between a consumer and a licensee under the Electricity Act, 2003 and the sole and exclusive jurisdiction is that of the forum created under Section 42(5) of the Electricity Act, 2003, subject to appeal by the consumer before an Ombudsman under Section 42 (6).

Having noted PSPCL objection, the Commission has examined the matter and has decided that the Commission is only adjudicating the crucial issue that the hospitals under reference are not getting uninterrupted supply on continuous basis and are still being charged 25% additional energy charges. The Commission is determining this in view of Clause 24 of the General Conditions of Tariff and in light of the 25% charge being allowed as a part of the tariff order of the relevant years.

PSPCL has further asserted that the petitioners (intervener applicants) cannot take up this case before the Commission since the Commission has already decided the case against the petitioners vide order dated 22.03.2022 in petition No. 20 of 2021 and petition No. 39 of 2021. The Commission has considered this argument also and notes that the petition and order under reference related to the benefit sought by the petitioners

linked to the income tax exemption available to them which was decided against them. However, the Commission had kept alive the issue of determining whether the uninterrupted continuous power was being supplied to the petitioners which would justify the additional charge being claimed by PSPCL in order to provide such service. This is under scrutiny and decision of the Commission now in this case.

The petitioners assert that when uninterrupted constant supply, a service for which a substantial extra charge of 25% is being claimed has not been assured and delivered, the service provider i.e. the distribution licensee is not entitled to claim the extra charge.

The Commission observes that the petitioner (International Hospital) had sought to include its hospital in the category of essential services for getting the supply through an independent feeder. The Commission also notes that schedule of tariff for NRS and bulk supply in the tariff Order for FY 2019-20 to FY 2022-23 provides that:

“The energy charges shall be increased by 25% for private hospitals & MRI/CT Scan centers getting continuous supply through independent feeders under this Schedule;”

From the above provision, the expectation of each consumer is that it would receive reliable supply of electricity without any interruption when it is paying a 25% additional energy charge. The Commission also notes that based on the data submitted by the petitioner/intervenors and also the respondent PSPCL, these feeders show an excessive outage time. Though PSPCL has submitted details of outage frequency and time which are comparatively less than the submissions and details provided by the petitioners depicted in para 7 of the Order, yet the Commission notes that even based on PSPCL's data there are repeated and substantial instances of interruptions of supply

to these consumers even when these are being given supply through dedicated lines.

The Commission observes that the clause 8.2.1 of National tariff policy specifies that:

*8.2.1 The following aspects would need to be considered in determining tariffs:
 (1) All power purchase costs need to be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates. The reduction of Aggregate Technical & Commercial (AT&C) losses needs to be brought about but not by denying revenues required for power purchase for 24 hours supply and necessary and reasonable O&M and investment for system upgradation. **Consumers, particularly those who are ready to pay a tariff which reflects efficient costs have the right to get uninterrupted 24 hours supply of quality power.** Actual level of retail sales should be grossed up by normative level of T&D losses as indicated in MYT trajectory for allowing power purchase cost subject to justifiable power purchase mix variation (for example, more energy may be purchased from thermal generation in the event of poor rainfall) and fuel surcharge adjustment as per regulations of the SERC.*

The Commission considers that “continuous supply” mandates an obligation to provide the consumer with an “uninterrupted continuous supply” without interruption or break. Thus, the consumers who are paying an additional charge for getting the “uninterrupted, 24 hours supply” have the right and expectation for the same by way of paying a substantial markup of 25% over the normal tariff of their category. It is also quite evident that PSPCL has failed to provide the required quality of supply for which it has charged the Petitioners a substantial extra charge. As all the petitioners are hospitals, it is crucial and essential to have continuous power supply since any shortfall or sudden outage during critical procedures can have disastrous consequences resulting in even loss of life.

The Commission also takes note of para 37 of decision of Hon’ble Appellate Tribunal of Electricity decision dated 20.02.2020 in Appeal No. 164 of 2018 in the matter of M/s Century Rayons vs. Maharashtra State Electricity Distribution Company Ltd. The relevant extract of the judgement

which is most pertinent and squarely covers, addresses and elucidates on the issues under the decision in the present petition and is reproduced below:-

37.If the continuous category consumer was willing to pay higher tariff, and if the DISCOM had accepted him in such category, it was the obligation of the DISCOM to provide quality supply of electricity which was uninterrupted. The only exceptions to this general rule for continuous category would be those envisaged in Section 44 of the Electricity Act, wherein the Distribution Licensee is "prevented" from discharging its obligations for reasons of force majeure or other such occurrences "beyond his control". We may add that outages, load shedding or tripping which have been generally set out as the primarily reasons for interruptions do not fall in the exempt categories. There can arguably be a case made out for the outages to be scheduled for routine maintenance purposes. But then even such outages in the case of continuous category, dependent on supply by dedicated supply lines, have to be minimal, not of the extent included in the new rule introduced with reference to Load Factor Incentive.

In view of the above discussion and observations, the Commission is of the firm opinion that the Petitioners have actually suffered frequent interruptions in the electricity supply provided by PSPCL which cannot be considered as uninterrupted and 'Continuous Supply', despite levy of additional charges by PSPCL. The above extract from APTEL's judgement also unambiguously covers the issue at hand. Accordingly, the Commission decides that the Petitioners shall not be charged any additional levy. The concept of uninterrupted supply itself has been violated. Thus, no additional charge is applicable. They are to be charged tariff as any normal consumer of that category for the relevant years in the petitions.

- 10.2 The petitioners have requested that the additional energy charges for the service of 'continuous and un-interrupted power supply', the quantum of 25% is very high and steep. Since the Hospitals provide an essential service and it is not possible to pass on the additional charges to the patients, hence the same should be minimized and the quantum of any additional charge should be reduced.

This issue has already been appropriately addressed in the Tariff Order for 2023-24.

- 10.3 Other prayers of the petitioner such as to set aside the supplementary bill dated 26.11.2021, to set aside the impugned order dated 22.09.2021 passed by the CGRF and to set aside PSPCL's letter No. 1158 dated 29.09.2021 for demand of interest are rendered infructuous in view of the Commission's decision above in para 10.1.

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

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: 06.10.2023