

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

**Petition No. 06 of 2020
Date of Order: 26.08.2020**

Petition for the Determination of Additional Surcharge U/S 42 (4) of the Indian Electricity Act-2003 read with Regulation 27 of Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access) Regulation, 2011 to be made applicable on to the open access consumers availing power from the sources other than PSPCL for the period 01.04.2020 to 30.09.2020.

AND

In the matter of: Punjab State Power Corporation Limited (PSPCL), The Mall, Patiala.
.....Petitioner

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

ORDER:

1. This petition has been filed by PSPCL for determination of applicable additional surcharge for the period 01.04.2020 to 30.09.2020, to be levied on the open access consumers receiving supply of electricity from the sources other than PSPCL. The submissions made by PSPCL are summarized as under:

- a) The detailed data including hourly-based (Month-wise) data for Total Availability/ Total Scheduled Power/ Total Surrendered Power of the corresponding period of the previous year i.e. 01.04.2019 to 30.09.2019, for the

computation of the applicable additional surcharge has been submitted in the petition.

- b) From the detail of the data submitted, it is evident that, PSPCL has adequate generating capacities available to meet the entire power demand of the consumers of PSPCL including the open access consumers during the relevant period. Therefore, in the event of sourcing of power by open access consumers from sources other than PSPCL, part of the available generating capacity is likely to remain stranded during the period from April, 2020 to September, 2020.
- c) Provisions as regards to additional surcharge are made in Para 8.5 of the Tariff Policy and Regulation 27 of the PSERC Open Access Regulations, 2011. The Commission has notified the above Regulations in accordance with the provisions of the Electricity Act and the Tariff Policy, so as to compensate the distribution licensee for its stranded generation capacity arising out of its universal supply obligations. The additional surcharge is payable under the Regulations notwithstanding that only the inter-state transmission system is being used for availing open access and even when the lines of transmission/distribution licensee are not used.
- d) The burden of fixed cost is adversely affecting the financial interests of PSPCL, which in turn is affecting the consumers in the State buying power from PSPCL. As such, it is necessary that Additional Surcharge as provided under Section 42(4) of the Electricity Act, 2003

and the PSERC Open Access Regulations be determined and made applicable to open access consumers in the State.

- e) No power was availed by any consumer under open access for the period April, 2019 to September, 2019. Thus, the proposed rate of additional surcharge is non-determinable on the basis of capacity which remained stranded due to power scheduled under open access during the period. Therefore, the fixed cost being presently borne by all the consumers of PSPCL is required to be transferred to the open access customer in the same proportion, whenever opting for source(s) other than PSPCL. This would only be possible when the applicable rate of Additional Surcharge is worked out on the basis of total energy or power scheduled/consumed during the corresponding period of last year. Accordingly, the proposed rate of additional surcharge has been calculated from the fixed cost paid by PSPCL for total energy scheduled/consumed during this period.

2. The petition was admitted vide Order dated 13.03.2020 and PSPCL was directed to issue the public notice inviting objections from general public/stakeholders, as required under Regulation 67 of PSERC (Conduct of Business) Regulations, 2005. The petition was fixed for hearing as well as public hearing on 30.03.2020. The public notice was published by PSPCL on 17.03.2020 in 'The Tribune', 'Ajit', 'Punjab Kesari' and 'Rozana Spokesman' with the last date for submission of objections as 15 days from the date of publication of the notice.

3. Meanwhile, lockdown was imposed in the State as well as in the country to prevent the spread of Covid 19 pandemic. Since, the Order dated 28.11.2019 in Petition No. 20 of 2019 determining the Additional Surcharge payable by open access consumers was applicable for only upto 31.03.2020, the Commission vide interim Order dated 20.03.2020 decided to continue with the existing Additional Surcharge (i.e. @ Rs. 1.35/kWh) as per said Order provisionally during FY 2020-21 till the issue of the new Order. It was also mentioned in the Order that as and when the Order for Additional Surcharge for the period 01.04.2020 to 30.09.2020 is issued, the same shall become applicable from the date as mentioned therein and shall have an overriding effect on this Order.

4. Upon announcement of relaxation in the lockdown by the Govt., the Commission vide email dated 08.06.2020 intimated PSPCL that the date of hearing as well as public hearing has been fixed on 23.06.2020. The approved draft public notice for the same was also enclosed for publication by PSPCL. The same was published by PSPCL on 09.06.2020 in 'The Tribune', 'Ajit', 'Punjab Kesari' and 'Rozana Spokesman'. The last date for submission of objections was fixed as 15 days from the date of publication of the notice. In response to thereof, two objections were received, one from the Indian Energy Exchange and one from the Open Access Users Association.

5. The petition was taken up for hearing as well as public hearing on 23.06.2020. However, nobody appeared from the public in the public hearing except the representatives of PSPCL. During the hearing, PSPCL submitted that the Tariff Order for FY

2020-21 has been issued on 01.06.2020 and requested to be allowed to submit revised calculations based on the figures approved in the new Tariff Order. The Commission ordered PSPCL to submit the revised calculations by 30.06.2020. In compliance thereof, PSPCL vide its memo 5542 dated 29.06.2020 submitted the revised calculation. Since the revised data submitted by PSPCL involved the public interest, the Commission directed PSPCL to put the same in the public domain for inviting objections. The public notice was published on 18.07.2020 in the 'The Tribune', 'Ajit', 'Punjab Kesari' and 'Rozana Spokesman' with last date for submission of objections as 15 days from the date of publication of the notice. In response thereof, IEX made some additional submissions and PSPCL submitted its reply to the same vide Memo. No. 5525 TR- 5/957 Dated 04.08.2020.

6. The petition was taken up for hearing as well as public hearing on 05.08.2020. In the public hearing, only Sh. Saurabh Srivastava representing IEX appeared through video link. He reiterated the submissions made by them in the written objections. The Commission vide its interim order dated 10.08.2020 observed that PSPCL had submitted an incomplete reply to the objection No. 03 filed by IEX particularly regarding the issue of other costs and on the judgments referred by the objector. The petition was listed for final hearing on 19.08.2020 at 11.00 AM. PSPCL submitted its reply with regards to the Commission's observation in the above Order vide Memo dated 14.08.2020 and 19.08.2020.

7. The petition was taken up for hearing on 19.08.2020 and after hearing PSPCL the Order was reserved.

8. Objections/Comments

The issues raised by the objectors (Indian Energy Exchange & Open Access Users Association) and PSPCL's reply thereon are summarized as under:

8.1 Applicability of additional surcharge/Regulatory prudence

Objection/Comment

It was submitted that:

- a) PSPCL has filed the instant petition claiming Additional Surcharge despite the fact that there has been NIL open access consumption in the state during the past two years. The claim of Additional Surcharge when there has not been any open access and thus NIL stranded capacity owing to open access, is devoid of any rationale and is not in the spirit of the Open Access Regulations framed by this Commission.
- b) Evidently, only around 50% of the capacity is getting scheduled despite nil open access consumption in the state. Clearly, the discom will have stranded capacity irrespective of whether open access consumption occurs or not in the state. The Discom's inability to prudently plan and optimize its power purchase portfolio and associated costs should not manifest itself in the form of an arbitrary imposition of Additional Surcharge. It is noticed from the data; that energy is depicted to be surrendered from the stations with very high VC. Energy is also depicted to be surrendered from the stations with very low VC. Since, the energy beyond the approved MOD cannot be considered for purchase by

Discom, the submitted surrendered quantum is not correct. Further, the Discom has surrendered energy from stations with a low variable cost, without taking advantage of the opportunity to sell the same in market when the market prices were high. This clearly depicts lack of planning on the part of Discom.

- c) The Commission made the following observations in the Order dated 6.9.2019 and 28.11.2019 while determining the Additional Surcharge for past periods.

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ii) *PSPCL has surplus contracted capacity from various tied up sources, the fixed cost of which is being presently borne by all consumers of PSPCL. Even though presently there is no open access, in case an open access consumer opts for source(s) other than PSPCL, the fixed cost of the power stranded on account of his availing open access is liable to be borne by him.*

iii) *The Commission agrees with the contention of PSPCL that in the absence of any open access during the corresponding period of the previous year, the additional surcharge has to be calculated on the basis of total energy consumed during the corresponding period of the previous year, as this method allows the distribution of fixed cost on the open access consumers in the same proportion as is being borne by all other consumers of PSPCL.”*

Based on the above presumptions, the Commission had worked out the Additional Surcharge considering the overall energy consumed during the corresponding period of past year. Thus, despite the NIL open access volumes and NIL fixed cost of stranded capacity on account of open access, the Commission has

inadvertently approved the levy of Additional Surcharge on consumers.

The additional Surcharge cannot be determined on an assumption and levied without conclusive demonstration of stranded capacity due to open access on actual basis. The Tariff Policy aptly provides that the additional surcharge should become applicable on open access consumers only if it is conclusively demonstrated that the obligation of a licensee has been and continues to be stranded.

d) No other State Commission approves Additional Surcharge based on a presumption of open access, since the same would be tantamount to deterring the competition in the sector. The following orders of Hon'ble SERCs were referred to in this regard where the claims of Additional surcharge were rejected due to NIL stranded capacity demonstration on account of open access:

- i) Hon'ble Andhra Pradesh Electricity Regulatory Commission did not approve the claim of Additional Surcharge of the AP Discoms while issuing the Order dated 21.07.2018 in I.A. No.5 of 2017 in O.P. No.28 of 2016 and I.A. No.6 of 2017 in O.P.No.29 of 2016.
- ii) Hon'ble Tamil Nadu Electricity Regulatory Commission rejected the similar claim of TANGEDCO on the same grounds in Order dated 15.05.2006 in Petition No. TP 1 of 2005.

- e) Further, Tariff Policy, 2016 also envisages that the amount of additional surcharge should not be such that it eliminates competition for the consumers procuring power through open access. In the present petition, PSPCL has requested for levy of additional surcharge, in direct conflict with the objectives of the Tariff Policy.

Reply of PSPCL:

- a) PSPCL has filed this petition as per the Regulation 27 of Punjab State Electricity Regulation Commission Regulation (Terms & Conditions for Intra State Open Access) Regulations. The intent of determination of applicable additional surcharge is based upon the fact and provisions for compensating the distribution licensee for the recovery of fixed cost for the contracted capacity arising out of its universal supply obligation under the Indian Electricity Act, 2003. Though at present, there is no open access but the additional surcharge has to be determined in case in the future, there are cases of open access.
- b) PSPCL never intends to surrender cheaper power. Such unforeseen situations are part of system, because Punjab being a heavy power consuming State where load variations are frequent and caused by a number of reasons such as day & night, crop Season, winter & summer, domestic load variations. Most of these variations are dependent on weather. During load crash situations, normally for short durations, power of such plants is surrendered and then taken again as load

regains.

- c) PSERC while determining the additional surcharge @Rs.1.35/KWh for the period 01.10.2019 to 31.03.2020 in petition No. 20 of 2019 has followed the due procedure. No objection was filed by any organization/person regarding the calculation/methodology adopted in the matter of the aforesaid petition.

The determination/methodology for calculation of additional surcharge falls under the purview of the Commission. However, applicable rate of additional Surcharge is indeterminable in the calculation sheet adopted due to the absence of Open Access during corresponding period of previous year and the earlier methodology for determination of additional surcharge no longer remains applicable. Therefore the total fixed cost being presently borne by all the consumers of PSPCL is required to be transferred to the Open Access customers in the same proportion, whenever opting for a source other than PSPCL. PSPCL has executed Long Term PPA's due to its commitments and is bearing the fixed costs for same.

- d) PSPCL vide its submission dated 14.08.2020 stated that:
- i) In I.A. No. 5 of 2017 in O.P. no. 28 of 2016 and I.A. No. 06 of 2017 in O.P. No. 29 of 2016, APERC vide its order dated 21.7.2018 had concluded that the Distribution Licensee could not provide the sufficient data and also could not substantiate its claim for additional surcharge and was denied the Additional Surcharge for that period. But in this

present petition PSPCL had submitted the requisite data required for the determination of Additional Surcharge. The determination of Additional Surcharge is under the purview of the Commission.

- ii) TNERC vide its order no.2 dated 15.5.2006 in Petition No. TP 1 of 2005, had decided that the Distribution Licensee was deficit in the generation capacity available at that time and therefore was denied additional surcharge.

The Additional Surcharge had been granted by the Commission to PSPCL in Aug, 2016 at the time when PSPCL become surplus in power. So, the claim of Additional Surcharge is as per Section 42(4) of the Electricity Act, 2003 read with Regulation 27 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access) Regulations, 2011.

- e) The determination/methodology for calculation of additional surcharge falls within the purview of the Commission.

8.2 Computation of Fixed Cost

Objection/Comment

- a) While computing the additional surcharge PSPCL has considered the fixed cost for the available power capacity as Rs. 3937.64 Crore for the period April 2019 to September 2019 without providing any basis for considering the above fixed cost. The Commission in the tariff order for FY 2019-20 had approved a fixed

cost of Rs. 7121.53 Crore for FY 2019-20. Thus, the half yearly fixed cost considered by the Petitioner for computation of additional surcharge seems grossly abrupt and not in line with that approved in the tariff order.

b) Notwithstanding the sanctity of overall claim of additional surcharge, several items in the fixed cost seem to have been included by the Discom, which merit rejection. In its revised claim of additional surcharge (increased from earlier Rs. 0.88/unit to now Rs. 1.08/unit) PSPCL has included the fixed cost amounting to:

i) Rs. 633 Crore on account of PGCIL charges; Open Access Consumers, if any, will anyway incur the inter-state transmission charges on procuring power through Inter-state open access. Levy of the same through additional surcharge would result in imposition and recovery of the same charges twice, which is incorrect.

ii) REC purchase cost of Rs. 85.34 Crore; REC purchase cost cannot be included in stranded cost since it is associated with the purchase of certificates and the open access consumer anyway incur RPO cost if they avail power through open access.

iii) 'Other Charges' amounting to Rs. 317 Crore in the fixed cost for available power have been added, without giving any rationale.

- c) PSPCL in the revised submission of Annexure-J has made an error by considering intra-state transmission charges of Rs. 1355.6 Crore for FY 2019-20 while computing the fixed cost of distribution licensee, which is in contrast with the methodology used by the Commission in its previous additional surcharge order dated 28.11.2019 in Petition No. 20 of 2019.
- d) The Hon'ble Appellate Tribunal of Electricity in the decision in the case of Open Access Users Association vs. Haryana Electricity Regulatory Commission & Others, Appeal No. 269 of 2014 and batch dated 28.04.2016, while upholding the methodology applied by the Haryana Electricity Regulatory Commission, has settled the following principles:
- i) The consideration is only of long term power purchase commitments which are in excess of the demand in the State;
 - ii) The stranded capacity is to be considered only on the drawl by the open access consumers and not back-down for any other purpose.
 - iii) The fixed cost to be considered is out of such stranded capacity on account of open access consumers, which otherwise gets passed on to the retail supply consumers.

Reply of PSPCL:

- a) The Fixed cost considered is as determined by PSERC/CERC. PSPCL has claimed the charges paid by

it on actual basis on the account of fixed charges during the period.

- b) It is intimated that interstate transmission charges to be paid by open Access consumer on procuring power through open access are neither being levied by PSPCL and nor are payable to PSPCL. All the supplementary bills raised, RLDC charges, Compensation charges, water charges, petition filing charges etc. are included in the other charges mentioned in the petition. PSPCL also submitted the detailed break-up of other charges vide Memo No. 5583 TR-957 dated 14.08.2020 and memo No. 1642/43 dated 19.08.2020.
- c) & d) The methodology to calculate Additional Surcharge falls within the purview of the Commission.

8.3 Non-consideration of Fixed Cost through CSS

Objection/Comment

The Discom, has not taken into account the fixed cost recovered from the consumers by way of the Cross Subsidy Surcharge (CSS) paid by them. Consumers of the state pay CSS whenever they procure power through open access route. Since the Commission determines the CSS on the basis of the Average Billing Rate of the consumer category, it follows that the CSS will include some part of the fixed cost obligation of the licensee. Additionally, the OA consumers pay distribution wheeling charges and transmission charges over and above their power purchase cost and the CSS. Therefore, there is some part of the fixed cost which the discom is able to recover from the OA consumers by way of CSS being paid by them.

Reply of PSPCL:

Additional surcharge is levied as per the Regulation 27 of PSERC Regulation and Section 42 (4) of the Electricity Act. Regulation 27 is quoted as under:-

*"An open access consumer, receiving supply of electricity from a person other than the distribution licensee of his area of supply, shall pay to the distribution licensee an additional surcharge on the charges of wheeling, **in addition to wheeling charges and cross-subsidy surcharge**, to meet out the fixed cost of such distribution licensee arising out of his obligation to supply as provided under sub-section (4) of section 42 of the Act."*

The above Regulation clearly states that Additional Surcharge is leviable in addition to Cross Subsidy & Wheeling charges.

8.4 Non-consideration of demand charges paid by the consumers

Objection/Comment

The Open Access consumers pay the demand charges to the Distribution Licensee as a regular consumer. Such fixed cost already incurred by the OA consumers will have to be adjusted in the cost attributable to OA as stranded capacity of the Discom.

Reply of PSPCL:

In the calculation sheet for determination of Additional Surcharge under two-part tariff, the part of fixed charges paid by consumers with load more than 1 MW have been adjusted

i.e. the additional surcharge payable under two-part tariff is equal to additional surcharge for single part tariff - the part of fixed charges contributing towards fixed cost of power.

9. Commission's analysis and views on objections

9.1 Rationale of determination of additional surcharge:

- a) Regarding the objection that, the claim of Additional Surcharge is devoid of any rational when there has not been any open access and thus there was no capacity stranded owing to open access, the Commission observes that, the non-existence of open access consumption during the previous period does not mean that there would not be any open access in the future as well. A vacuum cannot be left in the system. Regulatory provisions have to be in place for the consumers opting to avail power through open access to provide for clarity/certainty in terms of applicability of provisions/charges for the existing as well as future demands. PSPCL's prayer is for determination of Additional Surcharge to be made applicable on to the open access consumers availing power from the sources other than PSPCL for the period 01.04.2020 to 30.09.2020. As such, it shall be applicable only on the actual drawl of power through open access.
- b) The Commission agrees with the objector that in view of the surplus capacity, PSPCL will have stranded capacity irrespective of whether open access consumption occurs or not in the State. However, the Commission notes that under Section 43 of the

Electricity Act 2003, a distribution licensee has a universal supply obligation to provide power as and when required by the consumers in its area of supply. Thus, the distribution licensee develops its distribution system and enters into long term Power Purchase Agreements (PPA) with sellers (generators/ traders etc.) so as to ensure supply of power on demand for the envisaged load. In the first decade of this century, like other States and the Centre, Punjab also initiated proactive actions to address the prevailing situation of power deficit. However, since actual demand did not keep pace with the forecast and also due to advent of compulsory RPO, most States (including Punjab) have become surplus in power. The surplus/stranded capacity gets further enhanced on shifting of load from PSPCL to other sources by open access consumers. Therefore, it would be prudent to recover the fixed costs of same from such open access consumers through additional surcharge as per the provisions of the Act and PSERC Regulations.

Regarding the submission that the surrendered quantum submitted by PSPCL is not correct as energy beyond the approved MOD cannot be considered for purchase by Discom; the Commission is of the view that, though PSPCL is mandated to schedule its drawl as per MOD, the same gets disturbed sometimes on account of scheduling to maintain technical minimum operation of the generating plants by respective LDCs.

Moreover, total stranding/surrendered quantum is not a function of MOD. Further, regarding submissions that the Discom has surrendered energy without taking advantage of opportunity to sell the surplus power, the Commission is of the view that, surplus power can be sold only if it benefits both the utility and the consumers. Further, PSPCL is selling surplus power whenever feasible.

- c) The Commission's Orders determining the applicable additional surcharge for previous periods were issued vide Orders dated 6.9.2019 in Petition No. 07 of 2019 and 28.11.2019 in Petition No. 20 of 2019, after following the due regulatory process. However, the Commission is in agreement with the objectors that additional Surcharge should become applicable on open access consumers only if it is conclusively demonstrated that the obligation of a licensee has been and continues to be stranded as mandated by the Tariff Policy. Also, PSPCL is surplus in power and if any consumer opts for the open access then the quantum of stranded power will increase.
- d) It is also noted that the facts/ grounds of contention in the Orders of Andhra Pradesh Electricity Regulatory Commission (APERC) as well as Tamil Nadu Electricity Regulatory Commission (TNERC) are as under:
- i) APERC vide its Order dated 21st July, 2018 has dismissed the I.A. No.5 of 2017 in O.P. No.28 of 2016 and I.A. No.6 of 2017 in O.P.No.29 of 2016

mainly on following grounds.

“42 Even if it has to be considered that there is stranded generation as per the actuals furnished by the DISCOMs subsequently, the stranded costs on account of such stranded generation is shown to be mostly from the generation of Hinduja and Krishnapatnam power plants (2063 MU out of the Open Access consumption of 2720.70 MU) for which there is no fixed cost determined and the DISCOMS themselves have shown the fixed cost for these two plants as ‘zero’.

43 Another deficiency noticed is estimation of obligation cost due to stranded generation. The Discoms have not filed the estimation of cost with detailed explanation with reference to various conditions of agreements source wise, in particular, the contractual obligation with M/s Hinduja, M/s SDSTPP, DBFOO, IEX etc.”

- ii) Tamil Nadu Electricity Regulatory Commission vide its Order dated 15.05.2006 has dismissed the Petition No T.P. 01 of 2005 with following observation:

“5.19.6 At present there is deficit in the generation capacity available at the disposal of TNEB. The fact as to whether any contracted capacity is stranded or not can be conclusively demonstrated as and when open access is allowed and the capacity migrated could be ascertained. The Commission therefore decides that there is no charge towards additional surcharge for the present.”

From the above, it is noted that APERC has dismissed the I.A. No.5 of 2017 in O.P. No.28 of 2016 and I.A. No.6 of 2017 in O.P.No.29 of 2016 because the Distribution Licensee could not provide sufficient data and hence could not substantiate its claim for additional surcharge. Further, TNERC has dismissed Petition No T.P. 01 of 2005 because the Distribution Licensee was deficit in generation capacity available at that time and therefore was denied additional surcharge. Thus, the grounds of contention in the above referred Orders are different than those related to the present petition and as such do not apply in this case.

- e) The Commission is conscious of the Tariff Policy's mandate that the amount of additional surcharge should not be such that it eliminates competition for the consumers procuring power through open access and thus determines the same as per the provisions of the PSERC Regulations after a due prudence check of the data submitted by PSPCL.

9.2 Computation of Fixed Cost :

- a) The Commission observes that, the fixed cost of PSPCL's own generation sources have also to be considered. For determination of applicable the additional surcharge for H1 of FY 2020-21, the Commission has taken into consideration PSPCL's obligation on basis of figures considered for H1 of FY 2019-20 in the Tariff Order for FY 2020-21.

b) The fixed costs obligations for the distribution licensee consist of the followings:

- The fixed costs payable to the generating companies (including own) for the capacity booked by the distribution licensee to meet the obligation to supply the electricity to the consumers,
- The fixed costs for availing long term access i.e cost payable to the Transmission licensees (Inter-State and Intra-State) for conveyance of energy from the generating stations to the input point of the distribution licensee, and
- The fixed costs of distribution business (wheeling and retail infrastructure) from the input point or receipt of electricity from transmission licensee to place of consumption of electricity at consumer place.

c) Regarding the fixed cost components of power purchase obligations, the Commission observes as under:

- i) The PGCIL (Inter-State transmission) charges for Long Term Access are payable in per MW of the contracted capacity by the distribution licensee and do not get reduced in case of shifting of consumers to other sources, hence, they constitute a part of the stranded fixed cost.
- ii) The Commission is in agreement with the objectors that REC purchase cost of Rs. 85.34

Crore should not be included in the stranded fixed cost as RPO compliance of the distribution licensee is computable on the basis of its input energy requirement, which gets reduced whenever an open access consumer shifts its drawl to sources other than its area of licensee.

iii) PSPCL in its petition has submitted fixed cost of Rs. 4996.51 Crore including other charges on account of power procurement. IEX has objected to the inclusion of some of the items mentioned in the above costs.

iv) Regarding the 'Other Charges' amounting to Rs. 371.57 Crore considered by PSPCL in fixed cost for available power, PSPCL vide Memo No. 5583 TR-5/957 dated 14.08.2020 and 1642/43 dated 19.08.2020, has submitted details of Rs. 231.301 Crore as fixed charges components out of Rs. 371.57 Crore indicated in the petition. The details of the same are as under :

Sr. No.	Plant Name and Details of Charges	Amount (Rs. Crore)
A	Total Other Charges	371.57
B	Previous Year Payments	-59.67
C	Net Other Charges	311.9
D	Variable Cost included in the other charges	
1	Compensation (gas)	
	Anta	0.20
	Auraiya	0.55
	Dadri	2.45
2	Compensation (RLNG)	
	Anta	0.57
	Auraiya	0.32
	Dadri	4.56

Sr. No.	Plant Name and Details of Charges	Amount (Rs. Crore)
	Unchahar-I	1.00
	Unchahar-II	1.00
	Unchahar-III	0.35
	Dadri II	0.32
3	Compensation (L)	
	Rihand I	1.82
	Rihand III	2.58
4	Gain on Auxiliary Consumption Chamera-I	-0.071
5	Excise duty, clean energy cess, royalty on coal-Sasan	7.63
6	Transit Fee, DMF, NMET- Sasan	6.93
7	GST on royalty on coal -Sasan	2.28
8	Incentive-Sasan	2.55
9	Supplementary bill towards change in law towards GST compensation cess, IGST, Custom duty, IGST on Ocean Freight, Technical Testing analysis and Transport of goods by road-CGPL Mundra	20.48
10	Shunting Charges-	
	TSPL	20.72
	GVK	4.36
	Total	80.599
E	Allowable Fixed Charges Component of other charges	231.301

Accordingly, the Commission decides to consider the fixed cost liability of power purchase obligations of PSPCL for computing additional surcharge as Rs. 4770.90 (4996.51-85.34-371.57+231.301) Crore.

- d) With reference to the Hon'ble APTEL's decision in Appeal No. 269 of 2014 and batch dated 28.04.2016 in the case of Open Access Users Association vs. Haryana Electricity Regulatory Commission & Others, the Commission observes that it also considers only the long term power purchase commitments to determine the surplus/stranding capacity. The basic

principle being adopted in determination of additional surcharge is that in the event of a consumer opting for drawl of power from sources other than his area of licensee, he continues to bear the fixed costs of the capacity getting stranded on account of the same, so that these costs do not get passed on to the other consumers of the licensee. Further, the same is made applicable only on the actual drawl, if any, by the open access consumers. As such, the methodology being followed by the Commission in determination of the additional surcharge is not in contradiction of the Hon'ble APTEL's decision.

9.3 Non-consideration of Fixed Cost through CSS:

The Commission refers to the Section 42 of the Electricity Act, 2003 which specifies as under:

“Section 42- (Duties of distribution licensee and open access):

- (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.*
- (2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:*

Provided that such open access shall be allowed on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission. Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:.....

(3).....

(4) *Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.*

(5).....

On a plain reading of the above provisions of the Act, it is observed that the Electricity Act assigns different purposes to the various charges to be levied by the distribution licensee on open access consumers. Cross-subsidy surcharge (CSS) is levied to compensate for the existing level of cross-subsidy in the system when a cross subsidizing consumer migrates to open access. Therefore, revenue through CSS is intended to be utilized for subsidizing a group of consumers. Whereas, Additional Surcharge is designed to compensate for the fixed costs of stranded capacity of the distribution licensee, as a result of migration of consumers to Open Access.

9.4 Non-consideration of demand charges paid by the consumers:

The Commission is in agreement with the objectors that the demand charges payable by Open Access consumers to PSPCL as a regular consumer needs to be adjusted in the cost attributable to Open Access as stranded capacity of the Discom. In the petition, while calculating the applicable additional surcharge PSPCL has also proposed the adjustment of fixed charges/demand charges paid by open access consumers to PSPCL under Two-Part-Tariff, by reducing a portion of the same (in the ratio of fixed costs of the power purchase to the total fixed costs of PSPCL) contributing towards the fixed cost of power purchase from the applicable additional surcharge worked out under single part tariff. The present tariff schedule is not designed to recover the fixed costs fully through the demand/fixed charges, however, the Commission decides to accept PSPCL's proposal.

10. Determination of the Additional Surcharge

The findings and decision of the Commission is as under:

- 10.1** The Electricity Act-2003, Tariff Policy- 2016 and PSERC Open Access Regulations provide for payment of Additional Surcharge by open access consumers receiving supply of electricity from a person other than the distribution licensee of his area of supply, to meet the fixed cost of such distribution licensee arising out of his obligation to supply as under:

Section 42(4) of the Act

“4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.”

Clause 8.5.4 of Tariff Policy

“The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.”

Regulation 27 of the PSERC (Terms & Conditions for Intra-state Open Access) Regulations, 2011

“27. Additional Surcharge

1) An open access consumer, receiving supply of electricity from a person other than the distribution licensee of his area of supply, shall pay to the distribution licensee an additional surcharge on the charges of wheeling, in addition to wheeling charges and cross-subsidy surcharge, to meet out the fixed cost of such distribution licensee arising out of his obligation to supply as provided under sub-section (4) of section 42 of the Act.

2) This additional surcharge shall become applicable only if the obligation of the licensee in terms of power

purchase commitments has been and continues to be stranded or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The distribution licensee shall indicate the quantum of such stranded costs and the period over which they would be stranded. The Commission shall scrutinize the statement of calculation of fixed cost submitted by the distribution licensee and obtain objections, if any, and determine the amount of additional surcharge:

Provided that such additional surcharges shall not be levied in case distribution access is provided to a person who has established a captive generation plant for carrying the electricity to the destination of his own use.

3) The additional surcharge shall be determined by the Commission.

4) The consumers availing Open Access exclusively on interstate transmission system shall also pay the additional 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 additional surcharge as determined under this Regulation.”

10.2 The Commission has carefully gone through the data submitted by PSPCL. The Commission observes that, in order to meet its obligation PSPCL has developed its T&D system and contracted adequate capacity from various sources. Also, there is an unavoidable obligation to bear fixed costs consequent to such contracts and these costs are shared by all the consumers. Thus, a case exists for determination of the additional surcharge to be levied on the

consumer opting to receive supply of electricity from a source other than PSPCL, to meet the fixed costs of the capacity stranded by his moving out.

10.3 PSPCL vide its revised submission dated 10.07.2020 has revised the calculations for the applicable additional surcharge as Rs. 1.08 per kWh based on the figures of H1 of FY 2019-20 considered in the Tariff Order for FY 2020-21. The principal approach for computation of the additional surcharge is in line with that adopted by the Commission in Orders dated 06.09.2019 in Petition Nos. 07 of 2019 and 28.11.2019 in 20 of 2019 respectively. However, the Commission found it prudent to rework the calculations for determination of applicable additional surcharge for H1 of FY 2020-21 by considering the fixed cost obligation of power purchase as Rs. 4770.90 Crore as discussed in para 9.2(c)(iv) above. Further, to determine the fixed cost obligation of power purchase commitments per unit, the Commission decides to consider the energy consumption at 11kV i.e. the base voltage at which the open access consumers are connected.

10.4 Accordingly, the Commission determines the applicable Additional Surcharge for the period 01.04.2020 to 30.09.2020 as Rs. 1.145 per kWh (Detailed in Annexure-A). This Additional Surcharge shall be leviable on the consumers situated within the area of supply of PSPCL, on the actual open access power brought by them from sources other than PSPCL, subject to the condition that the contracted capacity of PSPCL continues to remain

stranded during the period. Further, this Order shall have an overriding effect on the Commission's Order dated 20.03.2020.

Also, as directed vide Order dated 28.11.2019 in Petition No. 20 of 2019, PSPCL is required to file the petition for determination of the applicable additional surcharge, if any, at least two months prior to the date of the commencement of the same.

The petition is disposed of accordingly.

Sd/-

(Anjuli Chandra)

Member

Chandigarh

Dated: 26.08.2020

Sd/-

(S.S. Sarna)

Member

Sd/-

(Kusumjit Sidhu)

Chairperson

Annexure-A

Calculation of Additional Surcharge

(Based on the data for the corresponding period of the previous year i.e. 01.04.2019 to 30.09.2019)

Sr. No.	Particulars	Unit	Submitted by PSPCL	Worked out by the Commission
A	Total Installed/Contracted Capacity	MW	13568	
B	Average Availability Capacity	MW	9761	
C	Average Scheduled Capacity	MW	7230	
D	Average Stranded Capacity	MW	2531	
E	Average Open Access Availed	MW	0	
F	Fixed Cost for the available power capacity	Rs. Cr.	4996.51	4770.90
G	Total Energy Consumption	MU	34483.43	31681.56
H	Fixed Cost per Unit (F/G)	Rs/kWh	1.449	1.506
I	Adjustment of Fixed Charges paid under Two Part Tariff towards the fixed cost of power in case of consumers with load more than 1 MW			
i)	Energy consumed	MUs	6106.33	
ii)	Fixed Charges recovered	Rs. Cr.	415.03	
iii)	Fixed Charges per unit (ii/i)	Rs/kWh	0.680	
iv)	Total Fixed Costs =1/2 of Yearly Distribution fixed cost(Table 44, Chapter-3 of TO FY 2020-21) + F	Rs. Cr.	9218.32	8992.71
v)	Proportion of 'Fixed Cost for power purchase' to the 'Total Fixed Costs of the Distribution Licensee' (F/iv)		54.20%	53.05%
vi)	Part of the Fixed Charges paid by consumers with load contributing towards fixed cost of power (iii*v)	Rs/kWh	0.368	0.3606
J	Additional Surcharge payable under Two Part Tariff (H-I(vi))	Rs/kWh	1.081	1.145