

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

**Petition No. 11 of 2020  
(Suo – Motu)  
Date of Order: 10.07.2020**

In the matter of: Directions issued, vide letter No. 01/04/2020-EB(PR)/180-182 dated 30.03.2020, by the Govt. of Punjab, Department of Power under Section 108 of the Electricity Act, 2003 to specify a reduced rate (subject to maximum 6% per annum) of late payment surcharge(LPS) for payment which becomes delayed beyond the due date during the period from 24.03.2020 to 30.06.2020 to the Generating Companies or Transmission licensee, treating the restrictions imposed by the Central and State Government to contain COVID-19 as an event of Force Majeure.

**And**

In the matter of: The Commission on its own Motion

Vs

1. Punjab State Power Corporation Limited (PSPCL),  
The Mall, Patiala
2. Punjab State Transmission Corporation Ltd. (PSTCL),  
PSEB Head Office, The Mall, Patiala.
3. All Generators Supplying Power to PSPCL

**... Respondents**

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

**ORDER**

The Government of Punjab, Department of Power, referring to the imposition of restrictions by the Central Govt. and the State Govt. on the movement of Public and opening of offices and establishments etc. to control the spread of COVID-19 Pandemic

in the country, issued directions to the Commission under Section 108 of the Electricity Act, 2003 vide Letter No. 1/4/2020-EB (PR)180-182 dated 30.03.2020 to specify a reduced rate of Late Payment Surcharge (LPS) for payments which become delayed beyond the due date during the period from 24.03.2020 to 30.06.2020 for payment by PSPCL to the Generating Company (including renewable energy companies such as solar, wind, biomass, small hydro, co-gen etc.) or Transmission Licensee, treating the restrictions imposed by the Central and the State Govt. as an event of force majeure, as under:

*“Whereas restrictions have been imposed on movement of public and opening of offices and establishments etc. by the Government of India as well as Government of Punjab to control the spread of the COVID-19 pandemic in the country. In this time of crisis, the Government of Punjab is committed to provide uninterrupted 24x7 supply to all Health Care Institutions such as Medical Colleges, Hospitals, Dispensaries and other Medical Establishments and Quarantine Centres across the States for their smooth functioning. Besides, uninterrupted power supply is also being given to all consumers. Despite the lockdown, whole workforce of the power sector (Generation, Transmission, Distribution and System Operations) is working round the clock to keep all homes and establishments energized.*

*Whereas, due to the unprecedented situation, which is likely, to continue for some time the consumers are unable to pay their dues to the State Discom Punjab State Power Corporation Limited (PSPCL). This has affected the liquidity position of the PSPCL, thereby, impairing its ability to pay to the Generating and Transmission companies. The Government of India has decided that during the present emergency there will be no curtailment of supply to any DISCOM by CPSU Generating/Transmission Companies even to the Discoms, which have large outstanding dues to the Generation/Transmission companies. Even, Government of India has directed Central Electricity Regulatory Commission to provide a moratorium of three months to Discoms to make payments to generating companies and transmission licensees and not to levy penal rates of late payment surcharge.*

*Whereas, the State Discom PSPCL too has extended due date upto 15.04.2020 for payment of electricity bills of all the domestic, commercial*

*consumers having bills upto Rs. 10,000/- and all Small Power Industrial Order in Petition No. 11 of 2020 (Suo- Motu) 3 consumers without levy of late payment surcharge. There will be no disconnection of Small and Medium supply industrial consumers upto 15.04.2020 on account of non-payment of current electricity bills. Even due to less cash flow, PSPCL has to make regular payments on account of coal cost to coal companies, Railway freight, salary and pension, Power Purchase payments etc.*

*Whereas, in view of the force majeure situation arising due to severe restrictions placed on movement of public in the State and continue supply of electricity being an essential service, the Government of Punjab in exercise of powers conferred upon it under Section 108 of the Electricity Act, 2003 issues directions to the Punjab State Electricity Regulatory Commission that in larger public interest the Commission may specify a reduced rate of late payment surcharge (LPS) for payments which become delayed beyond due date during the period from 24th March, 2020 to 30th June, 2020 to Generating company (including renewable energy companies such as Solar, wind, Biomass, small hydro, Co-gen etc.) or transmission Licensee treating the restrictions imposed by the Central and State Government to contain COVID-19 as an event of force majeure. The reduced Late Payment Surcharge shall be applicable for such delayed payments till 30th June, 2020. The late Payment Surcharge shall not be more than the cost that the generating Company or Transmission Licensee (subject to 6% per annum), as the case may be, would have to bear for the actual amount of loan availed because of delayed payment.”*

2. The Commission took notice of the above letter as petition No 11 of 2020 (suo-motu) and exercising the power under Regulation 67 and 64 of the Punjab State Electricity Regulatory Commission, (Terms and Conditions for Determination of Generation, Transmission Wheeling and Retail Supply Tariff) Regulations, 2014 and 2019 respectively, relaxed the provisions of Regulations 31 of Tariff Regulation 2014 and 2019 vide Order dated 07.04.2020 and provisionally reduced the rate of Late Payment Surcharge to 6% per annum for such payments which become delayed beyond the due date during the period from 24.03.2020 till 30.06.2020, payable by

PSPCL to the generating companies and PSTCL. All the generators supplying power to PSPCL, PSTCL and other stakeholders were invited to send their comments and objections through email by 30.04.2020 and the matter was fixed for hearing as well as public hearing on 07.05.2020.

3. The public notice inviting objections/suggestions, if any, from the generators, PSPCL, PSTCL and other stakeholders was published in the Tribune (English), Hindustan Times (English), Ajit (Punjabi) and Punjab Kesari (Hindi). However, in the meantime the Govt. of Punjab further extended the lockdown to contain the COVID-19 pandemic. The Commission vide Order dated 01.05.2020 extended the date of receiving the objections, suggestions upto 20.05.2020 and it was stated that the date of hearing as well as the public hearing would be intimated separately. The Govt. of Punjab further extended the lockdown to contain the Covid-19 pandemic and therefore, the Commission vide order dated 18.05.2020 extended the date for receiving comments and objections from the general public and other stakeholders through email upto 27.05.2020. It was further mentioned in the order dated 18.05.2020 that in case the lockdown is extended beyond 31.05.2020, the Commission will dispense with the hearing and the public hearing as ample opportunity was provided to all for submitting their comments. The public notice extending the date for receiving the objections/suggestions was also published in the newspapers.
4. PSPCL filed its reply vide memo no. Spl-2/TR-5/962 dated 30.04.2020. PSTCL filed its comments vide memo no. 1234/FA/ARR-14 dated 21.05.2020. GS Atwal & Co Engineers Pvt. Ltd., 3<sup>rd</sup> Floor Empire Plaza, Sultanpur, MG Road, New Delhi, Talwandi Sabo Power Limited, Abohar Power Generation Private Limited, Prayatna Developer Private Limited, Nabha Power Limited, Biomass Power Producers Association (Punjab Regn. No. 472 of 2013-14) submitted their respective comments/suggestions and Nabha Power Limited submitted its additional comments/suggestions vide reference no. NPL/LCR/20-21/42 dated 22.05.2020.
5. The matter was taken up for hearing as well as public hearing on 01.06.2020 and during hearing Cycle Trade Union (Regd.), Ludhiana submitted its

objections/suggestions. After hearing the parties, Order was reserved vide interim order dated 09.06.2020.

## 6. **Objections**

The objections/comments are summarized as follows: -

- (i) The Commission is not bound by the directions given by the State Government under Section 108 of the Electricity Act and the Commission has to independently act upon such directions in accordance with the Electricity Act, Rules & Regulations and the respective agreements with generating companies/ transmission licensees. Further, any directions under Section 108 of the Electricity Act cannot interfere with the tariffs.
- (ii) The Directions issued by the Govt. of Punjab and the Public Notice issued by this Commission include the Renewable Energy Generators within the scope of reduction in the rate of LPS which is completely contrary to the settled position of law and the directions issued by the various departments/ministries of Govt. of India from time to time.
- (iii) None of the Banks in India are currently financing Working Capital at the proposed reduced LPS rate of 6% per annum. Payment of LPS at such reduced rates would leads to an additional Interest cost burden on the developers since it would not be sufficient to cover the Interest on the working capital required to be financed due to delay in payment by the DISCOM. Ministry of New and Renewable Energy (MNRE) in its Office Memorandum dated 1<sup>st</sup>April 2020 has clarified that since DISCOMs have already been given sufficient relief by providing the moratorium and as Renewable Energy (RE) Generating Stations comprise only a minor portion of the total electricity generation in the country, the payment of RE generators needs be done on regular basis as was being done prior to lockdown as per procedure established since 01.08.2019.It was suggested that the Commission should direct DISCOMs to continue processing the payment to Renewable Energy (RE) Generating Stations on regular basis before the due date as was being done prior to lockdown. Reduced interest rate should not be less than 12% per annum.
- iv. Talwandi Sabo Power Limited(TSPL) stated that for the projects whose tariff is determined under Section 63 of the Electricity Act,2003, the rate of LPS applicable to them should continue as per the provisions of the PPA.

- v. Nabha Power Limited (NPL) stated that for the projects whose tariff is determined under Section 63 of Electricity Act,2003,relief on LPS may be claimed by PSPCL in terms of the force majeure provisions of the respective PPAs.

**PSPCL's REPLY**

7. Punjab State Power Corporation Limited(PSPCL) vide Chief Engineer /ARR & TR, Patiala letter No.SPL-2/TR-5/562 dated 30.04.2020 has submitted its reply which is as under: -

- a. The LPS rates are generally fixed on the higher side to discourage the payee from making delayed payment, making it a deterrent provision and not necessarily for income purpose. The present situation is a "Force Majeure event" and the Discoms are under severe financial distress due to Covid-19 and imposition of lockdown. Discoms are experiencing acute cash flow stress owing to falling consumption in most regions (primarily for industrial and commercial consumers) and delayed tariff payment by end consumers. Sale of power to industrial and commercial has gone down to almost NIL due to lockdown & cash collection position is grim. Hence, delay in payment to Generation/Transmission companies is not voluntary in nature but due to reasons beyond the control of PSPCL. Hence, it is not justified to levy any LPS.
- b. The tariffs were quoted by IPPs under PPAs at a particular time when the applicable interest rates were higher than the present interest rate. This would be clear from a comparison of RBI repo rates, which in 2007, was 7.75 % and presently stands at 4.40 %. The reduction in repo rates is most likely to have a downward impact on the lending rates. It can be safely presumed that the prevailing rates in 2007, were considered to calculate the working capital cost of debt for two months and included in tariff itself. As the PPAs are entered into for terms of twenty-five (25) years and such tariffs are fixed in nature, the working capital loan rates considered during computing the tariffs have not

been revised/reduced according to present loan rates. This allows the generators to enjoy the benefits of assumption of higher interest rates based on historical working capital loan rates. For example, if the rate of interest on loan at the time of determining tariff in Financial Year (“FY”) 2012-13 was 13.5% p.a. against the present rate of interest @ 9% p.a., the generators are receiving the working capital interest cost equivalent to 3 months working capital cost for debt instead of 2 months as allowed in terms of the applicable regulations. However, the generators are not passing on this benefit of lower interest rates on working capital loans to the Discoms

- c. Currently, payment of any LPS by the Discoms is not being allowed by the Commission while determination of the tariff considering that the normative working capital is already allowed to PSPCL while determining the tariff. However, despite the financial shortfall due to Covid-19, PSPCL being an “essential service provider” is required to make payment towards maintenance of distribution network, repairs, salaries to the employees, etc. for continued operation of the distribution network and continued supply of electricity to consumers. PSPCL is also required to take many measures to deal with the difficult situation in accordance with the directions of the state government. In this regard, it was highlighted that on the basis of the directions given by the Govt. of Punjab, PSPCL vide commercial circular number 16/2020 dated 09.04.2020, has announced exemption in fixed charges for electricity consumers, along with deferment of deadline for payment of bills, while instructing the Power department to provide uninterrupted 24x7 supply to all consumers especially, Health Care Institutions
- d. PSPCL has released the payment towards invoices generated by most of the small power generators/RE Generators. The payments have been made in entirety or at least Rs.50 lakh whichever is higher for the month of February 2020. Despite insufficiency of funds, PSPCL has made these payments in the first fortnight of April-2020 with a delay of

just 7-10 days considering the possible hardship faced by the small generators such as loan repayment and salary payments to their employees.

- e. Further in consultation with Govt. of Punjab, PSPCL has undertaken various relief measures for its consumers in view of the ongoing pandemic which are detailed as under::

i. Due to extension in curfew/lockdown up to 3rd May, 2020, due date of electricity bills of Domestic & Commercial consumers with current monthly/bimonthly bills up to Rs 10,000 and all industrial consumers i.e. Small Power (SP), Medium Supply (MS) and Large Supply (LS) payable from 20th March, 2020 to 9th May 2020 has been extended up to 10th May, 2020 without levy of late payment surcharge. Further, 1% rebate is allowed to all the Domestic, Commercial, SP, MS and LS industrial consumers on the amount deposited by them through online digital modes, between 21.4.2020 and 30.4.2020 against the current bills (with due date up to 10-5- 2020) and/or previous arrears (if any).

ii. PSPCL has also appealed to its consumers of all categories to make advance payment towards their estimated electricity bills up to March 2021 to the extent they can through digital modes and earn interest @ 1% per month on advance payment as per supply code provisions.

**COMMISSION'S ANALYSIS& DECISION:**

8. i. As per the directions issued by Govt. of Punjab on 30.3.2020 under Section 108 of the Act, the Commission is required to specify a reduced rate of LPS where payment to generating company (including Renewable energy companies such as solar, wind, Biomass, small hydro and Co-gen) or Transmission licensees is delayed beyond a period of 60 days from the date of presentation of the bill during the period from 24th March 2020 to 30th June 2020 by treating the restrictions placed by the Ministry of Home Affairs, Government of India vide order dated 24.03.2020 to contain COVID-19, as an event of force majeure.



The Commission refers to Section 108 of the Electricity Act., which provides as follows:

**Section 108 (Directions by State Government):**

*(1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.*

*(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.*

Accordingly, in its interim order dated 07.04.2020 the Commission had observed that in the given situation, a reduced rate needs to be adopted in place of the penal rate of LPS specified under Regulation 31 of the Tariff Regulations 2014 and 2019, for delayed payments falling due beyond the period of 60 days, during the period from 24.03.2020 to 30.06.2020. The relevant extract of the said order is as under:

*“Accordingly, the Commission in exercise of its powers under Regulation 67 and 64 of the PSERC Tariff Regulations 2014 and 2019 respectively, relaxes the provisions of Regulations 31 of Tariff Regulations 2014 and 2019 and decided provisionally reduce the rate of late payment surcharge to 6% per annum for such payments which become delayed beyond the due date during the period from 24.03.2020 till 30.06.2020, payable by PSPCL to the generating companies and PSTCL. It was also clarified that if the period of 60 days beyond the due date of the presentation of the bill by the generating companies or PSTCL, falls before 24.03.2020 or after 30.06.2020, PSPCL shall be liable to pay the LPS as per applicable Regulation 31 of the PSERC Tariff Regulations 2014 and 2019.*

*For generating companies whose tariff has been adopted by the Commission under Section 63 of the Act, PSPCL may claim the relief from its obligations regarding the rate at which LPS is to be paid for payments which become delayed beyond the stipulated period during the period from 24.03.2020 to 30.06.2020, as per the force majeure provisions given in the respective power purchase agreements.”*

- ii. The tariff of some of the generating companies and Punjab State Transmission Corporation (PSTCL) is determined by the Commission under

Section 62 of the Act. As per the Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Generation, Transmission, Wheeling and Retail Supply Tariff) Regulations, 2014, as amended from time to time and Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Generation, Transmission, Wheeling and Retail Supply Tariff) Regulations, 2019 (hereinafter "PSERC Tariff Regulations 2014 and 2019 respectively"), provision for payment of late payment surcharge is as follows:

***"Regulation 31 of the PSERC Tariff Regulations, 2014 and 2019***

***31. BILLING AND PAYMENT OF CHARGES AND LATE PAYMENT SURCHARGE***

***31.1. All bills for capacity charges, energy charges, transmission charges and other charges shall be raised on monthly basis and payments shall be made by the beneficiaries on monthly basis.***

***31.2 In case, the payment of any bill for charges payable under these Regulations is delayed by a beneficiary beyond a period of **60 days** from the date of billing, a late payment surcharge at the rate of **1.25% per month** or part thereof on the unpaid amount shall be levied by the Generating Company or Transmission Licensee, as the case maybe."***

9. The Commission observes that the Reserve Bank of India vide circular no RBI/2019-20/186DOR.No.BP.BC.47/21.04.048/2019-20 dated 27<sup>th</sup> March,2020 has permitted lending institutions and banks to grant a moratorium of three months on repayment in respect of all term loans and has clarified that interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period. Similarly, in respect of working capital facilities,the Reserve Bank of India has permitted lending in stitutions and banks to defer the recovery of interest on such facilities, but has clarified that accumulated accrued interest shall be payable after the deferment period from 01.03.2020 up to 31.05.2020.
10. The Commission acknowledges the gravity and unprecedented nature of the situation. Payments received in the month of March 2020 account for a large share

of the annual revenue of PSPCL. The low receipt of payments due to non-payment or delayed payment by consumers would have adversely affected the cash flows of PSPCL. Accordingly, the Commission appreciates the concern of the Government of Punjab and holds that this is a matter of public interest. The directions issued by the Government of Punjab under section-108 of the Act are to address the difficulties faced by the distribution company in making payments to the generator and Punjab State Transmission Corporation, on account of the unprecedented situation arising out of the restrictions placed by the Central Government and State Governments on the movement of public and opening of offices and establishments etc. have duly been taken into consideration. Thus, in the existing situation some relief deserves to be given to PSPCL in the matter of rate of late payment surcharge applicable for any delay in its payments to the generators and transmission licensee (PSTCL) during the specified period.

11. It would be pertinent to mention in this context that the directions under section 108 stipulate the requirement to reduce the rate of LPS and that the LPS should not be more than the cost that the generating companies or transmission licensee would have to bear subject to maximum of 6% because of the delayed payment.
12. Regulation 67 and 64 of PSERC MYT Regulations 2014 and 2019 respectively which is extracted below empowers the Commission to relax any provision of the Regulations as under:

**“ POWER OF RELAXATION**

*The Commission may in public interest and for reasons to be recorded in writing, relax any of the provision of these Regulations.”*

13. Accordingly, in exercise of its powers under Regulation 67 and 64 of the PSERC Tariff Regulations 2014 and 2019 respectively, the Commission relaxes the provisions of Regulation 31 of Tariff Regulations, 2014 and 2019. to reduce the Late Payment Surcharge rate. It is noted that the cost of working capital has been related to SBI Advance Rate/MCLR in the MYT Tariff Regulations. The State Bank of India Marginal Cost of Funds based lending rate (MCLR) applicable for three months as on 10.04.2020, 10.05.2020 and 10.06.2020 has been @ 7.15%, 7.00% and 6.75%

respectively. The Commission, therefore, decides to take the average MCLR of these three months of 7% for the purpose of calculating the rate of LPS. Since loans are available to the Power Utilities at lower rates because of the COVID Pandemic, it would be reasonable to take 200 basis points above the average MCLR of 7%. Therefore, the applicable rate of LPS would be MCLR 7% plus 200 basis points i.e 0.75% per month.

14. The reduced rate of LPS as decided above shall be applicable for the payments which become delayed beyond the due date during the period from 24.03.2020 to 30.06.2020. The reduced LPS shall be applicable for such delayed payments till 30<sup>th</sup> June, 2020.
15. For generating companies whose tariff has been adopted by the Commission under Section 63 of the Act, PSPCL is free to claim the relief in respect of the rate at which LPS is to be paid for payments which become delayed beyond the stipulated period during the period from 24.03.2020 to 30.06.2020, as per the Force Majeure provisions given in the respective power purchase agreements.

The Petition is disposed of accordingly.

Sd/-  
**(Anjali Chandra)**  
**Member**

Sd/-  
**(S.S. Sarna)**  
**Member**

Sd/-  
**(Kusumjit Sidhu)**  
**Chairperson**

Chandigarh  
Dated: 10.07.2020