

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No. 21 of 2013
Date of hearing: 03.09.2013
Date of Order: 11.09.2013**

In the matter of : Petition regarding Late Payment Surcharge on electricity bills – Amendment to existing Clause 22.2 of General Conditions of Tariff.

AND

In the matter of: Indus Towers Ltd., 3rd Floor, DLF IT Park, Chandigarh-160101 (Punjab) through Shri Nikhil Kapoor, Energy Controller

Present: Smt.Romila Dubey, Chairperson
Shri Virinder Singh, Member
Shri Gurinder Jit Singh, Member

For petitioner: Shri Sanchit Makhija, Consultant

For PSPCL: Shri J.S.Multani, Dy.C.E./Billing
Shri Sanjeev Gupta, S.E./TR-2
Shri Paramjit Singh, Sr.XEN/Computer Billing,Chandigarh

ORDER

This petition has been filed by Indus Towers, DLF IT Park, Chandigarh, for seeking amendment to existing clause 22 of General Conditions of Tariff, relating to late payment surcharge of electricity bills. The petitioner has submitted that it operates approximately 5250 telecom towers in the State, making the petitioner company a high value consumer for PSPCL. It provides around `12 crore per month of revenue to PSPCL. The connected load of telecom towers varies from 5 kW to 25 kW per site, with more than 85% towers having connected load less than or equal to 20 kW. The petitioner has further

submitted that PSPCL charges more than `25 lac per month as surcharge for non-payment of electricity bills from the petitioner. For a consumer having load less than 100 kW, the amount of surcharge is 10% of the total bill amount for delay of even a single day in payment. The petitioner has reproduced in the petition the governing regulations for late payment surcharge.

The petitioner has further submitted that PSPCL charges surcharge @ 10% per month on total amount of the bill upto one year, in case the bills are not paid within due date, and this amounts to roughly 120% every year on total amount of bills due from consumers. The petitioner has mentioned the following reasons due to which the delayed payments have increased in amounts and numbers, despite taking various measures for prevention of delayed payments by the petitioner.

1. PSPCL generates bills as per the predefined billing cycle for each sub-division under PSPCL. As per their initiative, they have collated data w.r.t. sub division, billing cycle, due date etc. for monitoring of billing date and accordingly prompt payment of bills. However, it has been observed that billing cycles of each sub divisions are not clearly followed, and this results in wastage of time and manpower, culminating in delayed payments to the utility.
2. In sub divisions where spot billing is being followed (around 50-60% in the state), the date and time of visit of PSPCL employee for meter reading is not previously known, resulting in delayed receipt of bills. Furthermore, sub divisions where spot billing is being practiced, it keeps on changing on monthly basis without any prior intimation to the consumers making any follow up on bills extremely hard.
3. Petitioner has been availing online payment facility of PSPCL since past 2 years, and are one of the prime-users of online facility of PSPCL. However, it has been observed that in many cases, when the physical bills are available on time, the same are not available online for payment. As a result, despite collecting the bills timely, they are unable to make payment before due date and end up incurring surcharge. In this case, the petitioner decides to pay by demand draft

which takes more time for processing and hence leads to delayed payments.

As per PSPCL operation manual, spot bills are to be made available on the 5th day of bill generation and all other bills on the same day of bill generation for online payment by customers. But the same is not being implemented on ground with more than 15-20% of bills getting delayed in uploading on bill payment portal of PSPCL. Petitioner has to personally follow up several times with the concerned engineer for making bills available online to avoid surcharge.

4. In several cases, even after successful payment of last month's bill online, the amount gets reflected in next month's bill as arrears. In such cases though if appearing online but due to lack of part payment facility being unavailable online, payment needs to be done with DD without arrear amount resulting in more delays in payments.
5. Different sub-divisions of PSPCL require different bank cheques/DDs and no single defined bank facility is available which also results into delayed payment since processing cheques/DDs from different banks takes a lot of time.

The petitioner has illustrated its points through the data collected from its internal operations in which the petitioner has mentioned that it is getting less than 6 days for payments and consequently the average delay in payment of bills is only around 8 days in the last one year and the petitioner has paid a penalty of more than `40 lacs in January, 2013 and total penalty of `3 crore in the past year. The petitioner has also mentioned two reasons for charging the late payment surcharge from consumers. One of the reasons is to enforce timely payment of electricity bills by consumers and secondly to fund working capital requirements of the utility in case of payments getting delayed by the consumers.

The petitioner has further submitted that in order to provide an incentive to consumers to pay electricity dues on time, the distribution utilities have the power to enforce late payment surcharge as a percentage of unpaid dues from consumers. This amount also provides the much needed liquidity to utilities for maintaining working capital requirements. But the penalty should not

be used as a source of income for the utility. Late payment penalties should not be designed in any manner that state utility i.e. PSPCL uses the regulations for charging exorbitant surcharge from the consumers. The penalties are only to enforce the payment of bills on time from consumers and not for any additional revenue generation.

Comparison of prevalent rates of late payment surcharge in various States has been made by the petitioner as reproduced below:

Year	State	Rate (%)	Duration
FY 2012-13	Haryana	1.50	Per month on each billing cycle
FY 2012-13	Rajasthan	1.25	Per month when bill is delayed by 1.5 month
FY 2012-13	Delhi	1.25	Per month after 45 days
FY 2012-13	Gujarat	1.25	Per month after 15 days
FY 2012-13	UP	1.25	Per month for 3 months
FY 2012-13	MP	1.50	Per month after 60 days
FY 2012-13	Punjab	10	per month on amount for one year after 15 days
FY 2012-13	AP	1.50	per month after 30 days
FY 2012-13	Kerala	1.00	per month after 30 days
FY 2012-13	Karnataka	1.25	per month after 30 days
FY 2012-13	TN	1.50	per month after 30 days
FY 2012-13	WB	1.25	per month after 60 days
FY 2012-13	Maharashtra	1.50	per month after 15 days

The petitioner has submitted that Punjab has the highest late payment surcharge of 10% per month in the Country. It has further been stated by the petitioner that PSPCL has been charging an exorbitant amount of late payment surcharge from all its consumers. Also, the high penalty provisions have been incentivizing the utility to provide delayed bills to its consumers and in the process claim higher amount of penalty. The petitioner has illustrated the cross state comparison of income from late payment surcharge as compared to revenue from sale of power to illustrate its point and has mentioned that Punjab has the highest income from late payment surcharge of almost 1% of revenue from sale of power. PSPCL derives 15% more income from late payment surcharge per unit of revenue generated from sale of power as compared to the states like Haryana, Rajasthan, Gujarat, Delhi etc. When compared with AP, TN, Maharashtra, Kerala, Punjab, utility derives almost 30% more income from the late payment surcharge per unit of revenue earned from sale of power.

According to petitioner, these regulations have been incentivizing PSPCL in delaying the bill generation and delivery to its consumers and in the process collecting late payment penalties from its consumers.

The second reason for late payment surcharge as mentioned by the petitioner is to fund working capital requirement of the utility in case of payments getting delayed by consumers i.e. to compensate the utility for raising alternate funds through internal accruals or external borrowings in short term, and the petitioner has referred to the judgement of Hon'ble APTEL dated 21.7.2006 in this context which reads as under:-

"Late payment surcharge is levied on consumers who do not make timely payment of their electricity bills. Due to the delay in making the payments, there is a shortfall in cash flow available with the distribution company to incur its expenses. In such a situation, to meet such shortfall in cash flow, the Appellant being a distribution company is constrained to meet the expenses either through internal accruals or borrowings. The State Commission having felt that the delay in payment by the consumers beyond the normal period entails the additional cost which needs to be allowed since the late payment surcharge levied which compensates for such a delayed payment is treated as non-tariff income.

.....According to the Appellant, the interest rate which was fixed as 9% is not under the prevalent prime lending rate. On behalf of the State Commission, it was pointed out that the 9% has been fixed by the State Commissions only on the strength of the judgement of the Tribunal dated 21.7.2006 reported in 2007 ELR (APTEL) 1370. It is true that the Tribunal in that case fixed the interest rate as 9%. In that case, the tariff order was passed by the Commission on 09.06.2004. At that time, the prevailing lending rate was around 9%, which was much lower as compared to that prevailing rate during the year 2007-08. Therefore, the said decision would not apply to the present case. While fixing the interest rate, the State Commission should have considered the prevalent SBI prime lending rate. Even in the said judgement, the Tribunal has laid down the principle that the rate of carrying cost must be derived from prevalent prime lending rates".

As per the petitioner, the Hon'ble Tribunal has raised the point of calculations of late payment surcharges. The Tribunal specified that additional

cost incurred by the utility is the cost to be charged from consumers in cases of late payment surcharges. Also the rates of charging such amounts have to be commensurate with prevailing rates of short term lending available in the market.

The petitioner has further elaborated that on the same lines, from an analysis of tariff petition submitted by PSPCL for determination of tariff for the year FY 2013-14, it is evident that short term working capital loans for the utility are available in the market @ of 10.45-13% per year. This works out to be around 0.85%-1.25% per month. But the current charging rate from consumers by PSPCL for each month of delay in payment of bill is 10% per month. This means that the utility is charging 120% interest from consumers on money that it raises by way of short term loans @ of 10.45%-13% per year. This amounts to charging 10 times higher rate than the current market rate.

The petitioner has made the prayer to the Commission that:-

- (i) Clause 22 of General Conditions of Tariff dealing in late payment surcharge for consumers should be modified to benchmark the late payment penalty with various other states.
- (ii) The amount of late payment penalty should be commensurate with the cost involved in raising the short term loan as part of working capital requirements for the utility.
- (iii) The late payment surcharge norms should not incentivize the utility to consider the penalties as a source of earning extra revenue from its consumers.

The petitioner was intimated vide letter dated 11.04.2013 that this petition shall be taken up for admission on 16.04.2013 but nobody appeared on behalf of the petitioner on 16.04.2013. Next date of hearing for admission of the petition was fixed on 07.05.2013 by the Commission.

After hearing the petitioner briefly, the petition was admitted by the Commission on 07.05.2013. PSPCL was directed to file the reply by 04.06.2013 with copy to the petitioner and the petitioner was directed to file the particular instances when the bills were issued/received by the petitioner after the date by which these were required to be paid and had to bear surcharge on that account. The petitioner was further directed to file the detail of surcharge being

levied on the consumers by other State Electricity Regulatory Commissions on account of making payment of electricity bills after the due date. The petitioner was directed to file this information by 04.06.2013.

PSPCL vide its letter dated 03.06.2013 has filed the reply to the issues raised in the petition.

PSPCL has submitted that as per Sr. No.22.1 and 22.2 of General Conditions of Tariff and Schedule of Tariff, consumers having load of 100 kW and above, who do not pay the bill upto the due date, a surcharge of 5% upto 7 days is levied on such consumers, and after 7 days of non payment, a surcharge of 10% is levied upto one year, after which PDCO is effected. In the case of consumers having connected load less than 100 kW, the surcharge is leviable @ 10% on total amount of the bill, if the bill, is not paid upto the due date, but this surcharge is not levied on monthly recurring basis as stated by the petitioner in the petition. The petitioner has misled the Commission by stating that 120% surcharge is levied on total amount of bill every year.

PSPCL has submitted that it generates the bills as per the billing schedule for each sub division, which are exactly followed. No case of delay has been encountered so far on account of deviation in the schedule. Hence, there is no wastage of time and manpower, culminating in delayed payments to the utility.

PSPCL has further submitted that in sub divisions, where spot billing is carried out, the bills are being delivered at site by the meter reader from 9.00 AM to 5.00 PM. Meter reader has been given 15 days meter reading/bill generation schedule for each group. Meter reader goes to the site for meter reading as per the route map and group/cycle within the period of reading schedule. Particular dates for specific meters are not fixed for recording consumption during the schedule period. As such, it is not possible that a meter reader will exactly go to the site according to the previous meter reading date and the reading date may change as the meter reader is to record readings in between the period of 56 days to 64 days from the previous reading.

PSPCL has attached with its reply, the details of the bills paid on line through e-payment from December, 2012 to April , 2013, which showed that 7229 bills were paid online. The bill availability during the period December

2012 to April 2013 showed that 12182 bills were made available for payment in respect of Indus Tower. The details of the daily outstanding bills pending for payment are being delivered to Indus Tower. PSPCL has submitted that this has also been confirmed by its vendor through email dated 19th April, 2013. Further, Indus Tower also gave appreciation note to PSPCL's vendor, Pragyaware Informatics Private Limited, Ludhiana, for improvement in PSPCL website and easy access to PSPCL site, receipt generation, information of outstanding bills etc. as per email dated 18th January, 2013.

PSPCL has submitted that in no case the amount gets reflected back in next month's arrear, if the consumer has paid the bills online or through any other mode of payment. Error, if any, is being rectified instantly on notice.

PSPCL has further submitted that different cheques/DD are required at different sub division levels as the accounting level is maintained at the DS divisions for proper reconciliation of accounts.

PSPCL has mentioned in its reply that the main reason of non receipt of bills by the petitioner is that it has withdrawn its manpower from the tower sites as a measure to reduce its operational cost. In spite of the fact that persons of the petitioner are not available at site to receive bills, the petitioner is cooperated by sending the bills through email by PSPCL vendor, Pargyaware Informatics Private Limited, Ludhiana. In view of clause 30.10 of Supply Code, the petitioner is supplied with a copy of the bill whenever it approaches the field offices.

PSPCL has submitted that late payment surcharge is a yardstick for timely bill payment by consumers that helps easy cash flow of the utility. The rates of surcharge are reasonable and are levied with the approval of the Commission.

PSPCL has denied the contention of the petitioner that late payment surcharge is applied to enhance the working capital of the utility. Late payment surcharge is applicable only on those consumers who make bill payment after due date as per Sr.No.22.1 and 22.2 of General Conditions of Tariff & Schedule of Tariff approved by the Commission.

PSPCL has prayed to the Commission that:

- (i) The late payment surcharge should be levied as per approved "General Conditions of Tariff & Schedule of Tariff".

- (ii) The amount of late payment surcharge should not commensurate with the cost involved in raising the short term loan only, because other factors such as interest on long term loans & repayment of long term loans on capital assets, are also involved to operate the Electricity System in healthy condition.
- (iii) The norms of late payment surcharge does not, in any way, incentivize the utility to consider the penalties as a source of earning extra revenue from its consumers but late payment surcharge is essential for healthy operations of the utility, as also agreed by the petitioner.

PSPCL has further prayed to the Commission that the late payment surcharge levied on the consumers is an essential yardstick for timely recovery of electricity charges and the petition may be dismissed on the foregoing merits, in view of the submissions.

The petitioner filed the rejoinder to the reply of PSPCL during the hearing on 11.06.2013. The petitioner has submitted in its rejoinder that the reply of PSPCL regarding rationalization of late payment surcharge imposed on all consumers is irrelevant to the main point of the case and the reply of PSPCL is not synchronizing with the issues involved in the present case.

The petitioner has submitted in its rejoinder that as per data provided by the utility, the petitioner has been able to pay only 59% of available bills to PSPCL in the past 5 months and has tabulated data based upon PSPCL data and has emphasized the point that the real reason behind non payment of online bills is late uploading of bills on PSPCL portal and recurring arrear based bills. The petitioner has further attached some sample copies to show the extent of problem in the State. The petitioner has attached sample bills to illustrate the point that submissions of the utility are factually wrong and has reiterated that points picked up by PSPCL are irrelevant in the petitioner's case.

The petitioner in its rejoinder has further submitted that it appreciates PSPCL's point that late payment penalty is essential for encouraging compliance of bill payment of the utility, but the terms and conditions of the policy should be clear in its objectives. The petitioner has further submitted that Punjab has the highest surcharge @ 10% for even a single day of delay

upto one year. The petitioner has submitted that on one hand, PSPCL has shown that late payment penalties are not a source of revenue for the company and on the other hand the utility is seeking to fulfil its long term commitments on loans and interest payments via revenues from operational losses on late payment of bills. The petitioner has reproduced the judgement dated 21.07.2006 reported in 2007 ELR (APTEL) 1370 of APTEL and has stated that as per said judgement of the Tribunal, the additional cost incurred by the utility is the cost to be charged from consumers in case of late payment surcharges. Also the rates of charging such amounts have to be commensurate with prevailing rates of short term lending available in the market.

The petitioner has further mentioned that as per the tariff petition submitted by PSPCL for FY 2013-14, short term working capital loans for the utility are available in the market @ 10.45% to 13% per year which works out to be around 0.85% to 1.25% per month but the late payment surcharge levied by PSPCL is 10% per month which shows that utility is charging higher interest from consumers on money that it raises by way of short term loans per year. The petitioner has stressed his point by way of current operating structure promoting late payment surcharges in its rejoinder.

The petitioner has added one more prayer in addition to the prayer in the original petition that the penalty charged to the consumers should be based on the quantum of delay that has occurred in the bill payment.

The Commission heard both the parties at length on 11.06.2013. After hearing of the petitioner and PSPCL, the Commission directed the petitioner to submit the details/particulars of 3720 number bills shown as late bills on the PSPCL portal during the months of December 2012 to April 2013 in the table on page 6 of the affidavit filed by the petitioner and directed the petitioner to file the information by 25.06.2013 with copy to PSPCL and fixed further hearing for 16.07.2013.

The petitioner has filed the details of 3720 number bills shown as late bills on PSPCL portal during the months of December, 2012 to April 2013 and has mentioned that almost 19% of the bills are not appearing on PSPCL's online billing portal, 7% of the total bills paid have been received late and 6% of the bills have previously paid arrears added to the new bills. In all, 32% of

the bills are incorrect. This number being almost one third of the total bills caused difficulties in the payments of the bills on time.

PSPCL vide its letter dated 11.07.2013 has filed reply in continuation to its earlier reply submitted vide its letter dated 03.06.2013. In its reply dated 11.07.2013, PSPCL has submitted that late payment surcharge is a deterrent for timely payment of bills by consumers, as such there is no need to make change in the late payment surcharge on all the consumers. Relaxation of the late payment surcharge will lead to increase in delay of bill payments. The only motive of the petitioner behind the amendment is to save its manpower expenditure.

PSPCL has further mentioned in its reply that as per the details earlier submitted by PSPCL regarding the payment of 7229 bills online by Indus Towers, 373 bills were paid after due date even when the billing data was made available online and the same was confirmed by its outsourced agency through its email dated 01.07.2013. PSPCL denied the contention of the petitioner that 1233 wrong arrear bills were issued to it. The bills were provided in bulk on e-payment portal at the request of the petitioner which is an additional facility of bill payment and has further mentioned that in reality, physical bills are also delivered to the petitioner at its sites against which the petitioner can make the payment in time. As such, the petitioner cannot derive the benefit of non availability of bills on e-payment portal. Further, no complaint in this regard was received by the office of Dy. CE/Billing. PSPCL has further submitted that e-payment portal is being re-strengthened to speed up uploading of bills.

PSPCL in its reply to the rejoinder has further submitted that the late payment surcharge levied in Punjab, is correct and viable in view of field circumstances and response of consumers and these factors vary from region to region.

PSPCL has also submitted that the potential of e-transactions have increased by four times the potential attained in previous year which clearly shows the picture of bill availability on e-payment server.

Further, the outsourced firm, Pragyaware Informatics has been instructed to send an auto-software control message and emails to concerned Dy. Chief Engineer/SE/DS for continuous monitoring of uploading of the billing

data by ASE/Sr. Xen/DS and AE/AEE concerned in order to further increase the potential of e-payment server. Thus, there is no biased approach to Indus Tower, as also the physical bills are being delivered in time by PSPCL.

Further, PSPCL has annexed Order of the Commission dated 13.05.2011 vide which petition no. 22 of 2011 in the matter of amendments to existing clause 22 of General Conditions of Tariff was dismissed on the same grounds, and has prayed that there is no need for any amendment/relaxation in regulations. The petition is liable to be dismissed.

The Commission observed during hearing of the petition on 16.07.2013 that the petitioner has not supplied a copy of details of late appearing, non appearing and incorrect bills on PSPCL portal, for the months of December 2012 and January to May 2013 in respect of the petitioner, to PSPCL. A copy of the same was given to PSPCL by the registry of the Commission. After hearing, Commission directed PSPCL to file its response to the information/data supplied by the petitioner by 20.08.2013 with a copy to the petitioner. The Commission further directed that the petitioner may file rejoinder to the response and reply dated 11.07.2013 of PSPCL.

PSPCL vide its letter dated 22.08.2013 has filed the reply in compliance with Order of the Commission dated 17.07.2013 and has submitted that no amount has been charged in the bills on account of wrong arrears. The amount shown as arrears is due to the part payment made by Indus Tower in some cases and in some other cases, the arrears have been charged because of non-payment of the bills by Indus Towers. It has also been mentioned that the bills were delivered at the Tower sites as per the schedule but due to non-availability of the manpower at site, the petitioner was unable to collect the bills and make payment of bills in time, for which the PSPCL has made the duplicate bills at sub-division level. Thus, the arrear is reflected in the bills due to non-payment of bill in time by the petitioner. Also in some bills, the arrear was on account of charging of FCA. PSPCL has also denied that undue amount i.e. wrong arrear bills were issued to Indus Towers. Therefore, the contention of the petitioner that 1233 wrong arrear bills were issued, was not acceptable.

The Commission has gone through the entire gamut of submissions made by the petitioner and the utility. After carefully considering the same, the Commission decides as under:-

- (i) PSPCL is directed to submit a proposal to the Commission regarding levy of late payment surcharge for non payment of bills in time by the different categories of consumers, within one month of this Order. While framing the proposal, PSPCL will keep in view the rates of late payment surcharge being levied across various States in India, as brought out by the petitioner in its petition and submissions.
- (ii) PSPCL shall provide to the petitioner the names and address of its offices from where the petitioner can collect its bills. The dates and time for collecting the energy bills may also be intimated to the petitioner.
- (iii) PSPCL will take necessary steps to improve the e-billing system and ensure that the electricity bills appear on its portal immediately after these are finalized/issued by the outsourced agency/PSPCL.

The petition is disposed of accordingly.

Sd/-
(Gurinder Jit Singh)
Member

Sd/-
(Virinder Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 11.09.2013