

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

**Petition No.65 of 2011
(on remand by APTEL
vide Judgment dated
01.08.2014 in Appeal
No.38 of 2013)
Date of Order: 17.09.2014**

In the matter of: Petition for waiver of cross subsidy surcharge on power purchase under Open Access in case of mandatory power cut imposed by the Board (under Section 46 of the PSERC Open Access Regulations)

AND

In the matter of: Shri Harinder Puri, Secretary, Steel Furnace Association of India (Punjab Chapter) C/o Upper India Steel Mfg. & Engg. Co. Ltd., Dhandari Industrial Focal Point, Ludhiana.

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

ORDER

Steel Furnace Association of India filed a petition (No. 65 of 2011) before the Commission praying for the direction that cross subsidy surcharge should not be levied by the distribution licensee, Punjab State Power Corporation Limited (PSPCL), on the petitioner when the petitioner purchased power under open access from outside when PSPCL was not able to supply power to the petitioner due to the power cuts imposed by PSPCL. The Commission vide its Order dated 08.08.2012 rejected the prayer of Steel Furnace Association of India holding that the petitioner is liable to pay cross subsidy surcharge when

the petitioner buys power under open access during the period when the power is not supplied by PSPCL due to power cuts.

Steel Furnace Association of India filed an appeal (Appeal No. 38 of 2013) before the Hon'ble Appellate Tribunal for Electricity against the Order of the Commission dated 08.08.2012. The Hon'ble Appellate Tribunal for Electricity vide its Judgment dated 01.08.2014 has allowed the Appeal filed by Steel Furnace Association of India and has set aside the Order of the Commission dated 08.08.2012. In the operative part of the judgement in para 44 '**Summary of our findings**', the Hon'ble Appellate Tribunal for Electricity has observed as under:

- "i) This Tribunal in a number of judgements has held that cross subsidy surcharge is a compensatory charge and the logic behind the provision for cross subsidy is that but for the open access, the consumer would have taken electric supply from the Distribution Licensee and in the result the consumer would have paid tariff applicable for such supply which would include an element of cross subsidy for certain other categories of consumers, which are subsidized.*
- ii) Hon'ble Supreme Court in the matter of Sesa Sterlite Ltd. has held that Cross Subsidy Surcharge ("CSS") is payable by the consumer when it decides not to take supply from the Distribution Licensee but takes from other sources. CSS is a compensation to the Distribution Licensee in view of the fact that but for the Open Access the consumer would pay tariff applicable for supply which would include an element of cross subsidy. Such cross subsidy surcharge has to be paid as determined by the State Commission even if the line of the Distribution Licensee is not used by the open access consumer.*
- iii) In the present case the members of the Appellant Association have not opted for open access voluntarily but have been forced to procure power through open access from the short term market as a result of failure of the Distribution Licensee to meet its obligation to supply and due to imposition of restriction/power cuts on them. When the Distribution*

Licensee has failed to procure adequate power to meet its obligation and the consumers have been forced to procure power on their own through open access there cannot be the question of any loss to the Distribution Licensee and levy of cross subsidy surcharge for the same.

- (iv) *If the consumers do not procure power from the market through open access under conditions of power cuts and shut down their plants, no energy will be consumed by them and no charges will be collected by the Distribution Licensee for the period of power cut and hence no cross subsidy would be available from the charges of such subsidising consumers to the subsidized consumers. Therefore, if during the period of power restriction/power cuts, the consumer procures power from the market to continue its production instead of closing it down, no financial loss will be caused to the Distribution Licensee. Hence no compensation in the form of cross subsidy surcharge is leviable.*
- (v) *When the members of the Appellant are able to procure power form short term market it indicates a situation where the power is available in the market for meeting the demand of these consumers. The same power could have been procured by the Distribution Licensee from the short term market to meet its obligation to supply to the consumers and avoiding imposition of power restriction/power cuts on them. If the consumers who have procured power in open access from short term market are asked to pay cross subsidy surcharge on such drawal of power to the Distribution Licensee, it would result in rewarding Distribution Licensee for failure to meet its obligation to supply power to its consumers and penalizing consumers for no fault of theirs. In other words it will be beneficial for the Distribution Licensee to impose power cuts on the consumers and recover the Cross Subsidy charge without carrying its duty assigned under Electricity Act to meet the full demand of the consumers by making arrangements to procure adequate power.*

- (vi) *Imposition of cross subsidy surcharge when the consumers have been forced to procure power through open access due to power restrictions/cuts imposed by the Distribution Licensee is in contravention to objectives and the provisions of the Act, National Electricity Policy and Tariff Policy and the dictum laid down by this Tribunal and Hon'ble Supreme Court which provides that the Cross Subsidy Surcharge is a compensatory charge. It strikes at the basic objective of the Electricity Act to encourage open access to promote competition.*
- (vii) *Accordingly, we direct the State Commission to pass consequential orders that no cross subsidy charge would be levied on power available with consumers through open access to the extent of restrictions/power cuts imposed by the Distribution Licensee. This finding given in this judgement has to be construed as judgement in rem and this will be applicable to all open access consumers."*

The Hon'ble Appellate Tribunal for Electricity has directed the Commission to pass consequential orders to the effect that no cross subsidy charge would be levied on power available with consumers through open access to the extent of restrictions/power cuts imposed by the distribution licensee, which would be applicable to all open access consumers.

In view of the directions issued by the Hon'ble Appellate Tribunal for Electricity vide its Order dated 01.08.2014, a Staff Paper was prepared proposing an amendment for adding a proviso to clause 26(1) in the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011 namely :

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

Accordingly, a public notice was issued in various newspapers on 14.08.2014 for inviting comments/suggestions on the staff paper from general public and stakeholders by 05.09.2014. The public notice and staff paper were also uploaded on the Commission's website. A corrigendum to the public notice was also issued in various news papers on 15.08.2014 and 17.08.2014. Copies of the public notice, corrigendum and staff paper were sent to the petitioner/applicant Sh. Harinder Puri, Secretary, Steel Furnace Association of India, Ludhiana through registered post on 20.08.2014. Comments/objections from the following 5 No. objectors were received.

1. Shri Dalip Sharma, Director, PHD Chamber of Commerce and Industry, Chandigarh
2. Shri Vishav Nuwal, Director, REConnect Energy Solutions Pvt. Ltd., Gurgaon
3. Shri M.P.S. Rana, General Manager (Materials & HR), Punjab Alkalies & Chemicals Limited, Chandigarh
4. Shruti Bhatia, Vice President (Policy & Communications), Indian Energy Exchange Ltd., New Delhi
5. Chief Engineer/ARR&TR, Punjab State Power Corporation Limited, Patiala.

The main contentions raised in the objections are as under:-

- (i) Sometimes regulatory measures are imposed through advance notification but at the eleventh hour such measures are withdrawn due to availability of power on account of weather conditions such as rain or any other reason. Since the bidding time for purchase of power through Short Term Open Access closes one day in advance by 10.00 AM, as such withdrawal of imposed regulatory measures must be one day in advance and that too by 10:00 AM so that consumer(s) may plan their power purchase through Open Access accordingly.

- (ii) The Peak Load Hour Restrictions to be accounted for levy of Cross-Subsidy surcharge should only be the normal Peak Load Hour restrictions. If the peak load hours restrictions are increased from the normal period of three hours, the period of peak load restrictions above three hours should not be accounted for levy of cross-subsidy surcharge.
- (iii) The notification regarding regulatory measures available on the net does not have any time stamping. Since E-Mail Ids of all the Open Access consumers are available with the distribution licensee, as such, distribution licensee should be asked to intimate all the consumers regarding imposition/withdrawal of regulatory measures through E-Mail.
- (iv) Cross-Subsidy surcharge is an inherent component of the open access charges and has a major impact on a consumer procuring power through open access. The load restrictions in Punjab by the DISCOM i.e. PSPCL, primarily due to shortage of power, have the maximum impact on the large consumers. With no power available to run their plants, the consumers had no option but to go for "Open Access". Since DISCOM had failed to procure power for the consumers in the state, they should not be over-burdened by levying cross-subsidy surcharge. The very intention of levying cross-subsidy surcharge on the open access consumers is making up for the losses on account of agricultural and other category of consumers. However, in case of the DISCOM failing to provide power to the consumers, the consumers are paying the remaining open access charges to the DISCOM, which otherwise would not be there if consumers do not procure power from the open market. Thus, in the present shortage situation, there is nothing that the DISCOM could lose by allowing consumers to procure power to the extent of their shortage. States like Tamil

Nadu and Andhra Pradesh have already set a precedent in this case, where cross-subsidy is not applicable during periods when Restriction & Control (R&C) Measures have been imposed by the DISCOM due to acute shortage of power. This has resulted in large number of consumers opting for open access, thereby promoting competition and benefitting the end consumers.

- (v) The proposed proviso says that peak load hour restrictions imposed by the distribution licensee on the consumer(s) through advance notification shall not be exempted from levy of cross subsidy surcharge. This proviso has been proposed without giving in depth sight to this issue.
- (vi) The amendment is in deviation with the intent of the APTEL judgment which categorically held that at the time of restrictions/power cuts no cross subsidy surcharge should be levied. APTEL has not exempted any kind of restriction/power cuts in the said judgment. Therefore, there should be no exemption for all kind of restriction/power cuts.
- (vii) One of the objectors has proposed that following proviso may be added to Regulation 26(1):

“Provided further that such surcharge shall not be leviable on power available with consumer(s) through open access to the extent of scheduled load shedding including peak load hour restrictions put by the distribution licensee, on the consumer(s) through advance notification.”
- (viii) PSPCL in its comments has agreed with the provisions proposed by PSERC in the staff paper.

PSPCL was directed to file its comments on the objections at Sr.No.1 to 4. PSPCL submitted its comments on the objections vide letter no. 5037 dated 10.09.2014 as under:

- (i) Advance notice is usually given for imposition/withdrawal of peak load restrictions.
- (ii) Regulatory measures are imposed vide advance notification by uploading the circular on website of PSPCL.
- (iii) Peak Load restrictions are imposed due to system constraints. They are imposed for a fixed duration and are not considered as emergent regulatory measures.

Keeping in view the objections raised by objectors and comments of PSPCL on these objections, the Commission observes and decides as under:

In compliance to the directions of Hon'ble Appellate Tribunal for Electricity in Judgment dated 01.08.2014, the amendment in the Punjab State Electricity Regulatory Commission (Terms & Conditions for Intra-state Open Access) Regulations 2011, by adding a proviso to Regulation 26(1) as proposed in the staff paper namely

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

is in order. The amendment in the Punjab State Electricity Regulatory Commission (Terms & Conditions for Intra-state Open Access) Regulations, 2011 is accordingly approved by the Commission. The

Notification for amendment in Regulation 26 (1), shall be issued separately and got published in the Punjab Government Gazette.

Regarding advance intimation to be given to open access consumers for imposition/withdrawl of Peak Load Restriction as well as regulatory measures on their Email Ids, PSPCL is directed to incorporate the same in the procedure for Open Access.

Sd/-

**(Gurinder Jit Singh)
Member**

Sd/-

**(Virinder Singh)
Member**

Sd/-

**(Romila Dubey)
Chairperson**

**Chandigarh
Dated: 17.09.2014**