

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 58 of 2021
Date of Order: 18.01.2023

Petition for amendment in PSERC (Terms and conditions for Intra-State Open Access) Regulations, 2011, for allowing petitioner to charge transmission charges & SLDC operating charges for the actual maximum drawl of Northern Railway in excess of open access capacity and to approve the detailed procedure of STU for grant of connectivity to open access applicants at 132 KV & above.

AND

In the matter of: Punjab State Transmission Corporation Limited, State Load Despatch Centre, PSEB Head office, the Mall Patiala-147001, Punjab

Petitioner.

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

PSTCL: Ms. Silky Rani, Sr.Xen/OA
Sh. Vishal Jindal, AEE/OA

PSPCL: Sh. Rupinderjit Singh Randhawa, CE/ARR&TR
Sh. Ravi Luthra, SE/TR-2
Sh. Gurvinder Singh, Sr.Xen/TR-5
Sh. Gurpreet Singh Tiwana, Sr.Xen/OA
Sh. Amrinder Singh/AEE

Northern: Ms. Puja Priyadarshini, Advocate
Railway Sh. Praniel Mishra, Advocate

ORDER

1. Punjab State Transmission Corporation Limited (PSTCL) has filed the present petition under Section 86 of the Electricity Act 2003 read with Regulation 45 & 46 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access) Regulations, 2011 for

making amendments in the Regulations and for approval of detailed procedure of STU for grant of connectivity to open access applicants at 132 KV & above.

2. The petition was admitted vide order dated 02.11.2021 and it was further directed to publish a public notice inviting objections/suggestions from the public and all the Stakeholders to the petition. The public notice was published in various newspapers and Punjab Energy Development Agency (PEDA) filed suggestions/objections in response to the public notice. The petition was fixed for hearing as well as Public hearing on 15.12.2021. The Commission observed that interest of PSPCL and Northern Railway is involved and therefore notice be sent to PSPCL and Northern Railway also to submit their reply in the petition, further, directing PSTCL to file its rejoinder to the submissions made by Northern Railway and PSPCL. Northern Railway filed its reply in the petition vide letter No. 230-Elect/TRD/UMB/Open Access/1122 dated 03.03.2022 and PSTCL filed rejoinder thereto vide memo No. 212 dated 08.03.2022. Northern Railway vide letter No. 230-Elect/TRD/UMB/Open Access/1122 dated 13.09.2022 filed further submission by way of its reply to the rejoinder filed by PSTCL. PSTCL further, vide memo No. 928 dated 18.10.2022, also respondent and submitted its rejoinder/reply to the reply of Northern Railway. PSPCL also submitted its rejoinder/reply to the reply of Northern Railway vide memo No. 7654 dated 27.10.2022. After hearing the parties on 09.11.2022, Order was reserved.

Submissions of PSTCL

3. PSTCL has submitted as under:
 - i) That Open Access in the State of Punjab is presently being governed by PSERC (Terms and Conditions for Intra-State Open Access) Regulations,

2011, as amended from time to time and the generators and consumers connected to/ embedded within the Punjab State Transmission/ Distribution System are availing open access for Sale/ Purchase/ Wheeling of power under the aforesaid Open Access regulations. As per the said Open Access regulations, STU has been notified as Nodal agency for grant of Long Term Access (LTA)/ Medium Term Open Access (MTOA), while SLDC has been notified as Nodal agency for Short Term Open Access (STOA). As per the Open Access regulations and Tariff Orders issued by the PSERC for each financial year, the transmission charges for use of intra-state transmission system are payable by the LTA/ MTOA customers based on the open access quantum in MW and by STOA customers based on the open access transactions in kWh.

- ii) That the transmission charges and/or wheeling charges for use of transmission and/ or distribution system are payable on the contracted/ approved open access capacity (in case of LTA/ MTOA customers) or scheduled quantum only (in case of STOA customers) but sometimes the actual injection/ drawal by Open Access customers exceeds their contracted/ approved Open Access Capacity resulting in financial loss to the STU (PSTCL).
- iii) That Northern Railway- Ambala Division is one of the first LTA customer, who started availing Long Term Access (LTA) for purchase of upto 35 MW power w.e.f. 24.11.2019 for drawal at its 11 no. Traction Sub-Stations (TSS) within the State of Punjab connected to STU (PSTCL) at 132 kV/ 220 kV Voltage Level. The transmission charges determined by PSERC are being levied by PSTCL on the approved/ contracted open access capacity i.e. 35 MW for each month. On several occasions the actual drawal of Northern Railway has exceeded the contracted open access capacity of 35 MW, but

the transmission charges have been levied by PSTCL for 35 MW only. PSTCL has given an outline detail of actual maximum drawl quantum of Northern Railway and Number of Occasions from 24.11.2019 to July 2021 when actual drawal of Northern Railway exceeded the contracted LTA capacity of 35 MW. The actual maximum quantum drawn by Northern Railway during Nov-19 to Jul-21 is upto 25 MW more than the contracted/ approved quantum of 35 MW and due to recovery of transmission charges on contracted/ approved quantum instead of actual maximum drawn quantum, PSTCL has incurred financial loss.

- iv) That no wheeling charges were applicable to Northern Railway, being connected directly to the transmission system of PSTCL otherwise PSPCL may have suffered similar loss on account of wheeling charges for over-utilization of its distribution system. Besides Northern Railway, other Open Access Consumers/ Generators also sometimes over-draw/ over-inject resulting in over-utilization of transmission/ distribution system but are liable to pay transmission/ wheeling charges only on the contracted/ approved quantum (in case of LTA/ MTOA customers) or scheduled quantum (in case of STOA customers).
- v) That Haryana Electricity Regulatory Commission vide its notification no. HERC/25/2012 dated 11.01.2012, had issued HERC (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012. As per Regulation 51 of these regulations:-

“In case an open access consumer injects or draws more than the allocated capacity in the transmission and or distribution system beyond 10%, the open access consumer shall pay 150% of the

applicable transmission and or wheeling charges for this excess injection / drawl than the allocated capacity. The charges for this excess injection / drawal beyond 10% shall be levied in accordance with the approved detailed procedure.

Provided that in case an open access consumer frequently injects or draws more than the allocated capacity then the nodal agency may revise the allocated capacity in the transmission and or distribution system in accordance with the approved detailed procedure. However, before doing this, opportunity shall be given to the open access consumer to explain its position.”

A similar clause may be introduced in PSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2011, so as to avoid any financial loss to PSTCL on account of Over-utilization of open access capacity (over-injection / over-drawals) by Open Access Customers, who are not consumer of distribution licensee and petitioner may be allowed to charge transmission charges and SLDC operating charges for the actual maximum drawl of Petitioner (Northern Railway) in excess of open access capacity w.e.f. commencement of open access i.e. 24.11.2019.

- vi) That as per Regulation 25 of the Open Access Regulations, the in-kind transmission and wheeling charge @ 2% of the energy injected has been applicable to NRSE/ RE generators wheeling energy under Open Access. The rate of 2% was decided way back in 2006 in line with NRSE Policy, 2006, which was retained by PSERC in Open Access Regulations, 2011 and by Govt. of Punjab in NRSE Policy, 2012. The relevant clause 3(i) of prevailing NRSE Policy, 2012 is applicable for captive use only, it also empowers PSERC to amend/ revise the wheeling charge rate of 2% of

energy. Therefore, in line with the provisions of NRSE Policy, the in-kind transmission & wheeling charges (in shape of percentage of energy) needs to be made applicable/ confined only for captive use of energy.

- vii) That presently, normal applicable transmission and wheeling charges for normal open access (STOA) customers work out to be 68+23=91 Paise/unit, whereas for NRSE projects the same comes to be only 2% of Applicable Tariff i.e. approx. 12 Paise/unit, resulting in loading of other general consumers. Thus, an amendment is required to increase the transmission & wheeling charge from 2% to 10%, so as to levy atleast 50% to 60% of the normal applicable charges to NRSE/ RE generators availing open access.
- viii) That transmission charges @ 10% of revenue realized by distribution licensee are payable to STU/ transmission licensee in case of NRSE/ RE generators, while the transmission charges for normal open access (STOA) customers are around 25% of the Total transmission & wheeling charges. Therefore, share of transmission charges (in case of use of transmission system) are also required to be amended accordingly.
- ix) That Section 4.7.6 of PSERC (State Grid Code) Regulations, 2013, as amended from time to time provides that "*Distribution Licensees and Open Access/ EHV Consumers directly connected to STS shall ensure that their loads do not affect STU system in terms of causing any unbalance in the phase angle and magnitude of voltage at the interconnection point beyond the limits prescribed and individual and Total Harmonic Distortion (THD) of voltage shall not exceed the values specified in clause 3(2) of the CEA Grid Standards. SLDC may direct the Distribution Licensees and Open Access/ EHV Consumers connected to STS to take appropriate measures*

to bring the Harmonics within permissible limit. Further, Regulation 24 (24.1 to 24.8) of PSERC (Electricity Supply Code and related matters) (7th amendment) Regulations, 2020, provides for installation of Power Quality meters for measurement of harmonics and control of harmonics (within prescribed limits) by Designated Consumer (which includes consumers using or engaged in any of following processes i.e Arc Furnace, Induction Furnace, Chloro alkaline unit, Billet heaters with total connected rating above 100 kVA, Surface hardening Machine & Electrolytic process industry, Electric Bell furnaces for annealing, Electro-slag refining/re-melting processes, IT/ITES, Malls, Petro-Chemical units, Railways, Pharmaceuticals and connected at a supply voltage of 11 kV & above or as may be decided by the Commission from time to time).

Regulation 24.1 to 24.8 of Electricity Supply Code needs to be made applicable for all open access customers falling under above categories of Designated Consumer, especially those which are connected to transmission system and/or are not consumer of distribution licensee e.g. Northern Railway (presently not covered under Electricity Supply Code), whose traction sub-stations are liable to inject/ dump harmonics into the transmission/ distribution system, thus jeopardizing grid stability and quality of supply. A similar clause may be introduced in PSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2011, so as to ensure grid stability and quality of supply by limiting harmonics injection by Open Access Customers.

- x) That as per regulation 5 (1) of PSERC (terms & conditions for intra state open access) Regulations, 2011, as amended from time to time, applicant shall apply to the STU for connectivity in the Form prescribed in the

detailed procedure to be laid down by the STU. The STU shall prescribe the procedure within a period of 30 days from the coming into force of these Regulations. As of now, the open access applicants including entities seeking connectivity to transmission system of STU e.g. Northern Railway & Generators/ IPPs, were applying for connectivity to PSPCL as their consumer/ seller, and were being granted connectivity by PSPCL in line with the provisions of Electricity Supply Instructions Manual (ESIM) after grant of Feasibility Clearance by Feasibility Clearance Committee (FCC) and the need for formulation of separate procedure of STU for grant of connectivity didn't arise. Now, Northern Railway is requesting STU (PSTCL) to grant connectivity to its upcoming TSS without involving PSPCL, in line with the provisions of PSERC (Terms & Conditions for Intra-State Open Access) Regulations, 2011 and State Grid Code. PSTCL has submitted a detailed procedure for grant of connectivity to open access applicants (connected with State transmission system), as Appendix-6 of the petition for approval.

- xi) PSTCL has prayed for amendments in note appended to the Regulation 25 of the PSERC (Terms & Conditions for Intra-State Open Access) Regulations, 2011, and addition of Regulation 25AA and 29 as under:-

a) **“25AA**

- 1) In case of wheeling of power generated from NRSE project for captive use in the same company units located in the State, uniform wheeling and/or transmission charges shall be levied @ 10% of the energy injected/scheduled for injection into the grid, irrespective of the distance from the generating station i.e. additional 10% of the total energy shall be injected/

scheduled at injection point(s) 25% of the average revenue realized by distribution licensee from such additional injection shall be passed on to the STU/ Transmission licensee for compensating on account of transmission charges. In case of wheeling of power generated from NRSE project outside the state, full transmission and wheeling charges shall be leviable.

Provided that in case of wheeling of power for consumption within the State, generated from NRSE project in the State, achieving commercial operation (COD) from 09.07.2015 to 31.03.2017, no transmission and wheeling charges shall be leviable, irrespective of the distance, for a period of 10 (ten) years from its date of commercial operation (COD).

- 2) For Long Term Access (LTA) and Medium Term Open Access (MTOA) Customers; Applicable Transmission charges/ Scheduling & System Operation Charges/ Wheeling Charges shall be payable on the MW quantum/ capacity allowed for the open access. For Short Term Open Access (STOA) Customers; Applicable Transmission charges/ Wheeling Charges shall be payable on the kWh quantum of energy scheduled under open access.

Provided that, for the injection/ drawl by LTA/ MTOA customers (who are not consumer of distribution licensee) in excess of the allowed quantum/ capacity, if any, the charges shall be payable @150% of the applicable Transmission/ Scheduling & System Operation/ Wheeling Charges specified in Regulations 23, 24 and 25 of these Regulations on such maximum excess quantum drawn during the month.

Provided further that, for the injection/ drawl by STOA customers (who are not consumer of distribution licensee) in excess of the scheduled quantum, if any, the charges shall be payable @150% of the applicable

Transmission/ Wheeling Charges specified in Regulations 23 and 25 of these Regulations on the quantum of over-drawal/ over-injection.

Regulation 29-(A)

Where an open access customer falls under the category of “Designated Consumer” defined under Electricity Supply Code, 2014, as amended from time to time, the customer shall

- Install power quality meter and share the recorded data thereof with the transmission/ distribution licensee in line with the provisions of Electricity Supply Code.
- Control the harmonics level at the Point of Common Coupling (PCC) in line with the provisions of Electricity Supply Code. The limits of voltage harmonics and current harmonics, Point of measurement i.e. PCC and other related matters shall be as per the IEEE 519-2014 namely “IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems”, as modified from time to time read along with Standards issued by Central Electricity Authority (CEA) from time to time.
- Provide adequate harmonic suppression units/ harmonic filters to avoid dumping of harmonics into Licensee's transmission/ distribution system, complying with the standards issued by CEA from time to time.

The measurements undertaken to determine compliance shall be carried out in accordance with the requirements as specified in IEC 61000-4-7 and IEC 61000-4-30. There shall be continuous measurement of harmonics with permanent Power Quality meters complying with the IEC 61000-4-30 Class-A meters for all new installations.

Where the open access customer fails to install a power quality meter within the stipulated time (3 months from date of notification of this amendment) or the injection of harmonics exceeds the prescribed limits,

such consumer shall be liable to pay a penalty to the transmission/distribution licensee at the rate and in the manner as may be approved by the Commission from time to time. The penalty shall be without prejudice to the right of the transmission/ distribution licensee to take other punitive action as may be approved by the Commission.

- b) To allow it to charge transmission charges and SLDC operating charges from Northern Railway for actual maximum drawl in excess of open access capacity w.e.f. commencement of open access i.e. 24.11.2019.
- c) To approve the detailed procedure of STU for grant of connectivity to Open Access applicants at 132 KV and above as per appendix 6 of the petition.

Suggestions/Objections filed by PEDA.

4. Public notice inviting suggestions/objections was published in various newspapers. PEDA filed suggestions/objections in response to the public notice as under:
 - i. That Govt. of Punjab has set up PEDA as Nodal Agency for promotion of NRSE Projects in the state of Punjab. Govt. of Punjab has been notifying Policies for promotion of power and other projects based on New and Renewable Sources of Energy, Energy Conservation and Energy Efficiency etc., from time to time. Such policies were earlier notified in 1996 and thereafter in 2001, however, there were no provision with regard to transfer of power from NRSE and other Power projects through Open Access since there was no provision in the then applicable Electricity (Supply) Act 1948 and Generation, Transmission and Distribution was a Licensed Business.

- ii. That with the passing of Electricity Act 2003 by Parliament, the Generation of power was de-licensed and non-discriminatory Open Access for transfer of power to any person on payment of charges was introduced. Accordingly, this Commission notified the Open Access Regulations for the first time on 9.08.2005 but there was no specific provision with regard to incentives for NRSE based power plants proposing to transfer NRSE power by availing open access. Subsequently, GOP after considering the prevailing scenario and to further promote NRSE based power plants, notified NRSE Policy 2006 on 24.11.2006 to replace the NRSE Policy 2001. To promote NRSE plants for supply of power to industries and other consumers through open access, a provision was made in the “NRSE Policy – 2006” at Sr. no 4 of “Fiscal and Financial Incentives Code under NRSE Policy 2006” (Appendix-II) as under:-

“Facilities by Punjab State Electricity Board:

- i) **Wheeling:** *The PSEB/LICENSEES will undertake to transmit through its grid the power generated from NRSE projects set up inside or outside the State and make it available to the producer for captive use in the same company units located in the state or third party sale within the State at a uniform wheeling charge of 2% of the energy fed to the grid, irrespective of the distance from the generating station. Separate tripartite Agreement will be executed between the company, PSEB/LICENSEES and third party(s) laying down the procedure for apportionment of energy and other commercial clauses in respect of energy to be wheeled to third party(s). However private developers shall be required to file a petition in the PSERC for approval of wheeling charges. -----“*

Accordingly, vide Amendment No 1 of the Open Access Regulations, 2005 notified on 31.8.2007, Regulation 16 (1) (a) was substituted by the Commission, inter-alia, as under:-

16(1)(a): ----- Further, in case of wheeling of power generated from NRSE projects, transmission and wheeling charges shall be levied @ 2% of the energy injected in the State grid, irrespective of distance. The Board/Distribution licensee shall be compensated on account of transmission and wheeling by injection of additional energy at injection point(s).

The provision was also reiterated / inserted in Regulation 16(1)(c) also. Thus the provision covered all NRSE based power projects including Captive, Co-generation and Independent/Merchant power plants. The said Open Access Regulations 2005 were repealed and the PSERC notified Open Access Regulations 2011 on 1.7.2011 which provided in Note below Regulation 25 as under:-

Note: In case of wheeling of power generated from NRSE project, transmission and wheeling charges shall be levied @ 2% of the energy injected into the State Grid, irrespective of the distance i.e. additional 2% of the total energy shall be injected at injection point(s). 10% of the average revenue realized by distribution licensee from such additional injection shall be passed on to the STU/Transmission licensee for compensating on account of transmission charges

- iii) That the Commission Amended the Open Access Regulations 2011 vide Amendment No 2 on 13.12.2012 substituting the above Note under Regulation 25 as under:-

For Note under Regulation 25 of the Punjab State Electricity Regulatory Commission (Terms & Conditions for intra-State Open Access) Regulations, 2011, the following shall be substituted namely:

“In case of wheeling of power generated from NRSE project for consumption within the State, transmission and wheeling charges shall be levied @ 2% of the energy injected into the State Grid, irrespective of the distance i.e. additional 2% of the total energy shall be injected at injection point(s). 10% of the average revenue realized by distribution licensee from such additional injection shall be passed on to the STU/Transmission licensee for compensating on account of transmission charges. In case of wheeling of power generated from NRSE project outside the state, full transmission and wheeling charges shall be leviable.”

- iv) That the NRSE Policy 2006 was substituted with NRSE Policy 2012 by GOP on 26.12.2012 and provision regarding open access for NRSE Projects was made in the policy as under:-

ANNEXURE-III

FISCAL AND TECHNICAL ASSISTANCE

3. Facilities by Punjab State Power/Transmission Corporation Limited:

*i) **Power Wheeling:** The PSPCL/LICENSEE/PSTCL will undertake to transmit/wheel the surplus power through its grid, and make it available to the producer for captive use in the same company units located in the State at a uniform wheeling charge of 2% of the energy fed to the grid or as amended from time to time by PSERC, irrespective of the distance from the generating station. Such wheeling and/or transmission of power shall be governed by Open Access Regulations /procedures. The captive power production and consumption by beneficiaries i.e. same group companies shall meet the requirements laid down in Electricity Rules 2005. Captive power generators will be required to seek permission of PSPCL/PSERC for laying of transmission line for taking power to destination of use in Punjab.*

(ii) Open Access: The NRSE Project developer as per entitlement under the policy will also be allowed inter/intra state open access in accordance with the open access regulations. This facility shall be available only after refusal by State licensee to purchase the power on preferential tariff under long term PPA.

- v) That to promote the Solar Energy based Projects, CERC exempted Transmission charges of the Central Transmission Utility (Power Grid) for solar projects commissioned after 1.7.2011 to 30.6.2014 (which period is being extended from time to time). This facilitated transfer of solar power throughout the country without any transmission charges of central grid. Punjab had almost NIL potential of Wind and had allotted most of the viable potential of Small Hydro capacity whereas there was huge exploitable potential for Rice straw/Biomass and Solar based Projects. Keeping this in view and to further bring investment in Punjab in the renewable sector, and also to incentivize intra-state wheeling of NRSE power in line with GOI policies, the Council of Ministers, through department of New and Renewable Energy, Govt. of Punjab amended the NRSE Policy 2012 vide notification dated 9.7.2015 as under:-

ANNEXURE-III (FISCAL AND TECHNICAL ASSISTANCE)

Clause 3. (Facilities by Punjab State Power/Transmission Corporation Limited):

“(i) Power Wheeling: The PSPCL/LICENSEE/PSTCL will undertake to transmit/wheel the NRSE power through its grid, to consumers located in the State without any transmission and wheeling charges on the energy fed to the grid, irrespective of the distance from the generating station. However, all transmission & distribution losses and all other charges as per open access regulation shall be to the account of the OA

consumers. Such wheeling and/or transmission of power shall be governed by Open Access Regulations/procedures.

(ii) The captive power production and consumption by beneficiaries i.e. same group companies shall meet the requirements laid down in the Electricity Rules 2005. Captive Power Generators will be required to seek permission of PSPCL/PSERC for laying of transmission line for taking power to destination of use in Punjab.

iii) The facility of exemption of transmission & wheeling charges on intra state open access shall be available to the NRSE plants achieving commercial operation (CoD) from the date of issuance of this amendment notification uptill 31.3.2017 for a period of ten years from the date of COD of the plant.”

- vi) That to incorporate the above amendment in NRSE Policy 2012 in Open Access Regulations 2011, PEDA filed Petition No. 56 of 2015 before the Commission. The petition was disposed of vide order dated 15.01.2016 and accordingly amended the Open Access Regulations vide Amendment No 6 on 21.1.2016 as under:-

The following proviso shall be added under ‘Note’ in Regulation 25:-

Provided that in case of wheeling of power for consumption within the State, generated from NRSE project in the State, achieving commercial operation (COD) from 09.07.2015 to 31.03.2017, no transmission and wheeling charges shall be leviable, irrespective of the distance, for a period of 10 (ten) years from its date of commercial operation (COD).

The Petitioner in Para 17 of the Petition has extracted provision of NRSE Policy 2012 regarding grant of facility of wheeling of NRSE power to Captive Power Plants which was applicable during the period 26.12.2012 to 8.7.2015 and no longer applicable/stand amended from

9.7.2015. Therefore, the very basis of the proposal filed by the Petitioner is non-existent and therefore, the proposal contained in Para 18 of the Petition needs to be rejected out rightly.

- vii) That request of the Petitioner for increasing the Wheeling and transmission charges from 2% to 10% is also contrary to the NRSE Policy 2012 as amended by GOP. Whereas the policy provides that the intra-state open access be provided to the NRSE power generators without any wheeling and transmission charges, the present Regulations provide that the facility will be provided @ 2% and Petitioner has now prayed to increase the same to 10% which is against the provisions of the State Policy.
- viii) That as per the information available on the website of the Petitioner, presently only one NRSE generator i.e. Winsome Yarns is availing short term open access for captive consumption which is valid till 2025 for 3.9 MW cumulative capacity SHPs. With normative 40 % yearly PLF for hydro projects in Punjab, it works out as around 1.7 MW on round the year basis. In addition NIEL is availing Open access for its NRSE Power Plant in Nahar Sugar Amloh to Ludhiana/Lalru for captive use for 7 MW capacity during the period of operation of Sugar mill. With around 100 days of open access for sugar mill per year, this works out as 1.92 MW on round the year basis. Thus, total quantum on round the year works out as only 3.62 MW which is negligible and no appreciable revenue is going to be available to PSPCL/PSTCL whereas the negativity created will be huge.
- ix) That the Commission retained the existing provision of Transmission and Wheeling charges for open access by NRSE power plants as 2%

vide its order dated 13.1.2016 in Petition No 56 of 2015 though PEDDA requested for full exemption. The ground realities remain the same. As the retail tariff of sale of power by PSPCL to its consumers increases, the open access charges also increase as the charges are payable through 2% energy in kind.

- x) That the existing NRSE projects are already bound by their PPAs/commitments and there are only 2 developers availing such open access. Further, there is no potential for Wind projects and existing viable potential of hydro projects already stands allotted. Further, in view of Regulation 28(3) of Open Access Regulations 2011 as amended, solar plants are not able to avail intra-state open access for sale/captive consumption of power by consumers since their generation is infirm. As such the facility may be availed by Biomass /Waste to energy projects where PSPCL is reluctant to buy power as the Generic tariff of these projects is very high. Therefore, the existing provision of 2% towards wheeling and transmission charges may be continued and proposal contained in Para 19 to increase it to 10% may be rejected.
- xi) That PEDDA is well aware of the excess generation capacity with PSPCL during 8 months of the year. PEDDA on its part is doing its best to set up Bio-CNG plants based on Rice straw and other agro wastes. Therefore, the proposal of the petitioner may be rejected and continue the existing proviso of intra-state wheeling charges to all NRSE projects in the State of Punjab in order to promote / facilitate power generation from NRSE Projects.

Reply of PSTCL to the suggestions/objections filed by PEDDA

5. PSTCL filed reply to the suggestions/objections filed by PEDDA, as under:

- i. That the provisions of NRSE Policy cannot be termed as the very basis of the proposal of petitioner. The policies issued by the Central and State Governments e.g. National Electricity Policy, Tariff Policy, NRSE Policy etc. are only guidelines for laying down broad principles & methodologies. As per Section 108 of the Electricity Act, 2003, State Electricity Regulatory Commission shall be guided by the policies issued by State Government. It is upto the State Commission to issue final regulations (mandated), keeping in view all aspects involving larger interest of public / State Utilities. In the past also, the Commission, while issuing PSERC (Terms & Conditions for Intra-State Open Access) Regulations, 2011, was not able to adopt the cross subsidy surcharge formula as per the Tariff Policy, as it lead to a negative cross subsidy surcharge for Open Access customers in Punjab. The proposal of the petitioner is based on the financial loss being incurred by the State Utilities (PSPCL & PSTCL) due to the preferential tariff / lower transmission & wheeling charges allowed to NRSE projects for wheeling within the State. The policies issued by the Central and State Governments are only guidelines and are not mandatory to be adopted in full. The Commission retained the existing provision of Transmission and Wheeling charges for open access by NRSE power plants as 2% vide its order dated 13.1.2016 in Petition No 56 of 2015 though PEDDA requested for full exemption.
- ii. That the statement of PEDDA that only Winsome Yarns Ltd. and Nahar Industrial Enterprises Ltd. are presently availing Open Access for wheeling of NRSE power and no appreciable revenue is going to be available to PSPCL/ PSTCL from their negligible open access quantum cannot be accepted as the proposal of the petitioner is meant to

ensure equal transmission & Wheeling charges for all open access customers including NRSE projects and the future applicants.

- iii. That it is not disputed that the open access charges payable by NRSE consumers (when calculated in Rupees) shall increase with the retail tariff of sale of power by PSPCL to its consumers, however such increase shall be insignificant being 2% of the increase in tariff. As such, there will always be a huge difference between the open access charges payable by NRSE projects and open access charges payable by other open access customers, if the factor of 2% is not increased as proposed.
- iv. That, the less open access quantum and/ or inability of solar plants to avail open access due to scheduling restrictions in Regulation 28(3) of Open Access Regulations do not justify the inequality of open access charges between NRSE projects and other open access generators.

Reply filed by PSPCL

6. PSPCL filed its reply vide Memo No. 5396 dated 23.02.2022 submitting that PSPCL concurs with the various proposals of PSTCL except proposal with regard to sharing of Transmission Charges. PSPCL submitted that sharing of revenue with PSTCL realized from the additional injection for compensation on account of transmission charges should be according to utilization of system, keeping in view that injections/drawl by most of the NRSE projects for captive use is at 66KV or below.

Reply filed by Northern Railways.

7. Northern Railways filed its reply dated 03.03.2022 submitting as under:
 - i) That the Petitioner has failed to show as to how and to what quantum it has suffered losses. The Petitioner is able to recover its entire cost from its

user/consumers/customers by way of transmission charges which are approved by the Commission while approving their ARRAs.

- ii) That Indian Railways/Northern Railways in its status as an entity authorised under the Railways Act, 1989 and as a 'Deemed Licensee' under the Electricity Act, 2003 is procuring power through inter-state open access for its traction use in the State of Punjab. The Indian Railways is being billed by the Petitioner towards transmission charges as per the Regulations framed by this Commission and is paying the same on a regular basis.
- iii) That the Petitioner has presented the details in a manner as if the Indian Railways is having the actual maximum drawl for the entire month for all the time blocks. The said period also includes the period where the Indian Railways was procuring power through STOA in addition to the power through LTA. During the said period Indian Railways was being billed and was paying transmission charges for 35MW LTA over and above the transmission charges for the power procured through STOA. Petitioner along with PSPCL has been denying NOC to the Indian Railways for procuring power through Open Access on one pretext or the other, and Indian Railways has already filed Petition No.14 of 2021 in this regard before the Commission. Further, the demand of the Indian Railways had been severely impacted or unpredicted on account of Covid-19 pandemic/farmer's agitation, whereby during the said period there were certain restrictions, thereafter some relaxations and again some restrictions which created hurdles for the Indian Railways to plan its load requirement. It was this particular contingency that was being sought to be resolved by the Indian Railways by procuring power through STOA wherein any shortfall in the power requirement could be made by it.

However, the efforts for procuring power in an efficient manner were stalled by PSPCL and PSTCL, by denying NOC for STOA. Even as per Petitioner's own showing Indian Railways only once has over drawl power to the tune of 25MW. However, the Petitioner has failed to show that it has incurred any financial loss.

- iv) That Regulation 51 of HERC is only an enabling provision which was to be subsequently approved by the HERC while notifying the detailed procedure. However, no such provision has been approved by HERC. Further, Indian Railways has been charged for the transmission charges as per the contracted/approved open access capacity and no where has it been charged for the transmission charges as being sought by the Petitioner. The Petitioner has sought amendment in the form of Regulation 25AA in so far as 'Transmission Charges" for Long term Access, and MTOA are concerned. The Petitioner is not entitled to the relief as claimed. The petitioner has failed to show the financial loss as regards the additional quantum being over drawl by an entity and is seeking to make unlawful gains and to penalize the Indian Railways consequently.
- v) That the Petitioner is seeking to levy additional transmission charges on the Railways/LTA Open Access Customer/ MTOA Customer on the basis of the maximum excess quantum drawl during the month rather than on the actual power over drawn by it as in the case of STOA amendments proposed by it. It is a rare situation where an entity is able to match the schedule given by it in entirety. That's the reason that there is some range provided in the DSM Regulations framed by Central as well as State Electricity Regulations, wherein no penalty is levied upon an entity. Further, the HERC Regulation referred to by the petitioner in its petition also provides for the range of 10% in this regard. Thus, assuming but

denying that the Petitioner is entitled to recover any additional transmission charges for the over drawl by an LTA/MTOA/STOA customer, the same shall be subject to a range as determined by this Commission beyond which such additional charges may be prescribed. In so far as LTA/MTOA is concerned the Petitioner is seeking to levy additional transmission charges for the entire month on the basis of maximum demand recorded by an entity within a time block over the entire month. The charges proposed by the Petitioner are penal in nature. It is a settled legal principle that a penalty can be levied upon an entity only for the offence committed by it. There may be only limited time blocks in a month wherein an entity may be over drawing or over injecting and whereas in all the other time blocks, the drawl/injection may be within the capacity range contracted/approved. Thus, the proposal of the Petitioner to seek additional transmission charges on an entity availing LTA/MTOA on the basis of maximum excess quantum for the entire month is wholly arbitrary, illegal and unlawful. Further, the Petitioner is seeking to levy 150% of the charges on the power over drawn/injected by an entity. There is no reason or justification for proposing the charges at the rate of 150%. Even the charges prescribed by the Central Commission for such over drawl are much less as compared to what is sought to be charged by the Petitioner. The Indian Railways is procuring power through open access in its status as a Deemed Licensee and the status of Railways is akin to any other licensee. A perusal of the entire petition and the proposed amendments would show that the amendments are sought to be made specifically for the LTA/MTOA Customer in the state of Punjab. There is no reason or justification given by the Petitioner as to why the proposed amendment is sought to be made applicable only LTA/MTOA Customers

and not on the State Distribution Licensee or the consumers of distribution licensee. The law as prescribed has to be uniform for all the entities availing open access in the state of Punjab.

- vi) That there is malafide intention on the part of the petitioner. The petitioner is seeking relief qua Indian Railways only. It is not the case of the Petitioner that the Railways have not been billed or been paying the transmission charges as per the Regulations framed by this Commission. Further, assuming that the Commission is inclined to amend the Regulation as sought for by the Petitioner, the same shall be prospective and the application of the same cannot be retrospective. The Electricity Act, 2003 also does not provide for framing of a Regulation with retrospective effect. Thus, any claim of the Petitioner to levy additional transmission charges w.e.f. from 24.11.2019 is liable to be rejected.
- vii) That the Railways are bound to maintain the grid stability and quality of supply and shall comply with all the technical requirements as may be deemed fit by this Commission. However, the Commission may consider incorporating a condition that the transmission licensee/distribution licensee as the case may be first inform such Open Access Customer in case of any harmonic imbalance on the basis of data and thereafter call upon such Open Access Customer to install the meters as sought by it at those drawl points. Further, the Commission may consider specifying the time limit for installation of such meter as six months instead of 3 months from the date of such notification by the Transmission Licensee/Distribution Licensee as the case may be.
- viii) That as per Regulation 5(1) of PSERC (Terms and conditions for intra-state open access) Regulations, 2011 the Petitioner was to prescribe the procedure within 30 days from the coming into force of these Regulations.

These Regulations came into force on 01.07.2011 and therefore, the Petitioner was legally bound to prescribe the procedure by 31.07.2011. There has been a delay of more than 10 years on the part of the Petitioner in prescribing for the procedure, the only reason given for delay in the present petition is that since connectivity for the purposes of open access was being made through PSPCL and not directly through PSTCL. There is no reason and/or justification for the Petitioner to not comply with the mandate prescribed by the Regulations framed by the Commission.

- ix) That, even during the proceedings before this Commission in petition No.3 of 2017, it was pointed that petitioner is in process of framing procedure for connectivity as Railways shall be seeking connectivity directly with PSTCL. Said petition was disposed of by this Commission vide its order dated 28.02.2018. Even thereafter, it has been more than 3.5 years for the Petitioner to prescribe for such procedure. In fact, Railways had been seeking connectivity from the Petitioner for its Traction Substation at Gehri Baghi vide its application dated 11.11.2020, which was initially returned by the petitioner on the ground of outstanding dues of PSPCL and thereafter on the ground on framing of procedure for connectivity. This is despite the fact that the status of Indian Railways is akin to PSPCL who is also a licensee and has been given connectivity to the transmission system of the Petitioner. It is for the default on the part of the petitioner that there has been a considerable delay in getting the TSS at Gehri Baghi connected to the grid and as such the Petitioner is liable to be put to terms by this Commission for such a delay.
- x) That it has been proposed that the physical interconnection shall be done after two years from the date of application. The Indian Railways had applied for the connectivity from PSTCL in November 2020 and it is for the

default on the part of the Petitioner that the TSS has still not been connected. Thus, the Commission may consider prescribing that the time period for the pending application shall be two years from the date of application or three months from the date of approval of the procedure by this Commission. Any entity including Railways cannot be punished for the delay on the part of the petitioner in performing its statutory duty. Further, the Commission may consider lowering the time limit of physical connection. The Commission may prescribe two years as the maximum period and may permit physical connection in case the work, including system strengthening, can be done much prior to the expiry of two years. This will not only result in having quick connection for the entity concerned but will also result into quicker revenue generation for the petitioner.

- xi) That the restriction as regards having dual connectivity for intra-state transmission system and inter-state transmission system is wholly arbitrary and discretionary besides being contrary to the provisions of the Electricity Act, 2003. As per the Electricity Act, 2003 a consumer/customer is entitled to procure power through any source subject to compliance. The said restriction is highly arbitrary as once the connectivity is granted then it is a matter of accounting as to whether the same is through inter-state or intra-state.
- xii) That as regards condition 6, in the procedure, in so far as the cost of the dedicated line is concerned, the same as per the practice shall be borne by the entity concerned. However, the ownership along with the responsibility of O&M of the same shall remain with the petitioner. Further, Regulation 6(9) of the PSERC (Terms and conditions for intra-state open access) Regulations, 2011 provides as under:

(9) Unless exempted by the Commission for reasons to be recorded in writing, an applicant may be required by the State Transmission Utility to construct a dedicated line to the point of connection to enable connectivity to the grid, the cost of such line and bay shall be borne by the applicant. In cases where augmentation of the 132 KV /220 KV line feeding the substation is required the same shall also be borne by the applicant.

A perusal of the above would show that an applicant may only be called upon to bear the expenses of dedicated line and bay. Thus, any condition in the Procedure proposed by the petitioner cannot be in contravention to the provision of the Regulations under which it is proposed to be approved.

- xiii) That condition 2.4.3 (iii) is in contravention of the express provisions of the Open Access Regulations framed by the Commission. As per the Regulations, an entity is free to have a standby arrangement with Distribution Licensee or any other source of its choice. The petitioner is not entitled for the relief sought and the Commission may approve the procedure for STU Connectivity in the light of submissions made in the reply.

Rejoinder filed by PSTCL.

8. PSTCL filed its rejoinder to the reply filed by Northern Railways re-iterating its earlier submissions and further added as under:
- i. That the petitioner has been so far unable to recover the transmission charges for excess usage of transmission system by Northern Railway, which itself is a financial loss to the petitioner. The fact that the petitioner is able to recover its entire cost (including such loss) by way of transmission charges approved by the Commission in the approved ARR/ Tariff Order,

does not absolve Northern Railways from its obligation to pay the charges for excess use of transmission system. These are not borne by the user i.e. Northern Railway at present but by the distribution licensee (through the approved ARR/ Tariff Order) and ultimately by consumers (who haven't overdrawn from the transmission system but end up being wrongly penalized) by way of tariff hikes. In any case, Northern Railway or any other user, using the transmission system beyond its approved limit/ quantum, should not be allowed or encouraged to do so at the expense of the STU/ distribution licensee (PSPCL) and consumers of Punjab State.

- ii. That the Regulations issued by the Commission do not specifically mention that the transmission charges are to be levied on the approved open access quantum. The transmission charges on approved open access quantum are being levied by the petitioner as per the practice adopted by CTU at the Central level.
- iii. That the actual maximum drawl indicated by the petitioner in the petition have not occurred for all the time blocks throughout the entire month, but on several occasions especially w.e.f. July-2021 onwards. PSTCL has given the detail of such occasions/ time-blocks when the actual drawl of Northern Railway has exceeded the approved open access quantum and submitted that it is not one or two time-blocks, when the actual drawl of Northern Railway has inadvertently increased beyond the approved open access quantum, but w.e.f. July-2021 onwards, Northern Railway has deliberately crossed the limit for around 58% of the time.
- iv. That Northern Railway has also paid the transmission charges for STOA, while procuring power under STOA in addition to LTA during the period of 30.06.2020 to 16.09.2020. However, the charges for STOA are paid on the basis of scheduled quantum in kWh and not the MW capacity (as in case

of LTA) in line with the provisions of open access regulations issued by PSERC & CERC and payment of STOA charges does not entitle Northern Railway to draw power more than the approved open access quantum, resulting in excess use of transmission system.

The denial of NOC to Northern Railway by PSPCL on account of outstanding dues can also not be repeatedly termed as a reason by Northern Railway for breaching the approved LTA quantum limit on several occasions, especially when it had the option of clearing the outstanding dues, seeking stay by raising dispute or by opting for scheduling standby power from PSPCL.

25 MW quantum mentioned by petitioner in the petition is not over-drawl by Northern Railway but the average maximum quantum by which it has exceeded the approved LTA limit of 35 MW. The maximum over-drawl by Northern Railway has been found to the tune of 52.57 MW on 27th Sept-2021, when it has drawn 64.54 MW against the drawl schedule of 11.97 MW in 89th time-block.

- v. That provision in HERC (Terms and conditions for grant of connectivity and open access for intra-state transmission and distribution system) Regulations, 2012, has now been repealed vide HERC order dated 17.06.2020 in Case No. HERC/Pro-11 of 2017 wherein HERC has decided that the recovery of transmission charges from Northern Railway shall be on the basis of transformation capacity blockage as against contract demand or any other methodology to the contrary that may have been mentioned in any other Order / Regulations of the Commission. Transformation capacity blockage in respect of Northern railway is being worked out after adding the existing transformation capacity allowed at various Traction Sub-Stations (TSS) and converting it from 2-Phase

- System to 3-Phase System by multiplying with a factor of $1.732 (\sqrt{3})$ (as the 3-phase transformation capacity is blocked via. 2-phase feeding of Northern Railway). As such, Northern Railway is being levied and has been paying transmission charges to HVPNL for transformation capacity blockage of around 201 MVA(180.9 MW, considering Power Factor of 0.9) against approved open access quantum of 55 MW in the State of Haryana.
- vi. That Northern Railway has been availing Open Access for existing 11 no. TSS in the State of Punjab. At the time of application, the Sanctioned Load of these TSS was 127.99 MW and Contract Demand of 107 MVA (as sanctioned by the distribution licensee i.e. PSPCL). The 2-phase transformation capacity at these 11 no. TSS is 250.1 MVA (not including the 98.8 MW capacity of Standby transformers installed at Ghaggar TSS, Anandpur Sahib TSS, Butari TSS, Maiserkhana TSS and Kapurthala RCF) with 3-Phase Transformation Capacity blockage coming out as 433.1732 MVA. If transmission charges are levied in line with the present mechanism adopted by HVPNL in the State of Haryana, transmission charges in Punjab should be levied for 433.173 MVA or 389.856 MW (after converting transformation capacity blockage from 2-phase to 3-phase and considering 0.9 Power Factor for conversion from MVA to MW) instead of 35 MW, which will be a more rational approach to levy the transmission charges as compared to the earlier proposal/ prayer of the petitioner made in the petition.
- vii. That the statement of Northern Railway that the petitioner is seeking to make unlawful gains and seeking to penalize the Railways for the wrong not committed by it is untrue and vague. Proposing levy of transmission charges for the excess usage of transmission system or for transformation

- capacity blockage is rational and required to avoid passing on of burden to the petitioner/ PSPCL and ultimately to the consumers of Punjab State.
- viii. That the additional transmission charges for LTA were proposed on the basis of maximum excess quantum and not the actual energy over-drawl as in case of STOA, because the LTA charges are levied based on blockage of transmission corridor and are levied in Rs./ MW/ Month and STOA charges are based on the energy in kWh and levied in Rs./kWh. Further, the proposed amendment was sought only for the LTA/ MTOA customers (full open access consumers) and not for the partial open access consumers (consumers of distribution licensee), where consumer can draw upto its Sanctioned Contract Demand (CD). Electricity Tariff is applicable for draws upto sanctioned DCD and demand surcharge is applicable for draws above Sanctioned Contract Demand. The proposal was made by the petitioner to recover the loss being incurred by the petitioner since commencement of open access by Northern Railway.
- ix) That the request of Northern Railway to incorporate a condition that the transmission / distribution licensee may first inform such Open Access Customer in case of any harmonic imbalance on the basis of data and thereafter call upon the Open Access Customer to install the meters is unacceptable. In case the open access customer does not install the Power Quality Meters first, it will not be possible for the transmission/ distribution licensee to ascertain the harmonic imbalance and provide data.
- x) That as per Regulation 5 of Open Access Regulations, 2011, PSTCL was to seek approval of the procedure for connectivity within 30 days of notification of Open Access Regulations. However, the petitioner was unable to do so, as at that point of time, there was no full open access

- consumer within the State requiring connectivity from STU (PSTCL) without involving distribution licensee (PSPCL). At the time of notification of Open Access Regulations, 2011 i.e. on 01.07.2011, Short Term Open Access (STOA) customers/ transactions were in abundance with no LTA/ MTOA customer within the State and accordingly the Intra State STOA Procedures were prepared by SLDC and got approved from the Commission on 23.08.2011. After Northern Railway applied for Medium Term Open Access (MTOA) in 2017 and subsequently for Long Term Access (LTA) in 2019 (after withdrawing MTOA application), the LTA/ MTOA Procedure was also prepared by the petitioner (PSTCL) and got approved from the Commission dated 06.09.2019 (before operationalizing the LTA w.e.f. 24.11.2019 onwards). Similarly, when Northern Railway has now sought connectivity from STU for its upcoming & proposed TSSs (as full open access consumer, without involving distribution licensee i.e. PSPCL) vide its letter dated 23.07.2021, the petitioner has prepared procedure for connectivity and submitted to the Commission for approval.
- xi. That the application dated 11.11.2020 for Gehri Bhagi TSS was for LTA and not for connectivity. The connectivity for GehriBhagi TSS was sought earlier by Northern Railway from PSPCL in 2018. The connection was released by PSPCL on 20.11.2020. As such, there is no default on part of the petitioner for delay in getting the TSS at GehriBhagi connected to the grid or any delay in complying with the mandate prescribed by the Regulations framed by the Commission.
- xii) That there is no default on part of the petitioner for delay in getting the TSS at GehriBhagi connected to the grid or any delay in complying with the mandate prescribed by the Regulations framed by the Commission. Northern Railway is wrong in mentioning that the TSS has still not been

connected, as connectivity has been issued by PSPCL vide SCO dated 20.11.2020. The petitioner should have mentioned that the LTA to the TSS has not been operationalized due to outstanding dues towards this TSS of Northern Railway.

- xiii) That the request of Northern Railway for lowering the time limit is unacceptable as the time limit has been proposed keeping in view the Connectivity procedure of other States, CTU procedure and actual past experience.
- xiv) That the connectivity procedure has been made under PSERC (Terms & Conditions for Intra-State Open Access) Regulations, 2011, as amended from time to time, which is only applicable to open access customers and not State Discom. The connectivity to State Discom shall be governed by State Grid Code.
- xv) That the restriction as regards having dual connectivity for intra-state transmission system and inter-state transmission system has been proposed in order to avoid scheduling, dispatch and accounting difficulties at a later stage.
- xvi) That any condition in the procedure proposed by petitioner cannot be in contravention to the provision of the Regulations under which it is proposed to be approved. However, the regulations do not specifically mention that the O&M charges are not to be levied on the applicant for dedicated lines & associated equipment. It is agreed that no such charges are levied from partial open access consumers (consumers of distribution licensee) after construction & commissioning of dedicated line/ feeder, as these charges are borne by the consumer in the form of electricity tariff. However, the O&M charges of dedicated line/ feeder are not included in the open access charges levied to the consumer. As the full Open Access

consumer (non-consumer of distribution licensee) is only to bear the open access charges and not the tariff, the O&M charges for such dedicated lines/ feeders should be levied to such an applicant. The details of standby supply from distribution licensee as sought at Sr. No. 2.4.3 (iii) are optional and may be mentioned as NIL by the applicant.

xvii) That the petitioner is not at default for delay in complying with its obligation as per Regulation 5(1) of PSERC (Terms and Conditions for Intra-State Open Access) regulations, 2011, as amended from time to time. The petitioner may be allowed to seek revision in proposed amendment by levying the transmission charges on Northern Railway (and other full open access consumers) on the 3-phase transformation capacity blockage, as per the revised methodology applicable in the State of Haryana (which has been accepted by Northern Railway in Haryana). PSTCL submitted their revised proposal as under:-

Regulation No.	Provision earlier proposed in the petition	Revised proposal
25AA (2)	<p>For Long Term Access (LTA) and Medium Term Open Access (MTOA) Customers; Applicable Transmission charges/ Scheduling & System Operation Charges/ Wheeling Charges shall be payable on the MW quantum/ capacity allowed for the open access.</p> <p>For Short Term Open Access (STOA) Customers; Applicable Transmission charges/ Wheeling Charges shall be</p>	<p>For Long Term Access (LTA) and Medium Term Open Access (MTOA) Customers; Applicable Transmission charges/ Scheduling & System Operation Charges/ Wheeling Charges shall be payable on the MW quantum/ capacity allowed for the open access.</p> <p>For Short Term Open Access (STOA) Customers; Applicable Transmission charges/ Wheeling Charges shall be payable on the kWh quantum of energy scheduled</p>

	<p>payable on the kWh quantum of energy scheduled under open access.</p> <p>Provided that, for the injection/ drawl by LTA/ MTOA customers (who are not consumer of distribution licensee) in excess of the allowed quantum/ capacity, if any, the charges shall be payable @150% of the applicable Transmission/ Scheduling & System Operation/ WheelingCharges specified in Regulations 23, 24 and 25 of these Regulations on such maximum excess quantum drawn during the month.</p>	<p>under open access.</p> <p>Provided that, the LTA/ MTOA customers (who are not consumer of distribution licensee)/ full Open Access consumers shall be levied charges on the on the 3-phase transformation capacity blockage, as determined by the STU from time to time.</p>
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Reply filed by Northern Railway to the rejoinder filed by PSTCL.

9. Northern Railway filed reply to the rejoinder filed by PSTCL as under:
 - i) That at the stage of rejoinder, the petitioner has brought on record new facts and prayers and has tried to set up a new case and therefore its rejoinder ought to be rejected. With regard to proposal for additional transmission and SLDC charges on over-utilization of open access capacity/over drawal with retrospective effect, Northern Railway has further submitted that the Electricity Act, 2003 aims at bringing about competition with the ultimate objective of ensuring efficiency gains resulting from

competition for the consumers. Competition with regulatory oversight is the hallmark of the legislation and it recognized the important role of the regulatory commissions in the wake of the challenges that opening of the sector poses for consumers and other stakeholders and thus, Open Access was considered as an important tool of introducing competition in the electricity industry and ensuring choice to buyers and suppliers of electricity. The legislature, upon realizing the need, introduced open access which is very well acknowledged in the very objects of the Electricity Act. The relevant excerpt of the Statement of objects is reproduced herein below:

“3.....There is also need to provide newer concepts like power trading and open access....”

Further Section 2(47) of the Electricity Act defines open access as follows:

“non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission”.

Further, Section 39 of the Electricity Act, 2003 specifically includes provision of open access by the transmission licensee as one of the distinctive functions as under:

“Section 39. (State Transmission Utility and functions):

...

(2) The functions of the State Transmission Utility shall be -

...

(d) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges;

...”

Even Clauses 5.3.3 and 5.3.6 of the National Electricity Policy lay emphasis on the fact that the Regulatory Commissions need to provide facilitative framework for non-discriminatory open access.

- ii) That by providing open access, an entity is being given a “choice” to procure power from a source other than the local distribution licensee. However, under the present petition, the suggestions/proposals of the Petitioner are specifically designed to take away such choice from Northern Railways by making the power procurement through open access so exorbitantly expensive that it acts like a deterrent for Northern Railways to opt for open access. It is trite law that regulations are in the nature of delegated legislation and are subservient to the parent Act and cannot contradict it. Thus, the Petitioner cannot be allowed to insist on issuance of any regulation which may impair the environment of open access and invade on the core spirit of Electricity Act, 2003.
- iii) That an increase in transmission charges qua Northern Railways is being sought by the Petitioner on account of alleged over draws from the grid in connection with the open access availed for supply of power from Bihar to Punjab. Such matters are to be decided in conformity with practices and procedures laid down by the CERC and Northern Railway relied in this regard on the judgment passed by the Hon’ble Supreme Court in the case of *Central Power Distribution Co. v. Central Electricity Regulatory Commission*, (2007) 8 SCC 197.
- iv) That the Petitioner has submitted incorrect data regarding over draws under its rejoinder based on ‘actual maximum drawal during the month and the Northern Railways have submitted their position in a tabular form. The Petitioner has admittedly looked at a single time block in a day for

calculating the 'actual maximum drawal in a month. A comparison of the statement makes it evident that the entire monthly data for September'2021 has been put forth by the Petitioner as basis of the drawal in the 89th time block of 27.09.2021. The Petitioner should be put to terms for misrepresenting facts and figures before the Commission. The over drawals from July'21 to Jan'22 are during a particular time block during the applicable month and cannot be representative for deciding the transmission quantum for Northern Railways. Rather, average load as depicted by the Northern Railways will be more appropriate to decide the present issue. Moreover, there is well established mechanism of DSM Regulations to penalise such overdrawals.

- v) That in 2017, PSPCL approached the Commission by way of Petition No. 3 of 2017 seeking imposition of necessary conditions on Northern Railways to be followed by it while getting open access. The main grouse of PSPCL was that Northern Railways would not be a consumer of the PSPCL after the STOA and MTOA is allowed to it and that the interests of PSPCL need to be safeguarded. This petition was disposed of by the Commission by way of order dated 28.02.2018, with instructions/directions on what can be charged and what can't be charged from Northern Railways. Charging of Standby Charge, Monthly Minimum Charges (MMC), Fixed charges, Fuel Cost Adjustment, Time of Day tariff, Peak Load Exemption Charges *interalia* were specifically disallowed. As regards Additional Surcharge, relief was specifically prayed for by PSPCL but the judgment was silent on it. Therefore, in light of law settled by the Hon'ble Supreme Court and express provisions of the Code of Civil Procedure, 1908, it was understood that the relief as to additional surcharge was to be treated as declined. Northern

Railway has relied in this regard on the judgment of the Hon'ble Supreme Court in the case of *Yashwant Sinha v. CBI*, (2020) 2 SCC 338.

- vi) Moreover, specific directions were issued to the Petitioner (PSTCL) to process the application of Railways for issuance of No Objection Certificate for availing MTOA and STOA, as per the provisions contained in CERC/P SERC Regulations, in a time bound manner. The order dated 28.02.2018 has been challenged by PSPCL before the Hon'ble Appellate Tribunal by way of Appeal No. 320 of 2018 but there is no stay and the said order issued by this Commission is in operation and effective even today.
- vii) That on 01.07.2019, Bulk Power Transmission Agreement (BPTA) was signed between Northern Railways and the Petitioner in relation to 35 MW LTA capacity. Further, upon insistence of PSPCL, on 26.08.2019, Standby Agreement for 5MW was signed between Northern Railways and PSPCL (which expired on 30.12.2020).
- viii) That Despite clear directions of the Commission under the order dated 28.02.2018, PSPCL and PSTCL continued to block the open access applications of Northern Railways and raised invoices in derogation of this Commission's order and started insisting on payment of MMC and Demand Surcharge. PSPCL also insisted on payment of Electricity Duty (ED) and Infrastructure Development Fund (IDF) in derogation of Section 5 of the Punjab Electricity Duty Act, 2005 and Railway Bd. Letter no. 2002/Elec(G)/109/5 dated 06.01.2003 by virtue of which Indian Railways is exempted from payment of Electricity Duty/Energy Development Cess. Moreover, PSPCL delayed issuance of invoices and, as and when the invoices were issued as per request of Northern Railways, PSPCL started including a component of Late Payment Surcharge. Some of these charges were cleared by Northern Railways under protest.

- ix) That railway electrification works were progressing at a rapid pace in Punjab and transmission line works of TSSs at GheriBaghi, Kupkalan, Chajili, Hadiaya, Dhablan, Sohal, Dukhniwaran, New Khanna and New Shambhi(over and above the existing 11 TSSs) had either been completed or under progress. PSTCL/PSPCL refused inclusion of new TSSs to the existing LTA on one ground or the other including outstanding dues for GehriBahi TSS (which were illegal levies to begin with), non-compliance of RPO (despite non-grant of open access to enable Northern Railways to source this renewable power from the exchange) or absence of approved Detailed Procedure of STU for grant of open access. The connectivity applications for these TSSs had earlier been made by Northern Railways prior to 24.11.2019 (i.e., the date of start of open access in Punjab) but PSTCL and PSPCL insisted that first Northern Railways should operate these TSSs under 'consumer mode' and then apply to PSTCL for grant of open access once the STU detailed procedure is framed/approved.
- x) That Northern Railways approached the Commission by way of Petition No. 14 of 2021 seeking adjudication/clarity on the liability to pay Demand Surcharge and Additional Surcharge, addition of new TSS in the existing LTA and issuance of NoC for short term access. The Petition no. 14 of 2021 was disposed of by the Commission Vide Order dated 22.03.2022. While deprecating Northern Railways for the over draws by it in 86 time blocks, the Commission also disapproved of the role of the SLDC in this regard.
- xi) That Pursuant to the above-mentioned Order, payment for GheriBaghi TSS has been made by Northern Railways. Pertinently, post issuance of the order dated 22.03.2022, Northern Railways requested for revision of existing LTA by submitting an application to PSTCL for inclusion of Kup Kalan and GehriBaghi TSS. However, in complete defiance of the express

directions of the Commission, PSTCL refused to include the TSSs in the existing LTA by way of its letter dated 25.03.2022 on the ground that the Commission has directed Railways to rework its power purchase plan. The settled law is that the judgment of a court has to be read in its entirety and Northern Railway has relied in this regard on the judgment passed by the Hon'ble Supreme Court in the case of *Islamic Academy of Education v. State of Karnataka*. Thereafter, on 18.04.2022, PSTCL wrote to Northern Railways insisting on payment of outstanding dues for GehriBaghi TSS and compliance of RPOs.

- xii) That PSTCL on one hand insisted on compliance of RPO and on the other hand refused to process the open access applications of Northern Railways which would enable it to procure renewable power. It is clarified that Indian Railways has a target of Net Zero Carbon by 2030 and is setting up renewable energy plants which will be commissioned in the next 2-3 years. Even today, Indian Railways / Northern Railways is ready to comply with the RPO obligations and in this regard immediate intervention of the Commission is sought in getting the open access approvals for procurement of renewable power. Further, PSTCL was insisting on payment of outstanding dues for GehriBaghi TSS while continuing to raise arbitrary invoices claiming additional surcharge and demand surcharges as well as interest over amounts which were not even chargeable by it. The Hon'ble Appellate Tribunal by way of its order dated 30.05.2022 in Appeal No. 186 of 2022 has issued a stay against insistence of payment of additional surcharge as directed under the order dated 22.03.2022. However, PSTCL and the Petitioner continued to make demands of demand surcharge and additional surcharge in flagrant defiance of specific instructions from the Commission and the Hon'ble Appellate Tribunal.

- xiii) That various rounds of meetings were held between the Petitioner, PSPCL and Northern Railways and further Northern Railways was directed by the State entities to approach the CGRF for redressal of its grievances regarding outstanding payments. Pursuant thereto, Northern Railways has filed Case No. CF – 060/ 2022 before CGRF, Ludhiana for resolution of the issue of alleged outstanding dues for GehriBaghi TSS.
- xiv) That vide order dated 22.03.2022, the Commission directed Northern Railways to rework its power purchase plan on its current as well as future requirements. Therefore, after undertaking a detailed study of the load requirements including sudden variations occasioned by various factors including, COVID-19 and Farmers' Protests in the State of Punjab and, after arranging additional power from BRBCL, on 17.08.2022, Northern Railways applied to PSTCL for increase in LTA capacity revision from 35 MW to 50 MW. However, even this was refused by PSTCL on 18.08.2022 on the alleged ground that complete application needs to be submitted in this regard with fresh requisite application fee. With an oblique motive of blocking the request of Northern Railways yet again, PSTCL directed that *"prior to submission of application. It may also be ensured that pending issues with PSPCL may also be cleared."* It is understood that this stance was deliberately adopted by the Petitioner since it was aware that issues with PSPCL are pending before different forums like, APTEL, CGRF, etc. which will take some time to get resolved.
- xv) That conduct of the petitioner demonstrated that they are arbitrarily abusing the process of law and arm-twisting the customer and deemed distribution licensee to give in to become a consumer of the local distribution licensee (i.e., PSPCL) by blocking all avenues for procurement of power from other sources. Such conduct of State Utilities i.e., repeated denial of open access

and flagrant flouting court orders at their whims and fancies, is arbitrary. The amendments sought by Petitioner under the present petition is yet another attempt by the Petitioner to profiteer at the cost of Indian Railways. In contraction to the very spirit of open access and Electricity Act, 2003, instead of readily allowing open access to Northern Railway, the Petitioner has rather chosen to approach the Commission for increase in transmission charges. The allowance of levy of transmission charges on actual maximum drawal could very well be counter-productive to the grid. The law is well settled that what cannot be done directly cannot be done indirectly. Further, levy of transmission charges on overdrawal in addition to deviation charges based on DSM will lead to double jeopardy and impinge on the DSM Regulations framed by the CERC.

- xvi) That the Petitioner is giving its own ad-hoc calculations based on individual TSSs level. The calculation submitted by the Petitioner (433.173 MVA or 389.856 MW) is purely an algebraic sum of contracted demand based on transformation blockage capacity or virtual capacity at each drawal point. The proposed methodology doesn't have any technical basis and appears to be an exercise to extract maximum revenue from Indian Railways under the head of transmission charges.
- xvii) That considering the nature of operations of Indian Railways and in terms of the order dated 05.11.2015 passed by the Central Commission, the power requirement at a given point of time considering all the drawal points as one single entity simultaneously shall always be less than the total sum of the contract demand as existing at individual points before disconnecting from the State Distribution Companies. Further, even the increase in number of drawal point does not necessarily increase the load requirement of Indian Railways in that proportion as after addition of new drawal points the

traction load of Indian Railways gets distributed and the loading in the existing drawal points (TSSs) gets reduced and balanced.

- xviii) That PSTCL is solely relying on the order dated 17.06.2020 issued by the HERC in support of its claim, which is in challenge before the Hon'ble Appellate Court. It is settled law that judgments are not statute and the factual differences must be looked at to ascertain if it should be treated as a precedent.
- xix) That in Haryana, Railways has 11 TSSs or drawl points with a contract demand of 55 MW and thus, the transformation capacity has been worked out as 232 kVA. Whereas, in Punjab, Railways has 11 drawl points with a contract demand of 35 MW currently and the transformation blockage capacity has been calculated as 433.173 MVA. Thus, it is clear that the calculations of PSTCL are ad-hoc and arbitrary and not even based on the Haryana methodology and without any technical study of the subject. If the prayers under the Petition be allowed, it is estimated that transmission charges would increase by almost 10 or 11 times the current charges.
- xx) That Reference may also be made to other states like Rajasthan, Bihar, Delhi, Karnataka and Gujarat, etc. where Indian Railways avails open access and transmission charges are calculated on "Tied Up/PPA Quantum under LTOA/MTOA" in line with the methodology followed at the Central level.
- xxi) That with regard to approval of its proposal in relation to injection/dumping of harmonics by open access customers/generators, Northern Railway submitted that the petitioner has not presented any system study on the amount of harmonics generated by the TSSs of Northern Railways and its detrimental effect on the system. However, Northern Railways is bound to maintain the grid discipline and quality of supply and thus, shall comply with

all the technical requirements as may be deemed fit by the Commission. Further, it shall require large investment by Northern Railways and accordingly sufficient time limit for this compliance may be given and Commission may consider 6 to 12 months from the date of notification instead of 3 months.

xxii) With regard to Approval of the Detailed Procedure of STU for grant of connectivity to open access applicants at 132kV & above, Northern Railway submitted that the Petitioner has deliberately delayed finalization of the Detailed Procedures. Firstly, framing of procedures are for the State in general and therefore, basing actions/omissions on a singular entity like Northern Railways, cannot be the correct line of action. The arguments advanced by the Petitioner exemplify that they are not even considering the growth of the open access sector in the State of Punjab and introduction of a new non-embedded open access customer is not even in its contemplation. Secondly, it is pertinent to clarify that Northern Railways was forced by PSTCL to approach PSPCL to seek connectivity and not of its own accord. It is evidenced by the documents on record that PSTCL itself has pushed Northern Railways to seek connectivity from PSPCL and now it is changing its stand under the petition.

xxiii) Northern Railway replied to the detailed procedure of STU for grant of connectivity to Open Access applicants at 132 kV & above as under:

Sr.No.	PSTCL Connectivity Procedure	Comments
1.	Clause 1.1- This Procedure is in accordance with....provisions of this Regulation shall prevail.	The PSERC (Terms and Conditions for Intra State Open Access) Regulations, 2011 has been issued under Section 42 and 181 of EA'2003. This Connectivity Procedure has been proposed as per the above Regulation.

		<i>Connectivity is to be granted by STU for grant of Open Access as per Section 39 of EA'2003 which is not covered.</i>
2.	Clause 1.3-Application or grant of Connectivity....	<p>Application is to be made by Generator (RE & NRSE) and Consumer. The Open Access Regulation defines, "Open Access Customer" as a Consumer permitted by the Commission to receive supply of electricity from a person other than distribution licensee of his area, or a generating company (including captive generating plant) or a licensee, who has availed of or intends to avail of Open Access.</p> <p><i>For a Consumer to avail Open Access from a person other than distribution licensee, he should be connected to the distribution licensee. How can a Consumer get connected to the Intra-State Transmission System?</i></p> <p><i>The Clause should also cover drawal points of deemed licensee for Connectivity to Intra-State Transmission System.</i></p>
3.	Clause 1.5- In case of multiple injection/drawal locations, ...applicant for each location.	<i>Since the drawal points at multiple locations shall be connected to Intra-State Transmission System, clause should also include collective scheduling, balancing and DSM accounting for all the drawal points connected to Intra-State Transmission System at multiple locations.</i>
4.	Clause 1.7	<i>Time period of 2 years should be prescribed where network construction/augmentation is required. This time period should be prescribed as 3 months where network capacity already exists and consent for connectivity has already been granted.</i>
5.	Clause 2.4	<p><i>Procedure for Connectivity application of drawal points of deemed licensee to be included.</i></p> <p><i>Procedure does not address Open Access Customer whereas the Connectivity Agreement (Format-6) addresses Open Access Customer.</i></p>

6.	Clause 2.4.3	<i>Details of Standby Arrangement from Distribution Licensee should not be mandatory but optional</i>
7.	Clause 2.4.6	<i>These requirement should be waived for Government Entities as Copy of Registration of Companies, MoA, Board Resolution, PoA do not apply for Government entities.</i>
8.	Clause 4.1	<i>PSTCL shall scrutinize the application and intimate the applicant of the deficiencies in the application... A finite timeline should be prescribed for scrutiny and intimation of defects. PSTCL should intimate the defects within 10 days of receipt of application. Further, if the application is not found to be in accordance with Regulations/Procedure, then also this defect should be pointed out with an opportunity to rectify without insistence of fresh application with fresh fee.</i>
9.	Clause 4.4 (b)	<i>Reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of the Regulation/Procedures... An opportunity should be given to cure this defect. Rejection should take place only if this defect is not rectified in a time bound manner.</i>
10.	Clause 5.1 The grant of connectivity shall not	<i>As grant of Connectivity is envisaged for Open Access, the application for Connectivity and Open Access should be processed simultaneously. The Open Access should be permitted as per Section 39 of EA'2003.</i>
11.	Clause 6.1- Unless exempted....real time data to SLDC	<i>The prevailing O&M charges as approved by the Commission shall be charged for the dedicated transmission line and associated bay and equipments. O&M Charges for dedicated transmission line and associated bay & equipments shall not be payable by User. These shall be included as a part of ARR for determination of STU transmission charges.</i>
12.	Clause 7.2- All costs/expenses/charges...	<i>The provision of bank guarantee has not been used in the proposed procedure.</i>

Further, STU should not insist on clearance of outstanding dues of the Discom as a pre-condition for grant of connectivity in case the Applicant/Open Access Customer is not a consumer of Discom/PSPCL or if such dues are disputed by the Applicant in any court of law or have been issued in contravention of express directions of any court of law.

Reply/rejoinder of PSTCL to the reply filed by Northern Railway:

10. PSTCL filed its rejoinder to the reply filed by Northern Railway submitting:
- i) That though the provisions of the Electricity Act and National Tariff Policy emphasize on promoting non-discriminatory open access to inculcate competition in the power sector, yet it is up to the State Electricity Regulatory Commissions to stipulate regulations for implementing open access and determine various charges associated with open access in such a manner that open access does not have an adverse financial impact on the licensee(s) and their consumers.
 - ii) That the suggestions/ proposals of the Petitioner have not been designed to take away choice of open access from Northern Railways by making the power procurement through open access expensive but to compensate the STU/ transmission licensee for unforeseen excess usage of transmission system by Northern Railway (without paying transmission charges for such excess usage) and to ensure that the charges for such excess usage acts as a deterrent for Northern Railway to avoid such excess usage of transmission system by way of excessive over-drawls.

Although regulations are in the nature of delegated legislation and are subservient to the parent Act but the Electricity Act provides for imposition

of various charges on open access customers e.g. transmission/ wheeling charges, cross-subsidy surcharge, additional surcharge etc. (to be stipulated by appropriate State Commissions), which does not hinder the non-discriminatory open access and competition thereof. The Electricity Act itself does not stipulate the method/ procedure for levy of such charges (e.g. whether the charges are to be levied on approved drawl quantum or actual maximum drawl), which is decided by the appropriate Commissions. As such, the amendments proposed by the petitioner in Open Access Regulations neither impair the environment of open access nor invade on the core spirit of Electricity Act, 2003.

- iii) That the Petitioner does not seek to discourage open access but to ensure that the charges for excess usage of transmission system by Northern Railway are realized and such charges act as a deterrent for Northern Railway to avoid excess usage of transmission system by way of excessive over-drawls. The Statement of Northern Railway that the petitioner (along with its sister concerns) has canvassed and exemplified discouraging open access repeatedly in the past, is vague, baseless and incomprehensible. The petitioner has never in the past exemplified discouraging open access to Northern Railway. The petitioner has always abided by the provisions of Electricity Act, Open Access Regulations and procedures, which involves obtaining consent of distribution licensee before grant of open access. The denial of open access to Northern Railway in the past by PSPCL is in accordance with the provisions of open access regulations framed by the Commission (owing to outstanding dues), cannot be termed as “discouragement of open access”, which has also been acknowledged by the Commission in its order dated 22.03.2022 in Petition No. 14 of 2021.

iv) That the Hon'ble Supreme Court judgment quoted by Northern Railway pertains to challenging of Hon'ble CERC order dated 04.07.2005 passed in Petition No.67/2003 (suo moto), whereby the CERC ordered the application of Availability Based Tariff (ABT) to Simhadri SPTS thermal station of the National Thermal Power Corporation (NTPC), which supplies power to the State Grid. CERC while implementing ABT mechanism had decided that besides Inter-State Generating Stations (ISGS) supplying power to multiple States, all other generating stations owned by the Central Power Sector Utilities which are supplying power to only one beneficiary of the State are also to be brought under the purview of ABT. The judgment is totally irrelevant to the matter of the present petition, especially when it is well known that the Generating Stations of NTPC falls under the purview of Hon'ble CERC, which has also been acknowledged by Hon'ble Supreme Court in the judgment para no. 21 quoted by Northern Railway - *"It is the Central Commission alone who has the jurisdiction particularly, in regard to generating stations of NTPC, which is a Central Government-owned and controlled generating company"*.

That by referring to average drawl during the month, Northern Railway cannot deny the excess usage of transmission system by it (which goes upto the maximum drawn quantum and not the average drawl). The petitioner submitted details to substantiate that Northern Railway on most of the occasions has drawn more than the approved open access quantum and used the transmission system more than it was allowed and transmission charges were paid for by it.

Northern railway has been excessively over-drawing and frequently breaching the approved open access quantum limit of 35 MW especially w.e.f. July-21 onwards, resulting in excess usage of transmission system

for most of the time. As such, average load depicted by Northern Railway is misleading and in-appropriate to be considered while deciding the present issue and no facts and figures have been misrepresented by the petitioner. Further, though there is well established mechanism of DSM Regulations to penalize such over-drawls, yet the DSM mechanism does not compensate the STU/ transmission licensee by way of transmission charges for excess usage of transmission system by way of over-drawls. Moreover, DSM mechanism levies deviation charges only for drawls above scheduled quantum, which may not be necessarily more than the approved open access quantum (based on which transmission charges for LTA/ MTOA are levied).

- v) That the onus is not on the petitioner but on Northern Railway to prove that it hasn't used the transmission system beyond approved open access quantum, for which it has been paying transmission charges. Northern Railway cannot walk away after using the transmission system for excess capacity without paying transmission charges by asking the petitioner to prove the losses it has incurred. This is similar to willfully use one's assets without paying for and asking him to demonstrate losses on such account. The judgment thus quoted by Northern Railway applies not to the petitioner but to Northern Railway to prove that it hasn't used the transmission system beyond approved open access quantum, for which it has been paying or to prove that it has been authorized to use transmission system of STU upto any limit at its own will.
- vi) That the petitioner has not suppressed any material fact. The Commission in its order dated 22.03.2022 in Petition No. 14 of 2021 has adjudicated the matter regarding grant of Open Access (LTA/ STOA) to Northern Railway and alleged unauthorized charges levied by PSPCL, deciding that

open access may be granted to Northern Railway provided that Northern Railway clears all its outstanding dues. The onus was on Northern Railway to clear its outstanding dues and make RPO compliance in accordance with the regulations framed by the Commission, before seeking open access, which it has not done till date. A high level meeting in this regard was also held between Secretary/ Power, CMD/ PSPCL, Officers of PSTCL and Northern Railway on 23.08.2022, whereat this issue was deliberated at length and it was decided that Northern Railway shall clear its outstanding dues towards Gehri Bhagi TSS and seek a one time relaxation of RPO by filing a Petition before PSERC and procuring green power from power exchange after getting NOC from PSPCL.

Northern Railway is wrong to mention that connectivity applications for its TSSs had earlier been made by Northern Railways to the petitioner prior to 24.11.2019 i.e., the date of start of open access in Punjab. Northern Railway had first approached the petitioner in the month of April-2021, when PSTCL insisted that first Northern Railways should seek connectivity for these TSSs from PSPCL, and then apply to PSTCL for grant of open access once the STU detailed procedure is framed/approved. However, when emphasized by Northern Railway in July-2021, the procedure for connectivity by STU was framed and submitted to the Commission for approval by way of this petition.

- vii) That as per the provisions of open access regulations and prevailing LTA/ MTOA procedure, consent of PSPCL is sought prior to grant of open access. The LTA application for inclusion of Kup Kalan and Gehri Baghi TSS in the existing LTA was forwarded by the petitioner to the PSPCL for consent on 24.03.2022 however observing that the LTA quantum of 35 MW has still been retained by Northern Railway in its LTA application for

inclusion of 2 no. TSSs, Northern Railway was advised to rework its power purchase plan, in line with Commission order dated 22.03.2022 in petition no. 14 of 2021, and increase the LTA quantum beyond 35 MW, as the 35 MW limit was already being breached by Northern Railway on regular basis (with maximum draws to the tune of 60-70 MW) and inclusion of 2 more TSS would have further increased its drawl, resulting in further breach of open access capacity, excess usage of transmission system and heavy over-drawls endangering grid security. As such, Northern Railway was advised to rework its power purchase plan by increasing the LTA quantum accordingly.

The judgment quoted by Northern Railway that “the judgment of a court has to be read in its entirety” therefore does not apply to the petitioner in the present matter but to Northern Railway, who has been quoting some irrelevant judgments without reading them in entirety.

- viii) That e-mail/letter dated 18.04.2022 was written by the petitioner, being the nodal agency for LTA, based on receipt of letter from PSPCL on same day to whom LTA application of Northern Railway was sent for consent in line with prevailing regulations/ procedures.
- ix) That the petitioner had asked Northern Railway to clear its outstanding dues and make RPO compliance in line with PSPCL letter dated 18.04.2022 and in accordance with the provisions of Open Access Regulations and this Commission’s order dated 22.03.2022 in Petition No. 14 of 2021. Moreover, the petitioner had not raised any bill for charges related to PSPCL e.g. dues towards Gehri Bhagi TSS, Additional Surcharge, Demand Surcharge, Interest amounts etc. The matter pertaining to dues of demand surcharge and additional surcharge and stay

order dated 30.05.2022 in Appeal No. 186 of 2022 relates to PSPCL and not the petitioner.

- x) That LTA application for increase in LTA capacity revision from 35 MW to 50 MW was not processed by the petitioner mentioning that complete application needs to be submitted in this regard with fresh requisite application fee, in line with the provisions of open access regulations and LTA/ MTOA procedure approved by this Commission. There was no oblique deliberate motive of blocking the request of Northern Railways by the Petitioner.
- xi) That the Petitioner is not guilty of any violation of directions issued by the Commission/ Hon'ble Appellate Tribunal/ CERC. The petitioner has been complying with the various regulations and orders issued by the Commission/ CERC and orders of APTEL issued from time to time. However, w.r.t. the extracts of CERC order in Petition no. 197/MP/2015, reproduced by Northern Railway, the directions of Hon'ble CERC i.e. *"All concerned RLDCs, State Transmission Utilities and SLDCs are directed to facilitate long term access and medium term access in terms of Connectivity Regulations from the generating stations or other sources to the facilities and network of Indian Railways"* should not be construed in such a manner that no checks, compliance of requirements/ terms & conditions needs to be ensured before facilitating long term access and medium term access to Railways.
- xii) That, the statement of Northern Railway that levy of transmission charges on over-drawal in addition to deviation charges based on DSM will lead to double jeopardy and impinge on the DSM Regulations framed by the CERC is untrue, as both the deviation/ DSM charge and transmission charge are different from each other. While deviation/ DSM charge is a

regulatory charge (and is not meant for compensating STU for use of transmission system), the transmission charge shall ensure such compensation to STU.

- xiii) That the petitioner had proposed levy of transmission charges based on 3-phase transformation capacity blockage based on the practice being adopted in the State of Haryana in line with HERC order dated 17.06.2020, which is being claimed to have been challenged by Northern Railway in Hon'ble APTEL. The Commission may decide the additional transmission and SLDC charges for excess usage of transmission system by Northern Railway as it may deem fit either based on the prayer of petitioner in the main petition or the revised prayer in the rejoinder submitted on dated 08.03.2022. The main motive of the petitioner is to get compensated for the excess usage of transmission system by Northern Railway and other full open access consumers/ generators and at a higher rate than the transmission tariff in order to provide for a deterrent to avoid such instances.
- xiv) That Northern Railways is engaging in inter-state open access for supply of power from Bihar to Punjab, the methodology for computation of transmission charges while availing open access for the associated intra-state transmission cannot be at variance with the methodology at the Central level. The methodology for computation of transmission charges for use of Inter-State Transmission System (ISTS) by CTU and transmission charges for use of Intra-State Transmission System (InSTS) by STU is always at variance. While the transmission charges for ISTS are worked out in accordance with CERC Tariff Regulations and shared among entities on monthly basis in accordance with CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, the charges

for InSTS are decided by State Electricity Regulatory Commissions, while approving annual ARR of STU/ transmission licensee in their Tariff Orders issued from time to time.

- xv) That the injection of harmonics by Northern Railway owing to its 3-phase to 2- phase conversion of supply and railway traction equipment and its detrimental effect on the system is known to all, which had also been acknowledged by this commission while deciding tariff for Railway Traction category, which was higher than any other permanent supply category, so as to mitigate its detrimental effect on the system of the licensee. The petitioner since grant of open access to Northern Railway in Nov-2019 has been repeatedly asking it to install suitable harmonic suppression filters and harmonic measurement system. However, Northern Railway has been unable to do so till date. Northern Railway in the past had ensured that the petitioner was provided system study on the amount of harmonics generated by its TSSs however no action in this regard has been taken by Northern Railway till date. Northern Railway has been deliberately negligent towards complying with the requests/ directions of STU/ SLDC, whether it relates to over-drawls, clearing of outstanding dues, RPO compliance or providing harmonic suppression and measurement systems.
- xvi) That at the time of notification of Open Access Regulations, 2011 i.e. on 01.07.2011, Short Term Open Access (STOA) customers/ transactions were in abundance with no LTA/ MTOA customer within the State and accordingly the Intra State STOA Procedures were prepared by SLDC and got approved from this Commission on 23.08.2011. After Northern Railway applied for Medium Term Open Access (MTOA) in 2017 and subsequently for Long Term Access (LTA) in 2019 (after withdrawing MTOA

application), the LTA/ MTOA Procedure was also prepared by the petitioner and got approved from the Commission on 06.09.2019 (before operationalizing the LTA w.e.f. 24.11.2019 onwards). Similarly, when Northern Railway has now sought connectivity from STU for its upcoming & proposed TSSs (as full open access consumer, without involving distribution licensee i.e. PSPCL) vide its letter dated 23.07.2021, the petitioner has prepared the procedure for connectivity and submitted to the Commission for approval in Oct-2021.

xvii) That the connectivity to 20 no. TSS of Northern Railway (including 11 no. TSS presently under Open Access) was sought by Northern Railway from PSPCL before approaching the petitioner for connectivity in Apr-2021 and even before grant of Open Access (LTA) in Nov-2019 (e.g. the connectivity for Gehri Bhagi TSS was sought by Northern Railway from PSPCL in 2018 vide A&A form no. 19478 dated 23.01.2018). The petitioner has copies of A&A forms submitted by Northern Railway to PSPCL for connectivity of its TSSs prior to approaching the petitioner for connectivity. The petitioner had only asked Northern Railway to seek connectivity from PSPCL in Apr-2021, which was not accepted by Northern Railway and accordingly, the procedure annexed with this petition was formulated by the petitioner and submitted to the Commission for approval. As such, the petitioner is complying with the requirements arisen from time to time and any action against the Petitioner under Section 142 of the Electricity Act, 2003, is unwarranted and uncalled for.

xviii) PSTCL submitted reply on comments of Northern Railway on the draft procedure as under:-

Sr. No.	PSTCL Connectivity Procedure	Comments of Northern Railway	Reply of Petitioner
1.	Clause 1.1- This Procedure is in accordance with....provisions of this Regulation shall prevail.	<p>The PSERC (Terms and Conditions for Intra State Open Access) Regulations, 2011 has been issued under Section 42 and 181 of EA'2003.</p> <p>This Connectivity Procedure has been proposed as per the above Regulation.</p> <p><i>Connectivity is to be granted by STU for grant of Open Access as per Section 39 of EA'2003 which is not covered.</i></p>	<p>As per the definition of STU in PSERC Open Access Regulations, it is a Government company specified as such by the State Government under sub-section (1) of Section 39 of the Act.</p> <p>The functions of STU have been defined under Section 39 of Electricity Act, 2003 and Section 2.3.2 of Punjab State Grid Code and it is understood that STU shall act under the same.</p> <p>The reference to Section 39 is not required to be provided in procedures, where the reference to sub-ordinate legislation i.e. Regulations has already been provided.</p>
2.	Clause 1.3- Application or grant of Connectivity.	<p>Application is to be made by Generator (RE & NRSE) and Consumer. The Open Access Regulation defines, "Open Access Customer" as a Consumer permitted by the Commission to receive supply of electricity from a person other than distribution licensee of his area, or a generating company (including captive generating plant) or a licensee, who has availed of or intends to avail of Open Access.</p> <p><i>For a Consumer to avail Open Access from a person other than distribution licensee, he</i></p>	<p>It is clarified that the application for connectivity under this procedure can be made by a generating station (RE/ NRSE or Conventional, who seeks to sale power under open access to 3rd party other than distribution licensee) or a user/ consumer (which is not consumer of distribution licensee e.g. full open access consumer like Northern Railway).</p> <p><i>For a Consumer to avail Open Access from a person other than distribution licensee, he should be first connected</i></p>

		<p><i>should be connected to the distribution licensee. How can a Consumer get connected to the Intra-State Transmission System?</i></p> <p><i>The Clause should also cover drawal points of deemed licensee for Connectivity to Intra-State Transmission System.</i></p>	<p><i>to the distribution licensee or transmission licensee/ STU.</i></p> <p><i>The connectivity to the distribution/ transmission system shall either be provided by distribution licensee under consumer mode in line with its Electricity Supply Instructions Manual or Connectivity to the transmission system shall be provided by STU/ transmission licensee under open access mode in line with this connectivity procedure.</i></p> <p><i>The clause already covers deemed licensee under “user/ consumer” part.</i></p>
<p>3.</p>	<p>Clause 1.5- In case of multiple injection /drawal locations,applicant for each location.</p>	<p><i>Since the drawal points at multiple locations shall be connected to Intra- State Transmission System, clause should also include collective scheduling, balancing and DSM accounting for all the drawal points connected to Intra-State Transmission System at multiple locations.</i></p>	<p><i>The connectivity procedure only pertains to grant of connectivity, which shall be followed by grant of Open Access under Open Access (LTA/MTOA or STOA) Procedures, further followed by scheduling and DSM accounting under State Grid Code read along with PSERC (Forecasting, Scheduling & Deviation Settlement for Solar & Wind Generators) Regulations, 2019 for Solar RE generators and PSERC (DSM) Regulations, 2020 for other State Entities.</i></p> <p><i>As such, the collective</i></p>

			<p>scheduling, balancing and DSM accounting shall not form part of this procedure.</p> <p>It is clarified that separate connectivity applications shall be required to be submitted by Northern Railway for each drawl point, though for the purpose of Open Access, Scheduling & DSM accounting Northern Railway shall be considered as a Single Entity (in line with Hon'ble CERC decision in Petition no. 197/MP/2015 and Hon'ble PSERC decision in Petition No. 3 of 2017.</p>
4.	Clause 1.7	<p>Time period of 2 years should be prescribed where network construction/augmentation is required. This time period should be prescribed as 3 months where network capacity already exists and consent for connectivity has already been granted.</p>	<p>The timelines proposed in the draft procedure are in accordance with PSERC Open Access Regulations and Connectivity Procedure of CTU and other States.</p> <p>Hon'ble Commission may revise the timelines if and as it may deem fit.</p>
5.	Clause 2.4	<p>Procedure for Connectivity application of drawal points of deemed licensee to be included.</p> <p>Procedure does not address Open Access Customer whereas the Connectivity Agreement (Format-6) addresses Open Access Customer.</p>	<p>The clause already covers deemed licensee under "user/ consumer" part. However, it is clarified that separate connectivity application shall be required to be submitted by Northern Railway for each drawl point, though for the purpose of Open Access, Scheduling & DSM accounting Northern Railway shall be considered as a</p>

			<p><i>Single Entity.</i></p> <p><i>The “Open Access Customer” has been defined in the Open Access Regulations (which covers each applicant whether generator or consumer/ user), under which the connectivity procedure and agreement have been drafted.</i></p>
6.	Clause 2.4.3	<p><i>Details of Standby Arrangement from Distribution Licensee should not be mandatory but optional.</i></p>	<p><i>Agreed. Standby Arrangement is already optional in line with Regulation 27 A of Open Access Regulations.</i></p>
7.	Clause 2.4.6	<p><i>These requirement should be waived for Government Entities as Copy of Registration of Companies, MoA, Board Resolution, PoA do not apply for Government entities.</i></p>	<p><i>Agreed. The documents not applicable for Government Entities shall not be insisted upon. The same may be substituted by applicable documents (e.g. Authorization letter etc.) accordingly.</i></p>
8.	Clause 4.1	<p><i>PSTCL shall scrutinize the application and intimate the applicant of the deficiencies in the application...</i></p> <p><i>A finite timeline should be prescribed for scrutiny and intimation of defects. PSTCL should intimate the defects within 10 days of receipt of application.</i></p> <p><i>Further, if the application is not found to be in accordance with Regulations/ Procedure, then also this defect should be pointed out with an</i></p>	<p><i>Agreed.</i></p> <p><i>However, if the application is not found to be in accordance with Regulations/ Procedure, a finite timeline of one week shall be allowed for rectification of defect without insistence of fresh application with fresh fee.</i></p>

		<i>opportunity to rectify without insistence of fresh application with fresh fee.</i>	
9.	Clause 4.4 (b)	<p><i>Reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of the Regulation/ Procedures...</i></p> <p><i>An opportunity should be given to cure this defect. Rejection should take place only if this defect is not rectified in a time bound manner.</i></p>	<p><i>As already mentioned above, if the application is not found to be in accordance with Regulations/ Procedure, a finite timeline of one week shall be allowed for rectification of defect, before rejection of application.</i></p>
10.	<p>Clause 5.1</p> <p>The grant of connectivity shall not</p>	<p><i>As grant of Connectivity is envisaged for Open Access, the application for Connectivity and Open Access should be processed simultaneously.</i></p> <p><i>The Open Access should be permitted as per Section 39 of EA'2003.</i></p>	<p><i>The applications for connectivity under this procedure and grant of open access shall be processed simultaneously provided that the applications have been made well in advance as per the stipulated timelines.</i></p> <p><i>The Open Access is already being granted by STU under Section 39 of EA'2003.</i></p>
11.	<p>Clause 6.1- Unless exempted....real time data to SLDC</p>	<p><i>The prevailing O&M charges as approved by the Commission shall be charged for the dedicated transmission line and associated bay and equipments.</i></p> <p><i>O&M Charges for dedicated transmission line and associated bay & equipments shall not be payable by User. These shall be included as a part of ARR for determination of</i></p>	<p><i>The O&M charges for dedicated transmission line and associated bay and equipment are required to be borne by the user. Including the O&M charges in ARR, shall pass on the burden to the consumers of licensee in form of tariff.</i></p>

		<i>STU transmission charges.</i>	
12.	Clause 7.2- All costs/ expenses/ charges...	<i>The provision of bank guarantee has not been used in the proposed procedure.</i>	<p><i>The provision of bank guarantee has been covered under LTA/ MTOA Procedures in line with Regulation 16 (2) (d) of Open Access Regulations, according to which bank guarantee of Rs. 10,000 /- (Ten thousand only) per MW shall be kept valid and subsisting till the execution of the long-term access agreement, in the case when augmentation of transmission system is required, and till operationalization of long-term access when augmentation of transmission system is not required.</i></p> <p><i>No additional bank guarantee for connectivity has been proposed in procedure, however the applicant will have to deposit advance charges for construction/ augmentation work, as presently applicable for connectivity by the distribution licensee (PSPCL).</i></p>

Further, w.r.t. the statement of Northern Railway that STU should not insist on clearance of outstanding dues of the Discom as a pre-condition for grant of connectivity, PSTCL submitted that as per Chapter-3, Regulation 10 (4) of PERC Open Access Regulations, the clearing of outstanding

dues is a pre-condition for availing open access and thus is required to be fulfilled before grant of connectivity, specifically for the purpose of availing open access. The petitioner is not in violation of any Regulations/Orders contrary to allegation made by Northern Railway while trying to divert from the real issues in the petition.

Rejoinder of PSPCL to the reply filed by Northern Railway

11. PSPCL filed a rejoinder to the reply filed by Northern Railway submitting
 - i. That denial of open access to Northern Railway in the past by the PSPCL is in accordance with the provisions of open access regulations framed by the Commission (owing to outstanding dues). It cannot be termed as “discouragement of open access”, which has also been acknowledged by the Commission in its order dated 22.03.2022 in Petition No. 14 of 2021.
 - ii. That PSPCL has not suppressed any material fact. The Commission in its order dated 22.03.2022 in Petition No. 14 of 2021 has adjudicated the matter regarding grant of Open Access (LTA/ STOA) to Northern Railway and decided that open access may be granted to Northern Railway provided that Northern Railway clears all its outstanding dues. The onus was on Northern Railway to clear its outstanding dues and ensure RPO compliance in accordance with the regulations framed by the Commission, before seeking open access, which it has not done till date.
 - iii. That in Petition No. 14 of 2021, PSERC vide its order dated 22.3.22 has directed PSPCL & PSTCL to provide connectivity to Gehri Bhagi TSS in the existing LTA, provided that Railways clears all pending dues of PSPCL, since Railways has not cleared outstanding dues, the consent was not granted for inclusion of Gehri Bhagi TSS in the existing LTA. The

Railways is only selectively quoting the facts of the Hon'ble PSERC's order dated 22.3.22 in Petition No. 14 of 2021.

- iv. That as per the orders of PSERC, already raised invoices were revised by raising RBS (revised bill statement) No 40/2022 dated 29/04/2022. Also, there is no bar to issue further bills as per the order of PSERC. Amount of already paid Demand Surcharge was duly adjusted in RBS No 40/2022 dated 29/04/2022. The interim relief granted by Hon'ble APTEL is from payment for Additional Surcharge and there is no bar on raising the Invoices for the same. As per Regulation 56 (2) of Electricity Act 2003, there is a limitation period for raising Invoices to consumers. Thus, invoices were not raised for two years then, the same would not be recoverable from Northern Railways. Therefore, it was mandatory to raise the Invoices and show arrears as per Regulation 56 (2) of Electricity Act 2003.

Observations and Decision of the Commission.

The Commission has carefully gone through the submissions made in the petition by PSTCL, replies of PSPCL, Railways & PEDDA, rejoinders and arguments made during the hearings. The issue wise findings and decision of the Commission are as here under:

1. **Issue No. 1: Incorporating provisions for levy of additional Transmission/ Wheeling and SLDC Charges for over-utilisation of Open Access Capacity (over-injection/ over-drawl) by Open Access consumers/Generators:**

In the petition, PSTCL has referred to Regulation 51 of HERC (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 notified by

Haryana Electricity Regulatory Commission (HERC) vide no. HERC/25/2012 dated 11.01.2012 which provides that:-

“In case an open access consumer injects or draws more than the allocated capacity in the transmission and or distribution system beyond 10%, the open access consumer shall pay 150% of the applicable transmission and or wheeling charges for this excess injection / drawl than the allocated capacity. The charges for this excess injection / drawal beyond 10% shall be levied in accordance with the approved detailed procedure.

Provided that in case an open access consumer frequently injects or draws more than the allocated capacity then the nodal agency may revise the allocated capacity in the transmission and or distribution system in accordance with the approved detailed procedure. However, before doing this, opportunity shall be given to the open access consumer to explain its position.”

PSTCL requested the Commission to introduce a similar clause in PSERC Open Access Regulations, 2011 to levy the transmission charges on account of Over-utilization of open access capacity (over-injection / over-drawals) by Open Access Customers, who are not consumer of distribution licensee so as to avoid any financial loss to the STU (PSTCL).

However, Railways vide its reply dated 03.03.2022 submitted that the referred Regulation 51 is only an enabling provision which was to be subsequently approved by HERC while approving detailed procedure and it is being charged for the transmission charges as per contracted / approved open access capacity. However, here it is being charged for the transmission charges as being sought by the petitioner.

In reply, PSTCL submitted that the mentioned provision in HERC (Terms and conditions for grant of connectivity and open access for intra-state transmission and distribution system) Regulations, 2012, has now been repealed vide HERC order dated 17.06.2020 in Case No. HERC/Pro-11 of 2017 wherein HERC has decided that the recovery of transmission charges from Northern Railway shall be on the basis of transformation capacity blockage as against contract demand or any other methodology to the contrary that may have been mentioned in any other Order/Regulations of this Commission. As Northern Railway has already accepted and is paying transmission charges for transformation capacity blockage in State of Haryana, it should not have any objection to do so in the State of Punjab. PSTCL requested the Commission to allow revision in proposed amendment by levying the transmission charges on Northern Railway (and other full open access consumers) on the 3-phase transformation capacity blockage, as per the revised methodology applicable in the State of Haryana.

The Commission notes the Railway reply that the referred Order dated 17.06.2020 issued by HERC is in Challenge before the Hon'ble Appellate Court. Railways has also submitted that there is no concept of transformation blockage capacity under the Electricity Act 2003 and the dispensation by the HERC is not binding on the Commission. The Commission also takes note of Railways submission that in the other states like Rajasthan, Bihar, Delhi, Karnataka, Gujarat etc. the transmission charges are calculated on "Tied up/PPA quantum" under LTOA/MTOA in line with methodology at central level.

PSTCL vide reply dated 18.10.2022 submitted that the Commission may decide the additional transmission and SLDC charges for excess

usage of transmission system by Railways as it may deem fit out of either of the two prayers.

From the perusal of the PSERC OA Regulations, 2011 it is clear that the open access customer is liable to pay full transmission charges. However, the Commission observes that before deciding the additional Transmission/ Wheeling and SLDC Charges for over-utilisation of Open Access Capacity (over-injection/ over-drawl) by Open Access consumers/Generators, the more important issue that needs to be addressed is regarding the consistent overdrawal by the Railways. The issue was acknowledged and addressed in detail vide the Commission's Order dated 22.03.2022 in Petition no. 14 of 2021 wherein the Commission has taken cognizance of the fact that Railways has been consistently overdrawing/underdrawing power from the grid using UI mechanism as a real time market at the expense of other players, thus, jeopardizing security of the interconnected grid and such acts leading to grid indiscipline cannot be justified in any manner.

Further, the Commission had observed that in line with the provisions of Section 33 of the EA 2003 and Regulation 2.3 of the Punjab State Grid Code, SLDC is expected to direct Railways to curtail its load to match the reduced availability of its contracted generator. SLDC is duty bound to follow the relevant provisions in totality and is responsible for carrying out real time operations for Grid control and dispatch of electricity within the state through secure and economic operation of the Grid in accordance with Grid standards and State Grid Code. Despite the Commission's concerns explicitly addressed in the referred Order, it is noted that consistent overdrawals/underdrawals by Northern Railways are failure on the part of SLDC to exercise the powers conferred on it and

discharge its duties. The Commission once again directs SLDC to ensure Grid discipline and exercise the inherent powers vested with it under the Grid Code. If the SLDC is prompt in performing its duties the situation as this shall not arise wherein special provisions need to be inserted to compensate one particular stakeholder for the default of another stakeholder for excess use of transmission capacity.

It is true and accepted that since levy of transmission charges and/or wheeling charges for use of transmission and/ or distribution system are as payable on the contracted/ approved open access capacity (in case of LTA/ MTOA customers) or scheduled quantum (in case of STOA customers) substantial and consistent variation results in financial loss to the STU (PSTCL) due to consistent overdrawal of Northern Railways. However, the Commission is convinced that in case all the Stakeholders take accountability of their obligations towards maintaining Grid discipline and discharge their duties fairly, such situations shall not arise. Thus, the Commission reiterates its direction to both Northern Railways to maintain discipline and to SLDC to use its inherent power as per Grid Code. Any non-compliance henceforth shall be dealt under Section 142 of the Electricity Act, 2003

Coming to the issue of levy of additional transmission charges of unscheduled Over-utilization of open access capacity (over-injection / over-drawals) by Open Access Customers, to avoid any financial loss to the STU (PSTCL) the Commission observes that from the submissions made by PSTCL and other stakeholders during the proceedings of the petition, there are various proposed options on the methodology to be adopted for recovery of transmission charges on account of over-utilization of open access capacity. However, the Commission at the present stage

decides to follow the extant OA Regulations, 2011. An appropriate amendment to cover the issue highlighted and discussed above shall be considered and due process followed. As such for the present the Commission directs Northern Railways and SLDC both to discharge their duties with diligence and avoid such transgressions in the future. The Commission will initiate the process to bring about the necessary amendments in the Regulation to consider and impose additional transmission charges of unscheduled Over-utilization of open access capacity (over-injection / over-drawals) by Open Access Customers in future.

2. Issue No. 2: Allowing the petitioner to charge transmission charges and SLDC operating charges for the actual maximum drawl of Northern Railway in excess of open access capacity w.e.f. commencement of open access i.e. 24.11.2019.

Notwithstanding the fact that the Commission agrees with PSTCL that transmission charges needs to be paid on account of Over-utilization of open access capacity (over-injection / over-drawals) by Open Access Customers, to avoid any financial loss to the STU (PSTCL). The Commission also notes the established principle that Regulations cannot and should not be implemented retrospectively.

In this regard the Commission relies upon following judgments of the Hon'ble Supreme Court:

a) Panchi Devi v. State of Rajasthan”, (2009) 2 SCC 589

“9. A delegated legislation, as is well known, is ordinarily prospective in nature. A right or a liability which was created for the first time, cannot be given a retrospective effect. Furthermore, the intention of the State in giving a prospective effect to that Rule is clear and

explicit; the amendment in Rule 22-A was also to be effective from 1-9-1982 itself. No relief can be granted to the appellant herein on the basis of the decision in Prabhati Devi (See para 5 above). The said decision did not lay down the correct law. Article 14 of the Constitution of India has a positive concept. Equality, it is trite, cannot be claimed in illegality. Even otherwise the writ petition as also the review petition have rightly not been entertained on the ground of delay and laches on the part of the appellant.

b) “M.D. University v. Jahan Singh,” (2007) 5 SCC 77

“19. The Act does not confer any power on the Executive Council to make a regulation with retrospective effect. The purported regulations, thus, could not have been given retrospective effect or retroactive operation as it is now well settled that in absence of any provision contained in the legislative Act, a delegatee cannot make a delegated legislation with retrospective effect.”

c) “State of Rajasthan v. Basant Agrotech (India) Ltd.,” (2013) 15 SCC 1

“22. In MRF Ltd. v. CST [(2006) 8 SCC 702] the question arose whether under Section 10(3) of the Kerala General Sales Tax Act, 1963 power was conferred on the Government to issue a notification retrospectively. This Court approved the view expressed by the Kerala High Court in M.M. Nagalingam Nadar Sons v. State of Kerala [(1993) 91 STC 61 (Ker)] , wherein it has been stated that in issuing notifications under Section 10, the Government exercises only delegated powers while the legislature has plenary powers to legislate prospectively and retrospectively, a delegated authority like the Government acting under the powers conferred on it by the enactment concerned, can exercise only those powers which are

specifically conferred. In the absence of such conferment of power the Government, the delegated authority, has no power to issue a notification with retrospective effect.”

Further APTEL in its judgment dated 07.06.2021 in Appeal No. 131 of 2020 & IA Nos. 425, 426, 1210 & 1215 of 2020 in the matter of Tamil Nadu Power Producers Association and Tamil Nadu Electricity Regulatory Commission & others has also referred to above judgments of the Hon'ble Supreme Court and has ruled as under:

“15.8 Furthermore, we are convinced with the contention and have a concurring view with the settled position of law that a piece of delegated legislation cannot have a retrospective applicability unless the parent legislation under which it came into existence permits such retrospective applicability. In this regard, we have gone through the judgments of the Hon'ble Supreme Court in the cases of Panchi Devi (supra), M.D. University (supra) and Basant Agrotech (India) Ltd. (supra). The essence of these decisions is that in the absence of any provision contained in the legislative Act, a delegate cannot make a delegated legislation with retrospective effect. We have examined the provisions of the Electricity Act, 2003 and it is observed that no provision of law is enacted therein which permits retrospectivity. Accordingly, we set-aside the directions contained in Paras 6.2.5. & 7.2.4, and hold that there cannot be retrospective application of the procedure formulated.....”

From the above it is clear that the prayer made by PSTCL to implement the said amendment with retrospective effect is not tenable. As such any changes made with regards to the above proposal shall be made applicable from the date of notification of such an amendment.

3. Issue No. 3: Increasing Transmission & Wheeling Charges for NRSE/ RE generators wheeling power within the State under open access Customers.

PSTCL has proposed to increase the transmission charges presently from 2% of the energy injected into the grid to @ 10% of energy injected by distribution licensee. The Commission observes that Note to the Regulation 25 of PSERC Open Access Regulations, 2011 specifies as under:-

“In case of wheeling of power generated from NRSE project for consumption within the State, transmission and wheeling charges shall be levied @ 2% of the energy injected into the State Grid, irrespective of the distance i.e. additional 2% of the total energy shall be injected at injection point(s). 10% of the average revenue realized by distribution licensee from such additional injection shall be passed on to the STU/Transmission licensee for compensating on account of transmission charges. In case of wheeling of power generated from NRSE project outside the state, full transmission and wheeling charges shall be leviable.

Provided that in case of wheeling of power for consumption within the State, generated from NRSE project in the State, achieving commercial operation (COD) from 09.07.2015 to 31.03.2017, no transmission and wheeling charges shall be leviable, irrespective of the distance, for a period of 10 (ten) years from its date of commercial operation (COD)

PSTCL has proposed the transmission and wheeling charge from 2% to 10%, so as to levy at least 50% to 60% of the normal applicable charges to NRSE/ RE generators availing open access. Further

transmission charges @ 10% of revenue realized by distribution licensee are payable to STU/ transmission licensee in case of NRSE/ RE generators, while the transmission charges for normal open access (STOA) customers are around 25% of the Total transmission & wheeling charges.

PSPCL vide letter dated 23.02.2022 submitted that it concurs with the various proposals of PSTCL except proposal at Para No. 20 of the petition which specifies as under:

“That further transmission charges @ 10% of revenue realized by distribution licensee are payable to STU/transmission Licensee in case of NRSE/RE generators, while the transmission charges for normal open access (STOA) customers are around 25% of the total transmission and wheeling charges. As such, share of transmission charges (in case of use of transmission system) are also required to be amended accordingly”.

PSPCL submitted that sharing of revenue with PSTCL realized from the additional injection for compensating on account of transmission charges should be according to utilization of system keeping in view that injection/ drawl by most of the NRSE projects for captive use is at 66 KV or below.

The Commission observes that PEDDA in its objection to PSPCL's submission has pointed out that the proposal of PSTCL for increasing the Wheeling and transmission charges from 2% to 10% is also contrary to the NRSE Policy 2012 as amended by GOP. Whereas the policy provides that the intra-state open access be provided to the NRSE power generators without any wheeling and transmission charges, the present Regulations provide that the facility will be provided @2% and petitioner has now

prayed to increase the same to 10% which is against the provisions of the State Policy.

The Commission observes that while framing the Regulations, the Commission had provided relaxation in the transmission and wheeling charges to promote NRSE power on one hand and also provided the part of energy for compensation to the utilities. The Commission intends to continue with the same and is not inclined to increase the quantum of additional energy of the total energy to be injected at injection point(s) from existing 2% in lieu of transmission and wheeling charges and issue shall be reconsidered at an appropriate time.

However, with regard to the issue of sharing of 10% of the average revenue realized by distribution licensee from such additional injection which shall be passed on to the STU/Transmission licensee for compensating on account of transmission charges, the Commission agrees with PSPCL's view that revenue from the additional injection should be according to utilization of the system. The commission also considers the request of PSTCL to increase its share from 10% to 25%. Accordingly, the Commission decides that for open access where injection/ drawl by most of the NRSE projects for captive use is at above 66 kV or below and the 132kV and above transmission system is not being used at all, PSPCL alone is entitled for the average revenue realized by distribution licensee from such additional injection. However, for open access injection where the 132kV and above transmission system is involved the Commission decides to increase the PSTCL share to 25% from the existing 10%.

4. Issue No. 4: Incorporating measures to control dumping/ injection of harmonics by Open Access customers/generators.

PSTCL has requested to introduce a similar clause as per Regulation 24 of the PSERC Electricity Supply Code and related matter) (7th amendment) for open access customer in PSERC Open Access Regulations, 2011, so as to ensure grid stability and quality of supply by limiting harmonics injection.

The Commission observes that Section 4.7.6 of PSERC (State Grid Code) Regulations, 2013, as amended from time to time provides as under *“Distribution Licensees and Open Access/ EHV Consumers directly connected to STS shall ensure that their loads do not affect STU system in terms of causing any unbalance in the phase angle and magnitude of voltage at the interconnection point beyond the limits prescribed and individual and Total Harmonic Distortion (THD) of voltage shall not exceed the values specified in clause 3(2) of the CEA Grid Standards. SLDC may direct the Distribution Licensees and Open Access/ EHV Consumers connected to STS to take appropriate measures to bring the Harmonics within permissible limit.”*

The Commission notes PSTCL's submission that Regulation 24 (24.1 to 24.8) of PSERC (Electricity Supply Code and related matters) (7th amendment) Regulations, 2020, provides for installation of Power Quality meters for measurement of harmonics and control of harmonics (within prescribed limits) by Designated Consumer (which includes consumers using or engaged in any of the following processes i.e Arc Furnace Induction Furnace, Chloro alkaline unit, Billet heaters with total connected rating above 100 kVA, Surface hardening Machine & Electrolytic process industry, Electric Bell furnaces for annealing, Electro-slag refining/re-melting processes, IT/ITES, Malls, Petro-Chemical units, Railways,

Pharmaceuticals and connected at a supply voltage of 11 kV & above or as may be decided by the Commission from time to time).

PSTCL further submitted that Regulation 24.1 to 24.8 of Electricity Supply Code needs to be made applicable for all open access customers falling under above categories of Designated Consumer, especially which are connected to transmission system and/or are not consumer of distribution licensee e.g. Northern Railway (presently not covered under Electricity Supply Code), whose traction sub-stations are liable to inject/dump harmonics into the transmission/ distribution system, thus jeopardizing grid stability and quality of supply.

The Commission notes that Northern Railways in its rejoinder submitted that the transmission / distribution licensee may first inform such Open Access Customer in case of any harmonic imbalance on the basis of data and thereafter call upon the Open Access Customer to install the meters. Further, Northern Railways has also requested that since large investment is required by Railways to comply with the provisions of the Regulation, hence the time period of 6-12 months from the date of notification be given for compliance.

The Commission notes that provision of installation of Power Quality meters for measurement of harmonics and control of harmonics (within prescribed limits) by Designated Consumer already exists in the PSERC Supply Code Regulation.

Further, Regulation 3(2) of the PSER OA Regulation, 2011 specifies as under:

“3 (2) Save as aforesaid and unless repugnant to the context or the subject-matter otherwise required, words and expressions used in these regulations and not defined, but defined in the Act, or the

Central Commission's regulations or any other regulation of this Commission shall have the meaning assigned to them respectively in the Act or the Central Commission's regulations or any other regulations of this Commission."

In view of the above it is clear that once a statutory provision has been made in one Regulation of the Commission, unless the same is at variance with the provisions of the referred Regulations, then that will duly hold good in the current case as well. If the PSERC Supply Code Regulations provides for installation of Power Quality meters for measurement of harmonics and control of harmonics (within prescribed limits) by Designated Consumer than it is consequently applicable in context of PSERC OA Regulations also. As such the Commission finds it redundant to insert the same clause in the PSERC OA Regulations when it is already mandated under the Supply Code. Northern Railways is directed to comply with the provisions of the OA Regulations in entirety alongwith concomitant provisions of Supply Code Regulations, PSERC Grid Code etc. Also, PSTCL and PSPCL are directed to ensure compliance of Regulations by the consumers within 6 months of the issuance of this Order.

- 5. Issue No. 5: Approval of detailed procedure of STU for grant of connectivity to open access applicants connected at 132 kV & above under regulation 5 (1) of PSERC (terms & conditions for intra state open access) Regulations, 2011, as amended from time to time.**

The Commission observes that as per the provisions of Regulation 5(1) of the PSERC OA Regulations, 2011, the STU was required to prescribe the procedure within a period of 30 days from the coming into force of these Regulations. i.e. by 1st August 2011, which the STU has

failed to prescribe yet. The Commission takes serious note of non-compliance by PSTCL and the specious reasons furnished by PSTCL. PSTCL's explanation is that the open access applicants, including entities seeking connectivity to transmission system of STU e.g. Northern Railway & Generators/ IPPs, were applying for connectivity to PSPCL as their consumer/ seller, and were being granted connectivity by PSPCL in line with the provisions of Electricity Supply Instructions Manual (ESIM) after grant of Feasibility Clearance by Feasibility Clearance Committee (FCC). Thus, the need for formulation of a separate procedure of STU for grant of connectivity did not arise. If the Regulations had provided for and mandated the drafting of procedure, PSTCL was obligated to and ought to have put together the procedure. Since, the Regulations do not mandate the Commission's prior approval to the connectivity procedure, PSTCL is again directed to finalise and prescribe the Connectivity procedure within 30 days of the issuance of this Order, ensuring the same to be in line with the provisions of the PSERC OA Regulations, 2011 as amended from time to time.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 18.01.2023