

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

**Petition No. 17 of 2024
Date of Order: 16.05.2024**

Petition under Sections 86, 181, and other applicable provisions of the Electricity Act, 2003, read with Regulation 71 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, notified by the Commission for directions in relation to levy of Fuel and Power Purchase Adjustment Surcharge.

In the matter of: Punjab State Power Corporation Ltd.,
The Mall, Patiala, Punjab
.....Petitioner

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

Order

1. PSPCL has filed the present petition for seeking directions in relation to the levy of Fuel and Power Purchase Adjustment Surcharge ("FPPAS") in terms of the Punjab State Electricity Regulatory Commission (Conduct of Business) (6th Amendment) Regulations, 2023.
2. The submissions made by PSPCL in the petition are summarized as under:
 - I. The provision of FPPAS is notified in terms of Section 62(4) of the Electricity Act, 2003, for recovery of variations in the power purchase costs from time to time. The objective of the above provision is that the variations in the power purchase cost, which may be affected due to variation in fuel cost or other factors, are recovered in a timely manner to ensure adequate cash flow and funding to the licensee.

II. The working of the formula presently notified in the Regulations lead to certain unintended and unjust consequences, on account of which PSPCL has preferred the present Petition seeking directions and removal of difficulties in the implementation of the regulations. The Commission is also empowered to amend the regulations, if necessary, considering the facts and circumstances of the present case.

III. FPPAS is required to be computed and billed to the consumers on a monthly basis. The charging is on the (n+2)th month. It is further provided that in case the computation and levy is not done in a timely manner, the entire cost of power purchase variation shall be forfeited by the distribution licensee and shall not be claimed in the truing up process.

IV. The FPPAS for the first 7 months of the FY 2023-24 works out to a negative figure by applying the formula as provided in the Regulations with details as under:

Month	Amount of FPPAS (Rs. Crore)	FPPAS (%)	FPPAS (Rs./unit)
April 2023	-390.89	-12.90%	-0.91
May 2023	-185.56	-6.26%	-0.44
June 2023	-208.09	-6.37%	-0.45
July 2023	-142.90	-4.64%	-0.33
August 2023	-76.24	-2.03%	-0.14
September 2023	-74.08	-2.26%	-0.16
October 2023	-12.08	-0.44%	-0.03
Total	-1089.84		

V. The Regulations only envisage and provide for levy of increased FPPAS to the consumers and not for any reduction in the tariff in case the FPPAS works out to a negative figure. Therefore, there was no reduction in the tariff for the month of

April, 2023 to October, 2023, as the FPPAS worked out to negative figures. However, for the month of November, 2023 the FPPAS worked out to a positive figure of Rs. 0.22/- per unit, with the quantum of FPPAS being Rs. 77.87 crores. The amount of FPPAS for the month of December 2023 was worked out to be negative i.e. Rs -8.34 Crore (-0.28%). There has been a positive FPPAS for the months of January 2024 amounting to Rs 226.67 Crore (6.51%)

VI. It is stated that the above position results in a very unjust consequence in as much as even when there was a substantial negative amount which was worked out for the previous month, there is no express and specific provision for adjustment of such negative amount against the positive amounts worked out for the subsequent months.

VII. In the above circumstances, PSPCL has preferred the present petition seeking directions of the Commission to enable the adjustment of negative FPPAS during the previous months of the financial year as against the positive FPPAS during the subsequent months of the same financial year. Quite apart from the fact that there would be no prejudice to the consumers on account of the above, the above methodology would in fact be in the interest of the consumers in as much as there is certainty of the tariff as there would be no immediate increase in the tariff, as the increase in FPPAS would get immediately adjusted in the tariff against the negative FPPAS of the previous months.

VIII. This would also benefit PSPCL in as much as the surplus or savings in power purchase cost gets adjusted immediately in the following months without waiting for the truing up process.

IX. The Commission may also consider giving directions under the Power to Remove Difficulties as provided for in the

Regulations or by way of amendment of the regulations to the effect that any increase in the FPPAS cost which is not recovered in the tariff during the year for any reason, may be claimed in the truing up process. The regulations ought not to prohibit any such claim to be made in the truing up process or to the effect that the entire amount be forfeited by the licensee.

X. In any event, these being in the nature of power purchase cost which are uncontrollable expenditure to the licensee, ought to be recovered in the tariff and cannot be denied to the licensee. The quantum of power purchase cost cannot be deprived to the distribution licensee merely on the ground that the same was not recovered in the immediately following month, but recovery of the same has been postponed to the truing up process. In the facts and circumstances mentioned above, PSPCL also seeks directions of the Commission to hold that any delayed recovery of variation in fuel and power purchase cost would not result in denial of the cost itself.

XI. The denial of cost would result in unjust and unintended consequences of power purchase cost incurred by PSPCL for supply of electricity to the consumers at large.

XII. The facts of the present case in fact best illustrate the unintended consequences in as much as while the FPPAS for the month from April, 2023 to October, 2023 and December, 2023, was substantially in the negative, the FPPAS for November, 2023 to be recovered in January 2024 and FPPAS for January, 2024 to be recovered in March 2024 were positive and well within the quantum that can be adjusted against the negative FPPAS.

XIII. The non-recovery of the positive FPPAS ought not to result in denial of the higher cost in itself to PSPCL, whereas

PSPCL has bona fide adjusted the negative FPPAS of the previous months against the positive FPPAS for the subsequent months.

XIV. PSPCL has prayed to the Commission to:

- (a) Direct the adjustment of the negative FPPAS for the previous months as against the positive FPPAS for the subsequent months to ensure there is no tariff shock to the consumers while at the same time recovery of cost by PSPCL;
 - (b) hold and direct that the non-recovery of FPPAS in any month would not result in denial of the cost itself to PSPCL in the truing up process;
 - (c) exercise the power to remove difficulties as provided in Regulation 71 of the Conduct of Business Regulations, 2005, of this Commission for in the alternate initiate proceedings for amendment of the regulations to provide for the above;
 - (d) pass such other further order(s) as the Commission may deem just in the facts of the present case.
3. The petition was admitted vide order dated 11.03.2024. PSPCL issued the public notice for inviting objections/suggestions from the general public and other stakeholders, which was published on 14.03.2024 in leading newspapers namely, 'The Times of India', 'The Tribune', 'Punjab Kesri', 'Rozana Spokesman', 'Jag Bani' and 'Danik Savera'.
 4. The petition was taken up for hearing as well as public hearing on 03.04.2024. However, nobody appeared from the public in the public hearing except the representative appearing for PSPCL. Accordingly, the Commission reserved the final Order vide interim Order dated 04.04.2024.

5. Decision of the Commission:

1. The Commission notified the PSERC (Conduct of Business) (6th Amendment) Regulations, 2023 vide gazette notification dated 05.06.2023 in line with the provisions of Electricity (Amendment) Rules, 2022 which provides for monthly automatic pass through of the variation in the cost of power, supplied to consumers, due to change in Fuel cost, power purchase cost and transmission charges with reference to cost of supply approved by the Commission in the Tariff Order.
2. As per Clause 1 of Appendix 7 of the Punjab State Electricity Regulatory Commission (Conduct of Business) (6th Amendment) Regulations, 2023, the FPPAS means the increase in cost of power, supplied to consumers, due to change in Fuel cost, power purchase cost and transmission charges with reference to cost of supply approved by the Commission. However, from PSPCL's submission it is noted that based on the formula specified in the Regulations in vogue the FPPAS for the first 7 months of FY 2023-24 worked out to negative due to which PSPCL was not able to implement in view of the existing provisions of the Regulations which specifies for pass through of the increase in cost of power. As a principle of natural justice, if positive FPPAS is to be recovered from the consumers, a negative FPPAS warrants relief to consumers by way of reduction in tariff. Taking note that there is no provision in the presently notified regulation to adjust negative FPPAS, and to be equally fair to both the discom and the consumers of the State, the Commission agrees with PSPCL's proposal of adjusting negative FPPAS during any month against the

positive FPPAS during the subsequent month of the same financial year in line with the monthly adjustment provided in the rules subject to true up. Accordingly, the Commission decides to add the following new proviso after first proviso of Clause 3 of Appendix 7 of the Punjab State Electricity Regulatory Commission (Conduct of Business) (6th Amendment) Regulations, 2023 as under:

***“Provided further that negative FPPAS in any month shall be carried forward to the next month and cumulative negative FPPAS of the previous month shall be adjusted against any positive FPPAS worked out during a subsequent month, in line with the monthly adjustment provided in the rules.*”**

Amendment in Regulations to this effect shall be notified separately.

3. Coming to the second prayer of PSPCL seeking relief on account of non-recovery of FPPAS in any month arguing that it would result in denial of the cost itself to PSPCL in the truing up process, the Commission is of the opinion that the provision to forfeit a licensee’s right to recover its costs should it fail to comply with the timeline is as per the Electricity (Amendment) Rules, 2022 duly adopted in the State’s Regulation vide notification dated 02.06.2023. The rules provide for the licensee to be disciplined and dynamically involved in the process of automatic recovery of FPPAS. The monthly recovery shall also help the licensee in improving its cash flows. Further the rules have been prescribed and notified by the GoI for all the licensees in the country and not just for PSPCL.
4. The Commission in its Order dated 31.05.2023 in the matter had already discussed the issue at length and observed that

generalized statements cannot be the basis for straying from the current statutory provisions. Rule and Regulations are framed for compliance by all stakeholders. Further, 1st proviso to Clause 3 of Appendix 7 already provides for relaxation to the Licensee from the above in case of any Force Majeure conditions.

Accordingly, the Commission does not accept PSPCL's prayer that non-recovery of FPPAS in any month would result in denial of the cost itself to PSPCL in the trueing up exercise since PSPCL is mandated by the rules and regulations to effect an ongoing monthly recovery and is so authorized to recover the increased FPPAS costs. If it fails to do so, it does it at its own peril. As discussed above, due to the lack of a provision in the present regulations, the accumulated negative FPPAS could not be adjusted against the subsequent positive FPPAS leading to this petition by PSPCL requesting clarification and relief. In order to remedy the lacunae, in this one instance PSPCL is allowed to adjust the future recovery of FPPAS against the accumulated surplus due to negative FPPAS of months. Once the present negative accumulation is adjusted against future positive FPPAS, thereafter, the adjustments will have to be done monthly as mandated by the rules and will not be allowed to be carried forward to be settled at the time of true up.

The petition is disposed of with the above directions.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: **16.05.2024**