

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

**Petition No. 09 of 2019
Date of Order: 27.09.2019**

In the matter of: Petition under Regulation 68, 69 and 71 and provisions of Chapter XI of PSERC (Conduct of Business) Regulations 2005 as amended up to date, Regulation 43 of Open Access Regulations and other relevant rules and regulations as approved by the Commission read with the relevant provisions of the Electricity Act 2003.

AND

In the matter of: M/S Oswal Denims (Prop. Oswal Woollen Mills Limited), having its office and works at Village Lalru, P.O Dappar, District S.A.S Nagar Mohali, through its authorized signatory, Sh. H.N. Singhal.

.....Petitioner

VERSUS

1. Punjab State Power Corporation Ltd. (PSPCL), The Mall, Patiala.
2. Punjab State Transmission Corporation Ltd. (PSTCL) PSEB Head Office, The Mall, Patiala.

.....Respondents

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

ORDER

M/S Oswal Denims (Prop. Oswal Woollen Mills Limited), has filed this petition for setting aside the decision of the Commercial and Metering Committee (CMC) PSPCL taken in its 15th and 16th

meeting held on 14.11.2017 and 14.09.2018 respectively, whereby CMC has decided that in case of Oswal Denims the under- drawal for the period 02.11.2015 to 17.12.2015 may be considered as 10% of Power Scheduled under Open Access during that period.

2. The Petitioner has a factory in the vicinity of Lalru, District S.A.S Nagar in the State of Punjab and is a Large Supply (LS) consumer of PSPCL. The Petitioner apart from being a consumer of PSPCL, is also drawing power under open access while using the transmission network of both the Respondents PSPCL and PSTCL-SLDC for meeting its day to day demand.

2.1 SDO, DS Sub Division, PSPCL, Lalru vide his letter no. 1765 dated 19.09.2017, conveyed to the Petitioner that Rs, 1,48,74,117/- is recoverable as per Revised Billing Statement (RBS) No. 96/2017 dated 29.08.2017 prepared jointly by CBC Ludhiana and SDO/DS, Lalru. The Petitioner submitted that the amount has been charged on the basis of UI account for the period 04.07.2015 to 30.12.2015 issued by SE/Open Access, SLDC Patiala on 14.06.2017 i.e. after about 1.5 to 2 years of the open access actually availed.

2.2 The grievance of the petitioner is that the readings of TPT meter installed by PSPCL were being taken by the Sr. XEN/DS Division, Lalru, every month and the readings of ABT meters were also taken simultaneously. These readings were being used for preparing the monthly consumptions bills wherein the quantum of open access power was also being indicated in the bill which was prepared on net PSPCL's energy used (Total metered consumption of TPT meter less open access energy scheduled). It was never pointed out by PSPCL or by SLDC to the Petitioner at

the time of issuing monthly NoCs that ABT meter data was not being down loaded nor was the Petitioner asked to supply the data. The matter was taken up with Senior Xen/DS Division, Lalru by the petitioner vide letter dated 28.01.2016 intimating that the ABT meters were installed and sealed by the respondents about 7 months ago but the data is not being downloaded for accounting of open access and requesting for downloading of data. Thereafter Dy. CE/Open Access, SLDC, Patiala took up the matter of non supply of ABT meter data with Sr. XEV/DS, Lalru vide a letter dated 22.06.2016 intimating that the data of the petitioner company received from CBC Ludhiana vide letter dated 10.06.2016 is from 03.02.2016 onwards. SE/OA, SLDC, Patiala requested for supply of Load survey data of ABT meters. So that UI account is prepared. It was also requested that if Data of ABT meter is not available, then Load Survey data of TPT meter may be supplied.

2.3 That Sr. XEN/DS, Lalru after about 7 months responded to the ibid communication of SE/OA, SLDC Patiala, dated 22.06.2016 vide his communication dated 12.01.2017, intimating that due to non-availability of new software of L&T meters in the MRI, the data for the relevant period could not be downloaded. Further, the petitioner took up the matter with Sr. XEN/DS, Lalru vide our letter dated 02.02.2017, intimating that the Petitioner has paid all the charges for OA power and also supplied details of quantum of power purchased under OA and Charges paid along with the letter. Some data was retrieved from MMTS office by Sr. XEN, DS, lalru and supplied to SE/OA office, the UI accounts of the Petitioner for the period 25.07.2015 to 30.07.2015, 31.07.2015 to 31.08.2015 and 01.08.2015 to 01.10.2015 was issued by Sr. XEN/OA, Patiala

on 06.07.2017 based on Load Survey data of TPT meters. The Petitioner submitted that the UI sheets were examined and found that in the absence of both TPT and ABT meter data, SLDC has arbitrarily and unilaterally assumed the energy surrendered under UI @ 20% of power scheduled under open access under some old decision of 1st / 2nd meeting of CMC. Therefore, Petitioner immediately requested SLDC to submit its case to CMC for review of its decision to charge UI @ 20% of OA quantum vide its communication bearing No 266, dated 26.09.2017.

2.4 The Petitioner further submitted that it had installed ABT meters of make and specifications approved by PSPCL and it was the duty of PSPCL to arrange for the software for data downloading while approving the make/manufacturer of ABT meters. Further, the Petitioner was granted approval for Short Term Open Access on 14.07.2015 and thereafter NOC for purchasing open access for every month, however, it was never pointed out by SLDC/PP&R that ABT meter data was not being received for preparing UI account. It is further submitted that the ABT meters (Main and Check both) remained operational during the period and were never declared defective by PSPCL.

2.5 Further, the CE/SLDC vide its communication bearing no. 2141/144, dated 29.10.2018, intimated that the case was considered by CMC in its 15th / 16th meetings held on 14.11.2017/ 14.09.2018 and decided as under:-

“In view of facts & peculiar circumstances of present case, CMC decided that in the specific case of Oswal Denims, the under-drawal for the period 02.11.2015 to 17.12.2015 may be considered as 10% of power scheduled during that period.”

Being aggrieved, the Petitioner wrote a communication to the CE/SLDC for charging 4% of power scheduled under UI as per YPT meter data download for the period before the missing data vide communication dated 16.11.2018, however, the Petitioner till date has not received any reply to the same. The petitioner placed its reliance upon Regulation 43 of PSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2011 and submitted that the Committee was required to investigate and resolve its grievance in line with normally accepted practices in a transparent manner, the prevalent rules and regulations, which the committee has miserably failed to do and has taken an arbitrary, unjust, non-speaking, mechanical, unwarranted and unsustainable decision, which is totally bad both on facts as well as in law and therefore, deserves to be set aside.

2.6 The petitioner has made the following prayer to:

- a. Set aside decision of the CMC taken in its 15th / 16th meetings held on 14.11.17 / 14.9.18, communicated to the Petitioner by CE/SLDC vide their letter no 2141/44, dated 29.10.2018, whereby, CMC has erroneously decided that in the specific case of Oswal Denims, the under-drawal for the period 02.11.15 to 17.12.15 may be considered as 10% of power scheduled during that period;
- b. Set aside the note dated 06.07.2017 issued by Sr XEN/OA, whereby it has been wrongly held that Due to the unavailability of both ABT as well as TPT meter data for the period 2.10.2015 to

1.11.2015 and 2.11.2015 to 17.12.2015, the provisional UI/ Imbalance/ Deviation Settlement Account has been prepared considering average under-drawal equal to 20% of power purchase in line with the decision of Commercial & Metering Committee (CMC) applicable for such cases of unavailable ABT/TPT data;

c. Set aside the UI account sheets uploaded by SLDC on SLDC web site issued on 6.7.17 and the RBS issued on 19.9.17, whereby the Petitioner came to know that SLDC has wrongly, arbitrarily and unilaterally assumed the energy surrendered under UI @ 20% of power scheduled under open access under some old decision of 1st / 2nd meeting of CMC;

d. Direct the Respondent-PSPCL not to charge any such purported charges on account of consumption of Electricity of PSPCL while wrongly assuming energy surrendered at any such notional rates, due to failure of the Respondent to download data of both ABT as well as TPT meter, for the period 2.10.2015 to 1.11.2015 and 2.11.2015 to 17.12.2015;

e. Direct the Respondent not to take any coercive steps against the Petitioner in the garb of the impugned decision of the CMC taken in its 15th / 16th meetings held on 14.11.17 / 14.9.18,

communicated to the Petitioner by CE/SLDC vide their letter no 2141/44, dated 29.10.2018;

- f. For Directing the Respondent-PSPCL to calculate and charge the UI while considering average under-drawal equal to 2.85% of power purchase as per the TPT Meter data for the period prior to 2.10.2015 to 1.11.2015 and 2.11.2015 to 17.12.2015;
- g. For any other relief in favour of the Petitioner as this Hon'ble Commission may deem fit in the facts and circumstances of the case.

The petitioner has further prayed that the implementation of the ibid decision taken by the CMC in its 15th and 16th meetings held on 14.11.17 and 14.09.18 respectively wrongly imposing 10% charges may kindly be stayed during the pendency of the present petition.

3. After considering the averments made in the petition, the petition was admitted vide Order dated 26.03.2019 and accordingly notice was issued to both the respondents to file their respective replies to the petition. In compliance thereof PSTCL filed its reply vide memo no. 1189 dated 26.04.2019 and submitted that the petitioner has not disclosed true and actual facts before the Commission. PSTCL submitted that the aspect pertaining to non-availability of the data has been fully deliberated in the meetings of the Commercial and Metering Committee and a procedure for assessment thereof has been arrived at. The decision has been taken in the matter of Oswal in terms of the decision of the CMC which is being uniformly and universally followed with respect to all consumers.

3.1 That the petitioner vide letter dated 26.09.17, requested CMC to resolve its grievance mainly on account of calculation of its 20% under-drawl by SLDC for the period 02.11.15 to 17.12.15, in case of unavailability of ABT as well as TPT meter data in line with the earlier decisions of CMC, Whereas the monthly average of under-drawl worked out on the basis of available ABT data of Oswal Denims is generally below 2.5% of power purchase and the same worked out on the basis of TPT meter data in case of unavailable ABT data is ranging between 2 % to 4.41% of power purchase (considering 2% additional under-drawl factor applied while making UI calculations based on TPT meter data). Oswal Denims had also represented that the unavailability of ABT meter data has resulted due to non-downloading of ABT data by concerned DS office of PSPCL, which is negligence on part of PSPCL and consumer should not be penalized on this account by considering high amount of under-drawl as per decisions of CMC.

3.2 Accordingly, the case of Oswal Denims was put before Commercial & Metering Committee during its 15th meeting, held on dated 14.11.2017 and as decided by CMC, the reasons for non-downloading of ABT meter data of Oswal Denims for the period of July-15 to Dec-15 by ASE/ DS, PSPCL, Lalru, were sought from the office of CE/ DS (South Zone), PSPCL, Patiala along with his comments for putting before CMC during next meeting. Accordingly, CE/ DS (South Zone), PSPCL, Patiala had supplied the justification of both the Additional SEs (posted at Lalru during the unavailable data period of 6 months) and it was agreed by CE/ DS (South), PSPCL, that the officers are not guilty. As the necessary software which was ABT compatible was not provided by the petitioner to PSPCL, PSPCL was not solely responsible for

non-downloading of data. It could not thus be construed as a default only on the part of the distribution licensee but on the part of Petitioner too.

3.3 That the petitioner cannot be permitted to draw advantage of its own wrong. The concerned Engineers had been visiting the office of the petitioner for the compatible software and also to download the data, however, the same is not made available by the petitioner.

4. PSPCL has also submitted its reply vide memo no. 5219 dated 04.06.2019 and submitted that due to non availability of the new software of L & T meters in the MRI, the data for the relevant period from EBT meter could not be downloaded.

5. Meanwhile the petitioner has filed Interlocutory Application No. 05 of 2019 seeking stay on the demand of Rs. 16,60,544/- towards Deviation Settlement charges for the period 25.07.2015 to 17.12.2015 issued by PSPCL through monthly consumption bill for the month of May 2019 payable on 28.06.2019. After hearing the parties the said Interlocutory Application was admitted vide order dated 26.06.2019 and the demand of Rs. 16,60,544/- towards deviation settlement charges was stayed till the final adjudication of the matter.

6. The petitioner has filed its rejoinder dated 10.07.2019 to the reply filed by PSTCL and reiterated the averments made in the petition. The petitioner submitted that PSTCL has acknowledged that the Petitioner started purchasing power under open access from 25.07.2015 but the downloading of data of ABT meter was started by ASE/DS, PSPCL, Lalru from 18.12.2015 onwards and

the first such downloading of data was done on 03.02.2016 (ABT meter has memory of 45 days). CD of downloaded data was sent to SLDC Patiala through ASE/CBC, PSPCL, Ludhiana on 12.04.2016. The Respondent-PSTCL has stated that the data from 25.07.2015 to 01.11.2015 was not supplied where as in fact, the data from 25.07.2015.to 17.12.2015 was not supplied.

6.1 The Petitioner objected to the statement of the then ASE/DS Lalru that the software was not provided by the Petitioner due to which the data could not be downloaded. It was submitted that neither the Open Access Regulations nor the Open Access Procedure nor the Metering Guidelines provide that CMRI/software is to be provided by the consumer. PSPCL's Commercial Circulars also shortlist the manufacturers of ABT meters with price and do not provide for price of software or CMRI. Further, PSPCL had been short listing/empanelling the ABT meter, CTs and PT manufacturers and meters, CTs and PT of only approved make were to be purchased by the Open Access consumers.

6.2 The petitioner has referred to Commercial Circulars bearing Nos. 53 of 2014 and 7 of 2016 annexed to the petitioner's reply which mention only ABT meters and does not mention about software or CMRI. Similar instructions have been issued by PSPCL for CTs and PT. It is evident from all these documents that Petitioner was not required to provide software for data download.

6.3 Further SLDC was issuing NOC for Short Term Open Access (STOA) every month with the concurrence of PSPCL but the fact regarding non-downloading of data was never pointed out to the Petitioner. It is also pertinent to mention here that SLDC had written a letter dated 31.07.2018 to ASE/DS Lalru pointing out that

ABT meter data of open access consumers i.e. Indian Yarns Ltd. and T. C. Terrytax Ltd. falling under Lalru division also have ABT meters of same make as that of Oswal Denims and DDL for these two consumers was carried out and supplied to SLDC during the period July 2015 to December 2015. There should have been no difficulty in downloading the ABT meter data of M/s Oswal Denims and the justification given seems ambiguous.

7. The Petitioner filed its rejoinder to the reply submitted by PSPCL and while reiterating its earlier stand submitted that Respondent PSTCL had requested ASE/DS Lalru, to supply the ABT meter data from 25.07.2015 onwards vide its letters dated 12.04.2016 and 22.06.2016 but no reply was sent by the then ASE/DS Lalru. It was only on 12.01.2017 i.e. after about 7 months when it was informed that the data could not be downloaded due to non availability of new software in CMRI and even the TPT meter data is not available due to technical fault in the computer of ASE/MMTS Dera-bassi as per their letter dated 04.01.2017. However, MMTS wing was able to extract the data for the period of 25.07.2015 to 01.11.2015 from the same computer which earlier had technical fault and the data was supplied on 09.05.2017 i.e. after about 8-10 months of the date when MMTS declared that the data from 02.11.2015 to 17.12.2015 was not available with them.

After hearing the parties, Order was reserved on 30.08.2019.

8. Observations and Decision of the Commission

The Commission has examined the submissions made in the petition, reply filed by both the respondents and rejoinder submitted by the petitioner and pleadings made during the course

of hearing of the matter. The Commission observes and decides as under:

8.1 The petitioner started availing STOA w.e.f. 25.07.2015. However, the first load survey data of ABT meter was downloaded by PSPCL on 03.02.2016, containing ABT meter data from 18.12.2015 onwards. In the absence of ABT data, UI account of the petitioner for the period 25.07.2015 to 01.11.2015 was prepared by SLDC on the basis of TPT meter load survey data of the petitioner available with PSPCL.

8.2 The grievance of the petitioner is regarding the revision of his UI account for the period 02.11.2015 to 17.12.2015 for which neither his ABT meter data nor TPT meter load survey data is available. The SLDC initially prepared the UI account of the petitioner, considering 20% under drawl of power scheduled as per the decision of Commercial and Metering Committee (CMC). The decision of the CMC was based on a sample study of UI energy accounts for the available ABT meter data of other open access consumers carried out in 2011. Subsequently, the matter was reviewed by CMC and UI account of the petitioner was revised considering 10% under drawal of power scheduled, based on the average under drawal by open access consumers during the period of 2010-17. The petitioner's contention is that, he is not at fault at all. It is the respondent PSPCL officers who had failed to download the data as per the Regulations and Procedure approved by the Commission. Further, that

consideration of the under drawal as 10% by the CMC for revision of his UI account is not in line with his actual under drawal as indicated by his UI account pertaining to subsequent periods. However, PSPCL submitted that ABT meter data of the petitioner could not be downloaded as the necessary compatible software for the meter was not provided by the petitioner to PSPCL. This submission of PSPCL that ABT meter data of the petitioner could not be downloaded due to non availability of the compatible software for the meter is not acceptable to the Commission as all the consumers including open access consumers are required to install only standardized meters of vendors specifically approved by PSPCL after getting them tested from its authorized labs. As such, PSPCL ought to have had access to the requisite software. That PSPCL did have the software is evident from CE/SLDC, PSTCL's memo dated 31.07.2018 addressed to Sr. XEN/DS Lalru ABT meter data of Open Access consumers, Indian Yarns Ltd. & T.C. Terrytex Ltd, falling under Lalru division, which had ABT meters of the same (L&T) make as those installed in the premises of Oswal Denims, was downloaded and supplied to the SLDC office during the period of July, 2015 to Dec, 2015 whereas the ABT data of Oswal Denims was not downloaded during the same period.

The Commission has observed that PSPCL officers are responsible for not following proper procedure for

downloading data and thereby causing harassment to a consumer. **Thus, PSPCL is directed to take appropriate action against those responsible and to issue instructions to ensure this is not repeated.**

Further, the Commission is of the view that CMC's actions to first rely on a study report carried out way back in 2011 of under drawl by some open access consumers and then on the data of other open access consumers for the period of 2010-17 is not logical or justifiable. **Accordingly, the Commission directs the CMC to review its decision and revise the UI account of the petitioner, for the period for which neither the ABT meter data nor the TPT meter data is available, on the basis of the data of under drawl of the petitioner available for the periods immediately preceding/ succeeding the unavailable data period. Further, CMC also needs to take a relook at the procedure to be adopted in such cases.**

The petition is disposed off accordingly.

Sd/-

(Anjuli Chandra)
Member

Sd/-

(S.S. Sarna)
Member

Sd/-

(Kusumjit Sidhu)
Chairperson

Chandigarh

Dated: 27.09.2019