

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

**Petition No. 37 of 2021**  
**Date of Order: 04.05.2022**

Petition under Regulations 9 and 10 of the PSERC (Harnessing of Captive Power Generation) Regulations 2009 and other relevant rules and regulations as approved by the Commission including Regulations 68,69,70,71 and 72 and other relevant provisions of Chapter XIII of the Conduct of Business Regulations 2005 as amended up to date and the provisions of the Electricity Act, 2003 for Setting aside the communication bearing memo no. 340 dated 10.03.2021, consequential Communication dated 23.03.2021 issued by the Respondent-PSPCL, whereby, the Respondent has wrongly charged Rs. 1,68,45,000/- on account of alleged demand surcharge and Rs. 5.42,096/- towards interest charges upon the Petitioner and the subsequent communications dated 25.03.2021, 01.04.2021 and for directing PSPCL to pay/refund the amounts of impugned demands.

AND

In the matter of: M/s Nawanshahar Power Pvt. Limited, Nawanshahar Sugar Mills, Banga Road, Nawanshahar, Distt. S.B.S Nagar, Punjab-144514

.....Petitioner.

Versus

1. Punjab State Power Corporation Ltd. (PSPCL), having its office at the Mall, Patiala, through its Chairman-Cum-Managing Director.
2. Chief Engineer (Distribution), North Zone , PSPCL, Jalandhar .
3. Superintending Engineer (Distribution), PSPCL, Nawanshahr.
4. Senior Executive Engineer (Distribution), PSPCL, Nawanshahr.
5. Assistant Executive Engineer (DS), City Sub-Division, PSPCL, Nawanshahr

..Respondents

Present: Sh. Viswajeet Khanna, Chairperson  
Ms. Anjali Chandra, Member  
Sh. Paramjeet Singh, Member

### **Order**

M/s Nawashahr Power Private Limited (NPPL) is running a 15MW capacity non-fossil fuel based co-generation power project at Nawanshahr Co-operative Sugar Mills Limited, District Nawanshahr and is supplying surplus power to PSPCL for which the petitioner has entered into a Power Purchase Agreement (PPA) dated 21.07.2014 with PSPCL. The grievance of the Petitioner in the instant matter is that PSPCL vide communication dated 10.03.2021 has wrongly charged Rs. 1,68,45,000/- on account of alleged demand surcharge and Rs.5,42,096/- towards interest charges upon the Petitioner and PSPCL has further wrongly deducted the alleged charges from the monthly electricity bill payable by PSPCL to the Petitioner for the export of power from the power project. The petition was admitted vide order dated 12.08.2021. PSPCL filed its reply to the petition vide Memo No. 7136 dated 02.09.2021. The petitioner filed rejoinder to the reply filed by PSPCL and after hearing the parties on 06.04.2022, Order was reserved.

### **Submissions of the Petitioner**

2.0. The petitioner has submitted that in terms of the PPA, surplus power generated from its 15 MW co-generation plant is being supplied to PSPCL against the applicable tariff as agreed between the parties. However, the petitioner received a supplementary bill vide Memo No. 340 dated 10.03.2021 from PSPCL levying, arrears of Demand Surcharge to the tune of Rs.1,68,45,000/- and Interest Charges to the tune of Rs 5,42,096/- upon the Petitioner wrongly and illegally.

2.1. That the petitioner replied to the Memo No. 340 dated 10.03.2021 vide communication dated 22.03.2021 submitting that the amount of demand surcharge and interest imposed by PSPCL is totally illegal and time barred in terms of Regulation 32.2 of the Supply Code, 2014 and Section 56 of the Electricity Act, 2003. Further, the demand surcharge is required to be calculated on the basis of the TVM meter data which stores the MDI on average of 30 minutes basis but PSPCL has considered ABT meter data which stores the MDI on average of 15 minutes basis. In case of tripping of power plant of the petitioner or reduction in generation, the load of the CPP/Sugar Mill is controlled manually and through interlock/load control relay so that on the basis of average of 30 minutes, the petitioner remains within the prescribed limits of CD. The ABT meter records Demand in KVA as average of 15 minutes time block, which results in higher value of maximum demand (MDI) recorded by it. Therefore, no reliance can be placed upon the MDI readings of ABT meters. The petitioner further submitted detailed representation dated 26.03.2021 but PSPCL has failed to pass any speaking order.

2.2 That for the year 2019-20, the amount is to be calculated at the rate of Rs 50/KVA/day subject to maximum of Rs 750/KVA/Month as per tariff order. Further, the amount of interest is not at all chargeable from the Petitioner as neither the Petitioner has been issued any bill for the period nor the Petitioner has delayed any payment. The bills issued by PSPCL have been duly paid by the Petitioner. On 06.04.2021, after wrongly deducting the entire amount of Rs. 1.738 Crores, PSPCL paid a sum of Rs. 78,36,531/- to the Petitioner on account of the power exported by the Petitioner for the month of February 2021. The Petitioner, vide communication dated 07.04.2021, requested the CMD, PSPCL to intervene in the matter and to direct the office of ISB Cell to release the full payment of the Petitioner on account of the bill

for the month of February 2021 as the issue with regard to the ibid illegal demands raised by PSPCL in the audit para were yet to be decided by the competent authority of PSPCL. PSPCL has mechanically deducted the illegal demands from the bill for the month of February 2021 on account of power exported by the petitioner, without even bothering that the co-generation power projects of the petitioner shall come to a standstill.

2.3 That the Commission while deciding a similar issue with regard to the Demand Surcharge wrongly imposed by PSPCL on Co-generation power generator operating sugar mill and a power plant, vide order dated 02.12.2015 in Petition No. 44 of 2015 titled as M/s Indian Sucrose Limited Vs PSPCL and Ors. has held that the excess amount recovered from the petitioner, if any, shall be refunded immediately. The impugned action of PSPCL is based on the purported Audit report carried out by the audit team of PSPCL, which itself cannot be relied upon being totally faulty and erroneous in nature and totally contrary to the prevailing laws/regulations. The petitioner was not even supplied Page 1 of audit para, despite requests. On a perusal of audit para, it is noted that the objection has been raised by the Audit team for entering into fresh agreement for availing start up power supply, which infact is totally unwarranted as CE/Commercial vide letter dated 13.8.2019 addressed to Dy. CE/DS Nawan Shahar has already clarified that there is no requirement of signing fresh agreement for availing start up supply. Thus, observations of audit in this regard are totally uncalled for. Moreover, the Audit has also conveyed that the *“Demand Surcharge worked out by the Audit team is based on the data made available and the same need to be finalized”*. Accordingly, the arguments raised by the Petitioner in its letters dated 22.03.21 and 26.03.21 should have been taken up by the sub division office with audit party for finalization of para but the office rushed to ISB office vide letter dated

25.03.2021 for deduction of the amounts which is totally wrong and unfair to the Petitioner.

2.4 That the Petitioner is being charged for the power drawn from PSPCL under Schedule SXIII of the Schedule of Tariff (Annexure II of the Tariff order, which is to be further read with General Conditions of tariff – Annexure I of the respective years). Further, the Supplementary Bill wrongly seeking Demand Surcharge to the tune of Rs. 1,68,45,000/- covers the period January 2018 to March 2020 and thus covers the FY 2017-18, 2018-19, 2019-20. A perusal of the general conditions of tariff of the above Financial Years reveals that the maximum demand for any day or month shall be considered as highest average load measured in kilovolt Ampere (kVA) during a block of 30 minutes period. In case of the petitioner, PSPCL has not installed the tri-vector/DLMS meter (TVM) for recording the maximum demand from the date the power plant was synchronized with the grid and sale of power to PSPCL commenced under the PPA. On both the ends i.e. at Petitioner's end as also on PSPCL's end, only ABT meters (Main and Check) have been installed and the ABT meters are Inter Face Meters meant for only open access purposes and sale of power by Generators/ CPPs to PSPCL. The ABT meters are not meant for preparing the monthly bill for the power drawn from PSPCL as a consumer/ CPP.

2.5 That the tariff Order for 2019-20 provides that the demand Surcharge for CPPs and open access consumers is to be calculated with rate of Rs 50/KVA/day subject to the condition that the demand surcharge so levied in a month shall not exceed the demand surcharge applicable on monthly basis. However, in the instant case, the Audit has worked out the Demand Surcharge straightaway @ Rs 750/KVA/Month, which is not as per the General Conditions of tariff as per the tariff order.

2.6 That delay in issuing the bills is not attributable to the petitioner. In fact, the petitioner paid the bills for power import in December, 2018 and in March, 2019 through adjustment in its bill for power exported to PSPCL, in accordance with the instructions and bills raised by PSPCL upon the petitioner. Thus, there was no delay on the part of the petitioner in paying the bills. The petitioner referring to Regulation 30.8, 31.1 and 31.9 of the supply code, 2014 has submitted that the bills for energy imported / consumed by consumer has to be delivered by PSPCL and is to be paid by consumer within the period specified. Any delay in payment beyond the specified date will attract late payment Surcharge and thereafter, interest for the actual period of delay. However, in the instant case, no bill has been issued to the Petitioner during the period of July 2017 to June 2018 up till December 2018 and from July 2018 to February 2019 up till March 2019. The Power imported was adjusted in the monthly power exported and sale of power bill was for net power exported. Later on the methodology was changed by PSPCL and separate bills were issued for power imported at PSPCL's rates and power exported was paid as per tariff provided in the PPA. The adjustment bills were issued to the petitioner in December 2018 and March 2019 and the same were paid through adjustment in the sale of power bills. Thus, there is no delay on the part of the petitioner in making payment of the bill amount and as such no occasion arises to charge the alleged interest for the period when no bill has been issued to the petitioner.

2.7 That PSPCL vide Memo No 483 dated 01.04.2021, has raised additional demand of Rs 36,60,000/- towards Demand Surcharge for the year 2020-21 pertaining to the period November 2020 to February, 2021. Similarly, Petitioner has also received another communication of the same date i.e. Memo No. 490 dated 01.04.2021, whereby, PSPCL has raised additional demand of Rs 105000/- towards Demand Surcharge pertaining to the period,

March, 2021. The Petitioner apprehends that PSPCL will deduct these amounts also from the next sale of power bill of the Petitioner, without taking the consent of the Petitioner. In case the impugned demands wrongly raised by PSPCL are not set aside and the charges wrongly deducted by PSPCL from the February 2021 bill for the sale of power by the Petitioner are not refunded along with applicable interest, the petitioner shall suffer an irreparable loss.

### **Submissions of PSPCL**

3.0 PSPCL has submitted in its reply that the present petition is not maintainable in the present form. The petition has been filed under Regulation 9 and 10 of the PSERC (Harnessing of Captive Power Generation) Regulations, 2009 which are applicable to Captive Power Plants whereas the petitioner has entered into a PPA with PSPCL for a co-generation plant. A Captive Power Plant is where the generator consumes at least 51% of the electricity generated on an annual basis for its own use as provided under Rule 3 of the Electricity Rules, 2005 but in the present case more than 51% of the generation on an annual basis has been supplied by the petitioner to PSPCL as under:

Year	Total Generation (MUs)	Electricity supplied to PSPCL (MUs)
2017-18	22.286	16.284
2018-19	32.271	19.968
2019-20	34.255	21.984

Therefore, the petitioner is not a Captive Power Plant and the petition is not maintainable.

3.1 That the schedule of Tariff contained in the various tariff orders of the Commission as well as the Electricity Supply Instructions Manual (ESIM) of PSPCL provide for separate tariff rate for supply of start-up power for pre-commissioning or planned/forced outages to Generators/Captive Power Plants. Further, apart from energy charges, demand surcharge for exceeding the contract demand is also to be charged as applicable to Large Supply (LS) Consumers. The methodology adopted and the quantification of the demand surcharge for exceeding the contract demand for startup power is laid down under the General Conditions of Tariff and Schedules of Tariff issued by the Commission from time to time and the Tariff Orders for FY 2017-18, 2018-19, 2019-2020 as well as the Electricity Supply Instruction Manual. The demand surcharge applicable to LS consumers during FY 2017-20 is Rs. 750/-kVA on excess demand in a month. Further in accordance with the various provisions the contract demand for supply of start-up power shall not exceed 15% of the rated capacity of the unit with highest rating in the power plant.

3.2 That on 01/10/2019, the audit team of PSPCL came out with the compliance report of the office of the Deputy Chief Engineer/DS Circle, PSPCL, Nawanshahr for the period April 2018 to March 2020. A scrutiny of records in Nawanshahr circle by the audit team revealed that the Petitioner had consumed 17.62 lakh unit of power from PSPCL' system during July 2017 to August 2020 for which separate energy bills, comprising of energy charges alone, had been raised by Nawanshahr City Sub Division during December 2018 to September 2020 in accordance with the PPA dated 21/07/2014. The payments against the same was adjusted by way of deduction being carried out by PSPCL authorities from the bills submitted by the Petitioner for energy supplied to PSPCL as per the PPA.

3.3 That PSPCL had neither executed any agreement with the Petitioner for meeting its requirement of startup power as provided in the



ESIM, 2018 nor obtained its required contract demand. In the absence of availability of contract demand of the Petitioner, applicable demand surcharge for exceeding the contract demand by the Petitioner could not be charged and recovered from the Petitioner for the period from July 2017 to August 2020. In terms of the applicable provisions of the ESIM 2018, various general Conditions of Tariff, and the Schedules of Tariff contained in the tariff orders, the maximum contract demand for the Petitioner's capacity (i.e., 15 MW) worked out to 2500 kVA. In the present case, the maximum demand of the Petitioner had exceeded 2500 kVA in thirteen months during July 2017 to August 2020 and had ranged between 3000 kVA to 5160 kVA during those months, on which applicable demand surcharge amounting to Rs. 1.68 Crore (approx.) was not levied by PSPCL.

3.4 That the bills comprising of energy charges for power consumed by the Petitioner during July 2017 to June 2018 amounting to Rs. 55.13 lakhs had been raised in December 2018 and the same for the period July 2018 to February 2019 amounting to Rs. 22.50 lakhs had been raised during March 2019, as against prescribed monthly billing. This has resulted in the Petitioner benefiting from the time value of money in its favour, which amounts to Rs. 5.42 lakh. Therefore, the relevant office of PSPCL, namely, city subdivision Nawanshahr had on 10/03/2021 issued a supplementary bill vide Memo No. 340 claiming the unpaid demand surcharge as well as the interest component.

3.5 That the question of limitation does not arise in the present case. Limitation applies only to initiation or legal proceedings before a court of law for recovery of amounts. The same has no application in the present case. The objections of the Petitioner being erroneous, PSPCL had on 06.04.2021, 02.06.2021 and 14.07.2021 proceeded to adjust the demand surcharge and the interest component.

3.6 That PSPCL has calculated the demand surcharge in terms of the ESIM 2018, General Conditions of Tariff, and Schedules of Tariff issued by the Commission from time to time under the Tariff Orders for FY 2017-18, 2018-19, 2019-20. On a perusal of the above provisions, it can be seen that the Commission has been consistently holding that if a consumer exceeds the sanctioned contract demand, demand surcharge shall be charged at a rate of Rs. 750/- per kVA per month on excess demand irrespective of the number of defaults in a month. The methodology has remained unchanged during FY 2017-18, FY 2018-19, and FY 2019-20. Further, the applicable provisions lay down that the contract demand for start-up power shall not exceed 15% of the rated capacity unit with the highest rating. Therefore, in accordance with the applicable provisions, the maximum permissible contract demand works out to 2500 kVA. It is for the Petitioner to arrange its affairs and limit the drawal of power within 2500 KVA. Any excess drawal would result in the levy of demand surcharge as determined by the Commission.

3.7 That with respect to the meters installed at the premises of the Petitioner it is submitted that the same are ABT meters. The meters installed at the premises of the Petitioner record MDI at an interval of 15 minutes. However, this has no bearing on the principle that the Petitioner is liable to pay demand surcharge on startup power on drawal over and above the contract demand. While the very levy of demand surcharge cannot be challenged, the Commission may decide on the methodology for levy considering the metering scheme in the present case.

3.8 That Section 56 of the Electricity Act, 2003 as well as the Regulation 32.2 of the Supply Code deal with disconnection of electricity connection for default of payment and as such are not applicable to the facts of the present case. Section 56 does not in any manner restrict the ability of PSPCL to recover its dues, without resorting to disconnection of electricity, or

otherwise limit or restrict the period for which dues could be recovered by PSPCL. Even the general principle of limitation does not have any application in the present case. Limitation Act only restricts the legal remedy available to a person, to recover amounts by initiating a suit for recovery of amounts.

3.9 That interest is payable by the Petitioner on the grounds of restitution and the time value of money. Interest is not by way of penalty but only for the time value of money. If the electricity is consumed during a particular period and the charges relate to a particular period, the Petitioner has enjoyed the time value of money from the relevant period of consumption till the date of payment. The interest does not accrue to PSPCL, but goes on to the benefit of the general body of consumers in the State of Punjab. The Petitioner ought not to benefit out of the time value of money, at the cost of the consumers in Punjab.

4. The petitioner submitted a rejoinder to the reply submitted by PSPCL denying the averments made in the reply, except the averments specifically admitted and reiterated its earlier submissions in the petition. The petitioner has further submitted that the statements of PSPCL indicate that they are agreeable to treat the power plant of the petitioner as captive power plant for billing purposes but not for any other relief including applicability of Demand Surcharge. PSPCL cannot pick and choose at its discretion. PSPCL has failed to quote any clause of PPA or rules/regulations by means of which the interest has been recovered specially when no bill has been issued. If PSPCL does not have the methodology to work out the due amount and issue monthly bills on the due date after recording JMRs, the Petitioner cannot be expected to work out the due amount when no description of chargeable rate is available in the PPA except that it will be as a consumer of PSPCL for energy imported.

## Observations and Decision of the Commission

The Commission has examined the submissions made by M/s Nawanshahr Power Private Limited (NPPL) in the petition, reply of PSPCL, subsequent rejoinders and information submitted by the parties during the course of hearings and has heard the respective counsels.

NPPL has prayed to the Commission to

- (i)** Set aside the communication of PSPCL, whereby, it has wrongly charged Rs. 1,68,45,000/- on account of alleged demand surcharge and Rs.5,42,096/- towards interest charges upon the Petitioner;
- (ii)** Set aside Communication dated 25.3.2021 issued by PSPCL, whereby, it has wrongly deducted the alleged charges from the monthly electricity bill, for February 2021, payable by PSPCL, for the export of power from the power project of the Petitioner;
- (iii)** Set aside Communication bearing memo no 483 dated 01.04.2021, received by the Petitioner on 15.04.2021, whereby PSPCL has raised additional demand of Rs 36,60,000/- towards Demand Surcharge for the year 2020-21 pertaining to period November, 2020 to February, 2021.
- (iv)** Set aside Communication bearing memo No 490 dated 01.04.2021, whereby, PSPCL has raised additional demand of Rs. 1,05,000/- towards Demand Surcharge for the year 2020-21 pertaining to the period for the month of March, 2021.
- (v)** Set aside all the similar/subsequent/prior communications whereby, the PSPCL, has wrongly imposed the impugned demands and deducted the impugned demands i.e. Rs. 1,68,45,000/- on account of alleged demand surcharge and Rs.5,42,096/- towards interest charges from the monthly electricity bill for February 2021, payable by PSPCL, for the export of power from the power project of the Petitioner;

(vi) Direct the Respondent-PSPCL to pay/refund the amounts of impugned demands i.e. 1,68,45,000/- on account of alleged demand surcharge and Rs.5,42,096/- towards interest charges wrongly deducted by PSPCL from the monthly electricity bill for February 2021, payable by PSPCL to the Petitioner, for the export of power from the power project of the Petitioner along with applicable interest and costs;

(vii) For passing any other relief in favour of the Petitioner as this Commission may deem fit in light of the facts and circumstances of the case.

The Petitioner (NPPL) has raised the following issues in the petition:

1. Demand surcharge has been levied on monthly basis whereas as per provisions of General Conditions of Tariff, Demand surcharge is to be calculated on daily basis in case of Captive power plants.
2. Demand surcharge is required to be calculated on basis of TVM (Tri-Vector Meter) meter which stores MDI on 30 minutes average. However, PSPCL has considered MDI of ABT meters installed on its premises which has MDI of average 15 minutes basis. PSPCL has not calculated the maximum demand as per its commercial circular 29/2015 which was upheld by the Commission in Petition No. 44 of 2015.
3. PSPCL is not entitled to recover the charges more than 2 years old under Section 56 (2) of the Electricity Act, 2003 and therefore the claim of PSPCL to recover the amount and interest for the delay in raising the bills is time barred and not tenable.

The issue wise analysis and decision of the Commission is as under:

**Issue No. 1** The commission notes that the availability and terms & conditions for Start up power as provided in Schedule SXIII are as under:

**SXIII.1 Availability** Available to Generators/CPPs, who seek supply for start up power for precommissioning or planned/forced outages. This power shall also be available to generators/CPPs connected to CTU grid with proper accounting.

**SXIII.5. Terms and Conditions**

**SXIII.5.1** *The Contract Demand for supply for start up power shall not exceed 15% of the rated capacity of the unit with highest rating in the power plant.*

**SXIII.5.2** *The generator shall execute an agreement with the distribution licensee for meeting the requirement for start up power incorporating above terms and conditions.*

**SXIII.5.3** *Start up Power to CPPs shall be governed by terms and conditions as specified in PSERC (Harnessing of Captive Power Generation) Regulations, 2009, as amended from time to time."*

**As per PSERC (Harnessing of Captive Power Generation) Regulations, 2009**

**4.2.1:** *Startup power shall be provided to the CPP who is neither a consumer of distribution licensee nor has an agreement for availing the Standby power. Provided that, maximum demand that can be contracted under Startup power shall not exceed 15% of the rated capacity of the unit with highest rating in the power plant. In case, the recorded drawal of the CPP exceeds its Startup contract demand, it shall be liable to pay demand surcharge as specified in the Schedule of Tariff for Startup power.*

The provisions of charging of demand surcharge for exceeding the Contract Demand for Generators/CPPs are as under:

**SXIII.4. Demand Surcharge** *The Demand Surcharge for exceeding the Contract Demand shall be as applicable to Large Supply Industrial Consumers (General).*

Rate of applicable Demand Surcharge is as under:

As per Tariff Order for FY 2017-18 & FY 2018-19

*If a consumer in a month exceeds the sanctioned contract demand, demand surcharge shall be charged at a rate of Rs. 750/- per kVA on excess demand irrespective of number of defaults.*

a) As per Tariff Order for FY 2019-20 & FY 2020-21

*If a consumer exceeds the sanctioned contract demand, demand surcharge shall be charged at a rate of Rs. 750/- per kVA per month on excess demand irrespective of the number of defaults in a month.*

*However, for Open Access customers and CPPs demand surcharge shall be charged on daily basis at a rate of Rs. 50/- per kVA per day on excess demand irrespective of the number of defaults in a day. Provided that the demand surcharge so levied in a month shall not exceed the demand surcharge applicable on monthly basis.*

Further the commission observes from the power purchase agreement (PPA) attached with the petition that NPPL has entered into a Power Purchase Agreement (PPA) dated 21.07.2014 with PSPCL as a co-generation

plant for the supply of 13.5 MW produced from its co-generation plant of 15 MW at the applicable tariff rate for non-fossil fuel-based co-generation plants. The Project was scheduled to be commissioned in the year 2014 but was commissioned in 2017. The petitioner also draws electricity from the grid, as and when required for start-up purposes for which petitioner is required to pay applicable charges. NPPL has submitted that agreement for start-up power has never been executed by PSPCL with it. In the absence of any such agreement for start-up power, PSPCL is not entitled to levy/ charges demand surcharge. The commission notes that Schedule SXIII5.1 of Schedule of tariff specifies that the contract demand for supply for start up power shall not exceed 15% of the rated capacity of the unit with highest rating in the power plant. Demand Surcharge shall be applicable for any demand beyond contract demand. **However, the Commission directs PSPCL to execute the agreement with the Generator for start up power incorporating the terms and conditions. The Generator may approach PSPCL accordingly.**

Rule 3 of Electricity Rules specifies that:

*“Requirements of Captive Generating Plant:-*

*(1) No power plant shall qualify as a ‘captive generating plant’ under section 9 read with clause (8) of section 2 of the Act unless-*

*(a) in case of a power plant - (i) not less than twenty six percent of the ownership is held by the captive user(s), and*

*(ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use.....”*

Accordingly, a captive power plant is where the generator consumes at least 51% of the electricity generated on an annual basis for its own use as provided for in Rule 3 of the Electricity Rules, 2005. The Commission notes from PSPCL’s submissions that NPPL has supplied more than 51% of the energy to PSPCL on annual basis for FY 2017-18 to FY 2019-20 as under:

Year	Total generation (Mus)	Electricity Supplied to PSPCL (Mus)
FY 2017-18	22.286	16.284 (73.07%)
FY 2018-19	32.271	19.968 (61.88%)
FY 2019-20	34.255	21.984 (64.18%).

Therefore, it can be seen that NPPL has a consumption less than 51% and therefore the petitioner does not qualify to be a captive power plant. NPPL has not objected to the principle of demand surcharge being levied and only objected on the methodology of computation of demand surcharge. Being a Co-generation plant, PSERC (Harnessing of Captive Power Generation) Regulations, 2009 are not applicable on NPPL. **In view of above, the Commission decides that in case of Start-up power demand of NPPL exceeding the sanctioned contract demand, demand surcharge shall be charged at a rate of Rs. 750/- per kVA per month on excess demand irrespective of the number of defaults in a month as per the provisions made in tariff Order for FY 2017-18 to FY 2020-21.**

**Issue No. 2:** The provisions of calculation of maximum demand as per General Conditions of tariff clause 10.3 are

As per Tariff Order for FY 2017-18 & FY 2018-19

*The maximum demand for any month shall be considered as highest average load measured in kilovolt Ampere (kVA) during a block of 30 minutes period.*

As per Tariff Order for FY 2019-20

*The maximum demand for any day or month shall be considered as highest average load measured in kilovolt Ampere (kVA) during a block of 30 minutes period.*

As per Tariff Order for FY 2020-21 & FY 2021-22

*The maximum demand for any day or month shall be considered as the highest average load measured in kilovolt Ampere (kVA) during a block of 30/15 minutes period as may be applicable.*

The Commission observes that in its Order dated 02.12.2015 in Petition No. 44 of 2015, it has issued directions to PSPCL as under:



*“16.6 On the issue of recovery of Demand Surcharge amounting to Rs. 9,18,000 in the bill for the month of Jan. 2015 for exceeding the contract demand during the time block of 12.15 to 12.30 hours on 09.12.2014, we may refer to clause 10.3 of General Conditions of Tariff which provides that maximum demand for any month shall be considered as highest average load measured in kVA during a block of 30 minutes period.*

*Since, PSPCL is using ABT meter data which records parameters in 15 minutes block period, so PSPCL is directed to revise the bill by taking average of two 15 minutes time blocks in a period of 30 minutes starting from 00:00 hours in accordance with para 4 of the Commercial Circular No.29 of 2015 dated 22.07.2015.”*

**In view of above, the Commission directs PSPCL to revise the bill of NPPL by taking average of two 15 minutes time blocks in a period of 30 minutes starting from 00:00 hrs. during the time periods for which the Tariff Order mandates to consider the maximum demand as highest average load measured in kilovolt Ampere (kVA) during a block of 30 minutes period.**

**Issue No. 3:** NPPL has submitted that as per the provisions of Supply Code 2014, no charges, which are more than 2 years old, can be recovered from consumers and interest charges cannot be levied upon the petitioner as the bills were being issued as per PSPCL directions and necessary adjustments for recoveries were made as and when PSPCL directed in this regard and the Petitioner has not delayed any payment. NPPL has also submitted that Section 56 of the Electricity Act, 2003 provides for a limitation period of 2 years for recovering the due amount.

Regulation 32.2 of the Supply Code, 2014 specifies that:

*32.2 Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under Regulation 32.1 shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied & the distribution licensee shall not disconnect supply of electricity in such cases.*

Section 56 of the Electricity Act, 2003 specifies that:

*Section 56. (Disconnection of supply in default of payment): -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in*

*respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:*

*Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -*

*(a) an amount equal to the sum claimed from him, or*

*b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.*

*(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity*

The Commission also notes the PSPCL submission that Section 56 of the Electricity Act, 2003 as well as the Regulation 32.2 of the Supply Code deals with disconnection of electricity connection for default of payment and as such are not applicable to the facts of the present case.

The Commission also refers to the judgment dated 18.02.2020 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 1672 of 2020 in case of Ajmer Vidyut Vitran Nigam Ltd. v. Rahamatullah Khan wherein it has been held in para No. 09 of the judgment that:

*Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.*

Accordingly, the limitation in Section 56 is with respect to disconnection and does not apply to raising a supplementary demand upon

realising a mistake in billing in the first instance. **In view of the above, the contention of the petitioner (NPPL) with regards to non-recovery of charges more than 2 years old is rejected.**

Regarding levy of interest, the Commission notes the PSPCL submission that the interest is payable on the grounds of restitution and the time value of money. Interest is not by way of penalty, but only for the time value of money. Also, the interest does not accrue to PSPCL but passes to the benefit of the consumers and the petitioner ought not to benefit out of the time value of money at the cost of consumers of the State. The Commission observes that NPPL has not delayed or defaulted any payments to PSPCL and the interest claimed by PSPCL is on delay in raising the bill instead of delayed/default in payment of the said bills and as such the liability of delay in raising the bills should not be imposed on the petitioner. **Accordingly, the Commission decides that the interest charges as claimed by PSPCL are not leviable. Further, PSPCL is directed to take utmost care to raise the bills to the consumers in time to avoid any such loss on account of time value of money.**

The prayers made by the petitioner are only accepted to the above extent only and PSPCL shall revise the bills as per the ibid decision of the Commission in this Order.

The petition is disposed of accordingly.

Sd/-  
**(Paramjeet Singh)**  
Member

Sd/-  
**(Anjuli Chandra)**  
Member

Sd/-  
**(Sh. Viswajeet Khanna)**  
Chairperson

Chandigarh  
Dated: 04.05.2022