

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION  
SCO 220-21, SECTOR – 34-A, CHANDIGARH**

Petition No. 56 of 2014  
(Suo-Motu)  
Date of Order: 07.05.2015

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

In the matter of: Compliance of APTEL Judgment dated 12.09.2014 in Appeal No.245, 176, 237 and 191 of 2012 filed by Steel Furnace Association of India, Mawana Sugars Limited, Open Access Users Association and Mandi Gobindgarh Induction Furnace Association Versus Punjab State Electricity Regulatory Commission and Punjab State Power Corporation Limited against the Tariff Order dated 16.07.2012 passed by the Commission for FY 2012-13 in ARR Petition No.69 of 2011.

AND

In the matter of :

1. Steel Furnace Association of India,
2. Mawana Sugars Limited
3. Open Access Users Association
4. Mandi Gobindgarh Induction Furnace Association

AND

In the matter of: Punjab State Power Corporation Limited

**ORDER**

The Commission passed Tariff Order dated 16.07.2012 for FY 2012-13 for Punjab State Power Corporation Limited (PSPCL)

in Petition No.69 of 2011 filed by PSPCL for approval of ARR and Determination of Tariff for FY 2012-13. Steel Furnace Association of India, Mawana Sugars Limited, Open Access Users Association and Mandi Gobindgarh Induction Furnace Association filed Appeal Nos.245, 176, 237 and 191 all of 2012 respectively against Tariff Order for FY 2012-13 for PSPCL before Hon'ble Appellate Tribunal for Electricity, New Delhi. Hon'ble APTEL decided the Appeals by common Judgment dated 12.09.2014. In the aforesaid Judgment Hon'ble APTEL gave following findings:

“88. Summary of Our Findings

- (i) Wheeling charges: We feel that the wheeling charges have been determined by the State Commission in contravention to the provisions of the Act, Tariff Policy, National Electricity Policy and its own Regulations. Therefore, we have no option but to set aside the impugned order in respect of determination of wheeling charges applicable to Open Access customers for the period 7.5.2012 to 31.3.2013 with directions to re-determine the wheeling charges applicable to Open Access customers as per the above findings within 90 days of communication of this judgment and pass on the consequential orders granting the relief to the Appellants and other Open Access customers. The retrospective revision of the intra-State transmission charges and wheeling charges for short term inter-State open access transactions by the Open Access customers is also set aside as it is in contravention to

the Inter-State Open Access Regulations of the Central Commission. This issue is decided in favour of the Appellants.

- (ii) Non-implementation of cost of supply: In view of the submissions of the State Commission and considering that the State Commission in the Impugned Order has fixed the tariff of all categories of the consumers within  $\pm 20\%$  of the average cost of supply, we are not inclined to interfere with the impugned order.
  
- (iii) Non-segregation of cost of Generation from Distribution: We find that the State Commission has determined the variable charges of different thermal power stations after considering the operational norms viz. norms for Station Heat Rate, specific fuel consumption, auxiliary consumption, etc., as per its Regulations. However, the State Commission has determined the Return on Equity, interest on loan, employees cost, A&G expenses, Repair and Maintenances expenses, etc., considering the combined assets/expenditure of the generation and distribution assets. The State Commission in paragraph 6.6.1 of the impugned order has stated that the segregation of ARR for FY 2012-13 of PSPCL into generation and distribution functions has been carried out on the basis of information furnished by PSPCL in its letter dated 30.3.2011 and audited accounts of FY 2009-10 of the erstwhile Board since audited accounts

for FY 2010-11 are not provided by PSPCL. It is indicated that ROE is bifurcated proportionally on the value of fixed assets of each function. The State Commission then determined the fixed cost of each generating station based on the data provided by PSPCL. We have observed some discrepancies in the bifurcated function-wise expenses as pointed out in paragraph 76. We feel that the State Commission should have determined the fixed charges for the generating stations separately. The State Commission as per its Regulations has to determine the station-wise generation tariff. Apportioning of the total fixed cost of PSPCL in some proportion to different functions of PSPCL is not in consonance with the Regulations. FY 2012-13 is already over and is due for truing up. Therefore, the State Commission is directed to correct the discrepancies as stated above and true up station-wise/function-wise expenditure after prudence check. This issue is decided in favour of the Appellant.

- (iii) High un-metered agriculture pump-set consumption: Therefore, we do not find any lacunae in the efforts of the State Commission to ensure the compliance of Section 55 of the Electricity Act. Therefore, this point is decided as against the Appellant”.

The Hon'ble APTEL has accordingly allowed the Appeals in part and directed the Commission to pass consequential orders in terms of the observations and directions given in the Judgment. In order to comply with the directions of Hon'ble APTEL, the

Commission initiated proceedings vide this petition suomotu. The appellants and PSPCL were issued notice dated 18.09.2014 to file written submissions as per directions of Hon'ble APTEL and hearing of the petition was listed on 10.10.2014. Mawana Sugars Limited, Mandi Gobindgarh Induction Furnace Association (Regd.) and Open Access Users Association filed written submissions by due date. The remaining parties i.e. PSPCL and Steel Furnace Association of India, were again directed to file written submissions by 05.11.2014 vide Order dated 13.10.2014.

During hearing on 11.11.2014, PSPCL filed copy of Memorandum of Appeal filed by PSPCL under Section 125 of the Electricity Act in the Hon'ble Supreme Court of India challenging the Order dated 12.09.2014 passed by the Hon'ble APTEL in Appeal Nos.245, 176, 237 and 191 all of 2012. As these proceedings vide this suo-motu petition were initiated to make compliance of the Order dated 12.09.2014 of the Hon'ble APTEL, the Commission decided vide Order dated 13.11.2014 to adjourn the hearing of the petition to 16.12.2014 in view of pendency of the matter in the Hon'ble Supreme Court. After hearing PSPCL on 16.12.2014 (none of the appellants appeared) the hearing of the matter was closed and Order was reserved.

Meanwhile PSPCL filed Petition No.71 of 2014 in the matter of its Aggregate Revenue Requirement (ARR) and Determination of Tariff for FY 2015-16. The issues decided by Hon'ble APTEL in its Judgment dated 12.09.2014 and compliance of the directions of Hon'ble APTEL also engaged the attention and consideration of the Commission in the processing of the aforesaid Tariff Petition during public hearings held at important places in the State and as per the representations, objections, comments and suggestions

filed by general public and stakeholders, the Commission has passed the Tariff Order dated 05.05.2015 for PSPCL for FY 2015-16. The issue of compliance of directions of Hon'ble APTEL Order dated 12.09.2014 has been given in detail at para No. 7.10 and 7.6 of the Tariff Order dated 05.05.2015 respectively which are reproduced hereunder:-

**“7.10 Open Access Charges**

7.10.1 The Commission, in exercise of powers conferred under Section 42 read with Section 181 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling the Commission in this behalf, based on the 'Statement of Reasons' issued vide No. PSERC/Secy./Reg.156 dated 29th June, 2011, framed the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011 and notified the same vide Notification, the 1st July, 2011. These Regulations were amended vide Notification dated 4th May, 2012, wherein existing Regulation 25(5) was substituted as under:-

“25(5) Long term, Medium term and short term Open Access customers availing supply at 220 kV, 132 kV, 66 kV, 33 kV or 11 kV, in addition to transmission charges, shall be liable to pay wheeling charges determined by the Commission as per the Tariff Order applicable for the year”.

The Commission passed the Tariff Order dated 16.07.2012 for FY 2012-13 for PSPCL, and made wheeling charges applicable for Open Access customers as per amended Regulation 25 (5). Some Open Access customers filed Appeals, being No(s) 176, 191, 237, 245, all of 2012 against Tariff Order for FY 2012-13 and Appeal No(s) 142 and 168, both of 2013 against Tariff Order for FY 2013-14 challenging the wheeling charges payable by all Open Access consumers irrespective of the voltage level at which supply was being taken. Hon'ble APTEL decided Appeal No(s) 245, 176, 237 and 191 of 2012 by common Judgment dated 12.09.2014.

Findings of Hon'ble APTEL on the issue (Para 88 (i)) are as under:

*“Wheeling Charges: We feel that the wheeling charges have been determined by the State Commission in contravention to the provisions of the Act, Tariff Policy, National Electricity Policy and its own Regulations. Therefore, we have no option but to set aside the impugned Order in respect of determination of wheeling charges applicable to Open Access customers for the period 7.5.2012 to 31.3.2013 with directions to re-determine the wheeling charges applicable to Open Access customers as per the above findings within 90 days of communication of this Judgment and pass on the consequential relief to the Appellants and other Open Access*

*customers. The retrospective revision of the inter-state transmission charges and wheeling charges for short term inter-state Open Access transactions by Open Access customers is also set aside as it is a contravention to the Inter-state Open Access Regulations of the Central Commission. Accordingly, this issue is decided in favour of Appellants”.*

The Commission initiated suo-motu proceedings vide Petition No.56 of 2014 to comply with the directions of Hon'ble APTEL and called upon the parties to file written submissions with regard to the directions of Hon'ble APTEL. During hearing on 11.11.2014, PSPCL submitted copies of Memorandum of Appeal filed under Section 125 of the Electricity Act, 2003 before the Hon'ble Supreme Court against the Order dated 12.09.2014 of the Hon'ble APTEL. The Commission, after hearing PSPCL on 16.12.2014, closed the hearing of the petition and reserved the Order.

Hon'ble Supreme Court, in its Order dated 06.04.2015 had stayed the Judgment dated 12.09.2014 passed by Hon'ble APTEL.

Similarly, some consumers of PSPCL had filed Appeal No.142 and 168 both of 2013 and had challenged the Tariff Order dated 10.04.2013 for FY 2013-14 for PSPCL, interalia on the ground of levy of wheeling charges as determined in the said Tariff Order in terms of Open Access Regulation 25 (5) as amended in 2012 on the Open Access customers irrespective of the



voltage at which the supply was taken. The findings of the APTEL dated 17.12.2014 on the issue in these Appeals are the same as in its Order dated 12.09.2014 in Appeal No(s) 176, 191, 237 and 245, all of 2012.

PSPCL filed Appeal before Hon'ble Supreme Court under Section 125 of the Electricity Act, 2003. Hon'ble Supreme Court had admitted the Appeals (Civil Appeal No(s) 2151-2152 of 2015) and had stayed the impugned judgment vide Order dated 27.03.2015.

Since both the judgments (dated 12.09.2014 and 17.12.2014) of Hon'ble APTEL on the issue of levy of wheeling charges on Open Access customers have been stayed by Hon'ble Supreme Court, the directions of Hon'ble APTEL vide these Judgments cannot be complied with in this Tariff Order. The wheeling charges in terms of Regulation 25(5) of Open Access Regulations as amended vide notification dated 4th May, 2012, shall continue to be payable by all Open Access customers.

## **7.6 Separate Tariff for each Function**

7.6.1 The Hon'ble APTEL decided Appeal Nos. 245, 176, 237 and 191 of 2012 by common judgement dated 12.09.2014. The findings of the Hon'ble APTEL on the issue of non-segregation of cost of generation from distribution (Para 88 (iii)) are as under: -

*“Non-segregation of cost of Generation from Distribution: We find that the State Commission has determined the variable charges of different*

*thermal power stations after considering the operational norms viz. norms for Station Heat Rate, specific fuel consumption, auxiliary consumption, etc., as per its Regulations. However, the State Commission has determined the Return on Equity, interest on loan, employees cost, A&G expenses, Repair and Maintenances expenses, etc., considering the combined assets/expenditure of the generation and distribution assets. The State Commission in paragraph 6.6.1 of the impugned order has stated that the segregation of ARR for FY 2012-13 of PSPCL into generation and distribution functions has been carried out on the basis of information furnished by PSPCL in its letter dated 30.3.2011 and audited accounts of FY 2009-10 of the erstwhile Board since audited accounts for FY 2010-11 are not provided by PSPCL. It is indicated that ROE is bifurcated proportionally on the value of fixed assets of each function. The State Commission then determined the fixed cost of each generating station based on the data provided by PSPCL. We have observed some discrepancies in the bifurcated function-wise expenses as pointed out in paragraph 76. We feel that the State Commission should have determined the fixed charges for the generating stations separately. The State Commission as per its Regulations has to determine the station-*

*wise generation tariff. Apportioning of the total fixed cost of PSPCL in some proportion to different functions of PSPCL is not in consonance with the Regulations. FY 2012-13 is already over and is due for truing up. Therefore, the State Commission is directed to correct the discrepancies as stated above and true up station-wise/function-wise expenditure after prudence check. This issue is decided in favour of the Appellant.”*

The Commission initiated suo-motu proceedings vide Petition No. 56 of 2014 to comply with the directions of the Hon'ble APTEL and called upon the parties to file written submissions with regard to the directions of the Hon'ble APTEL. Siel Chemical Complex, Mandi Gobindgarh Induction Furnace Association (Regd.), Open Access Users Association and PSPCL filed their written submissions. The Commission in Chapter 2 of this Tariff Order has decided not to carry out the true up of FY 2012-13. As such, the Commission is not determining the station-wise/function-wise expenditure for FY 2012-13 in this Tariff Order as ordered by the Hon'ble APTEL in its judgement dated 12.09.2014 in Appeal Nos. 176, 191, 237 and 245 of 2012. Further, the judgement of the Hon'ble APTEL dated 12.09.2014 has been stayed by the Hon'ble Supreme Court as per its Order dated 27.03.2015 in Civil Appeal No(s). 2151-2152/2015.

The Commission in its letter no. 11488 dated 01.10.2014 requested PSPCL as under, in the matter of determining separate tariffs for generation and distribution:

*“The Commission is to determine the separate tariffs for Generation and Distribution (Wheeling and Retail Supply) of electricity as per Electricity Act and the Tariff Regulations notified by the Commission. Further as per Orders of Hon’ble APTEL dated 11.09.2014, the Commission has been directed to determine the separate tariffs for Generation and Distribution. As such, the audited details of costs/figures be filed separately for Generation (Plant wise), Wheeling and Retail Supply Business so that Commission could determine the Generation Tariff (Plant wise Fixed/Capacity charges and Energy charges), wheeling charges and retail supply charges separately. The existing performae may be used for this purpose and for any left out information, additional performae may be designed at your level.”*

PSPCL commented as under in its ARR for FY 2015-16:

*“The detail of segregated cost/figures for generation, transmission and distribution for the FY 2012-13 has already been supplied vide this office Memo no. 920/924/A-45 dated 27th October, 2014. So far as the information for FY*

*2013-14 & FY 2014-15 is concerned, it is intimated that the accounts for FY 2013-14 is under preparation. Thereafter the accounts for the year FY 2014-15 will be prepared.”*

PSPCL was again asked to supply the information in the matter vide Commission's letter no. 13250 dated 01.12.2014, as under:

*“Cost audit report and the compliance report duly authenticated and signed by the cost accountant in the specified formats (Performae A to H) as per the notification of Ministry of Corporate Affairs dated 07.12.2011 may be furnished. Separate plant-wise statement in performa C as per notification for each type of generation viz Hydroelectric, Thermal, Atomic etc. and for captive consumption, power sold within country and power exported may also be furnished.”*

PSPCL vide its letter no. 1229 dated 09.12.2014 commented as under:

*“PSPCL submits that the firm of professional Cost Accountants has already been appointed and work regarding Cost Audit of the cost accounting records for FY 2012-13 had already being in process and will get finalized as early as possible. However, the Cost Accounting record and Cost Audit Report for FY 2011-12 has been finalised and Cost Audit Report submitted by Cost Auditor is put up to Board of Directors vide Agenda No. 196/CC/528 dated 7th October,*

*2014. PSPCL will submit the report as soon as it receives.”*

PSPCL has not supplied the station-wise/function-wise figures for FY 2015-16. Further, Regulation 44 of the PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 states as under:

*“**Special Provisions** During the period, the PSEB remains an integrated utility, the Commission may waive any of the provisions of these Regulations in any matter if, in the opinion of the Commission, it is impracticable or inexpedient to proceed as per these Regulations. In such a situation, after recording its reasons, the Commission may adopt any other approach which is reasonable and is consistent with the overall approach of these Regulations.”*

PSPCL has submitted in the ARR petition that it is one of the “Successor Companies” of the erstwhile Punjab State Electricity Board (Board) duly constituted under the Companies Act, 1956 on 16.04.2010 after restructuring of the Board by Govt. of Punjab vide Notification No. 1/9/08-EB(PR)/196 dated 16.04.2010, under the “Punjab Power Sector Reform Transfer Scheme”. As per the transfer scheme, the erstwhile Punjab State Electricity Board (the predecessor) has been unbundled into two companies i.e. POWERCOM and TRANSCO. The POWERCOM has been named as Punjab State Power Corporation Limited and TRANSCO has been named as Punjab State

Transmission Corporation Limited. As per the transfer scheme, the Govt. of Punjab has segregated the “Transmission Business of erstwhile Punjab State Electricity Board, concerning the transmission of electricity and the State Load Dispatch Center (SLDC) function. Hence, PSPCL is left with the Distribution, Generation and allied activities of the erstwhile PSEB. As per the PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, [Regulation – 1(3)(k)], PSPCL is considered as an integrated utility since it is currently engaged in multiple functions, namely, Generation, Trading and Distribution of electricity. Now, since PSPCL is an integrated utility engaged in multiple functions of Generation, Trading and Distribution of electricity, it is impracticable to proceed as per PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, in the matter of determination of station-wise/function-wise expenditure prudently and as such, in view of provisions of Regulation 44 of the ibid Regulations, the Commission decides to determine the station-wise/function-wise expenditure of PSPCL for FY 2015-16 on the same methodology as adopted by the Commission in its earlier Tariff Orders”.

The compliance of the directions of Hon'ble APTEL in its Order dated 12.09.2014 for passing consequential orders, have been discussed in detail by the Commission as reproduced above in the Tariff Order for PSPCL for FY 2015-16. Further action in the matter can now be taken only after the final disposal of statutory Appeals by the Hon'ble Supreme Court of India.

The petition is disposed of as above.

**Sd/-**  
**(Gurinder Jit Singh)**  
**Member**

**Sd/-**  
**(Romila Dubey)**  
**Chairperson**

**Chandigarh**  
**Dated: 07.05.2015**