

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No. 03 of 2017
Date of Order: 28.02.2018**

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

In the matter of : Petition under Section 16 of the Electricity Act, 2003, read with regulation 10 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 and other relevant provisions of Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011, for imposing necessary conditions on the respondent, to be followed by it, while getting Open Access in the State of Punjab, to safe guard the interest of the petitioner, in view of the Order dated 05.11.2015 passed by the Central Electricity Regulatory Commission in Petition No. 197/MP/2015 titled as Indian Railways V/s Power Grid Corporation of India Ltd. and others.

AND

In the matter of: Punjab State Power Corporation Limited (PSPCL), The Mall, Patiala.

.....Petitioner

Versus

1. Northern Railways, Ambala Division (Railways), through its Chief Electrical Distribution Engineer, Baroda House, New Delhi-110001.
2. Punjab State Transmission Corporation Limited (PSTCL), The Mall, Patiala.

.....Respondents

ORDER

This petition has been filed by PSPCL seeking imposition of

necessary conditions on the respondent, Railways, to be followed by it, while getting Open Access in the state of Punjab, to safeguard the interest of the petitioner.

2. PSPCL submitted as under:

i) CERC vide Order dated 05.11.2015 in the petition no. 197/MP/2015 filed by Indian Railways, held that Indian Railways is a deemed licensee under 3rd proviso of Section 14 of the Electricity Act and as a deemed Licensee, it shall be bound by the terms and conditions of license specified or to be specified by the appropriate Commission. The drawl points from ISTS located within a State are to be treated as a single entity for the purpose of scheduling. And, all concerned RLDCs, State Transmission Utilities and SLDCs have been 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. Further, an appeal bearing No. 276 of 2015 filed by West Bengal State Electricity Distribution Company Limited against the above order is pending. However, an I.A. No.445 of 2015 filed in the above said appeal seeking stay of the order has been dismissed by the Hon'ble APTEL vide its Order dated 16.12.2015.

ii) On the basis of the above said judgment passed by the CERC, Railways applied for grant of Medium Term Open Access (MTOA) for purchasing power from Jindal India Thermal Power Ltd. (JITPL) under Bilateral Transaction and drawl of the power purchased, at its 9 nos. existing and 3 nos. upcoming Railway Traction Sub-Station (TSS) Points,

situated in Punjab. It has also applied for grant of Short Term Open Access (STOA), vide its application received on dated 26.05.2016.

- iii) In case Open Access is allowed to the Railways in view of CERC order dated 05.11.2015 in petition No. 197/MP/2015, it will be treated as a single entity for the purpose of scheduling and energy accounting. However, the billing cycle may be different in respect of these TSS, falling under different Operation Divisions/ Sub-divisions of PSPCL. As such, the ABT data downloading (DDL) cycle will also differ in respect of each TSS resulting in difficulties in preparation of UI/Deviation Accounts and subsequent difficulties in proportionate adjustment of open access units in energy bills of each TSS.
- iv) PSPCL's ATC limit shall also get reduced by a margin equal to the power being availed by the Railways under Open Access. As a result, PSPCL shall not only lose its consumer but ATC limit available for PSPCL shall also get reduced by approx. 25 MW, up to which the Railways is expected to draw power under Open Access. Since the load of PSPCL during the peak summer months is to the tune of 11500 MW, PSPCL cannot afford any reduction in the ATC limit especially during those months. This issue needs to be taken care of. Railways should get its own ATC limit allocated from NRLDC being "deemed utility".
- v) The following issues would also arise in case the STOA and MTOA is allowed to the respondent.
 - a) The respondent would not be consumer of the petitioner

after the STOA and MTOA is allowed to it. There may be instances when no power is wheeled/scheduled on account of outage/ shutdown of the generator or due to some interruption in distribution system of the petitioner or in transmission line(s) or grid. In that eventuality the respondent would take electricity from the petitioner and for that situation the recoverable charges/ stand by charges have to be determined by the Commission.

- b) In case of over drawl / under drawl, the imbalance charges need to be determined as per Regulation 31 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access) Regulations, 2011.
- c) Additional surcharge has to be charged from the respondent and necessary directions have to be given in this regard.
- d) The respondent is also liable to comply with RPO norms in regard to the electricity taken under open access.
- vi) In view of the submissions made above and to safe guard the interest of the Petitioner, it is prayed that necessary directions may be imposed upon the respondent, as per section 16 of the Electricity Act, to follow while getting open access. Further, the respondent may be directed to follow the terms and conditions required to be followed while getting STOA and MTOA as stipulated in Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access) Regulations, 2011.

3. The petition was admitted by the Commission vide Order

dated 08.02.2017 and PSTCL, being a necessary party, was also impleaded as Respondent.

4. Railways filed its reply to the petition vide letter dated 02.03.2017. The same in brief, is as under:

i) Indian Railways is a department in the Union of India and the Northern Railways is a part of the Indian Railways and is a Zonal Railway under the Railways Act, 1989 and further is the Nodal Railway Administrator for the State of Punjab. Though the Petitioner has impleaded Northern Railways as a Respondent, the same has to be considered as Indian Railways, Union of India.

ii) Indian Railways is a deemed licensee and is authorized to distribute electricity under the Railways Act, 1989 independent of the Electricity Act, 2003 and in terms of Section 173 of the Electricity Act, 2003, the Railways Act having been a superior application, the requirements and procedures for deemed distribution status under the Electricity Act, 2003 are not necessary to be invoked to the Indian Railways/Respondent.

iii) Various contentions and issues raised by the petitioner are objected to. However, Railways is ready and willing to comply with all the terms and conditions of the Open Access Regulations as applicable to distribution licensees.

5. PSTCL submitted its reply to the petition vide memo no.734 dated 08.03.2017. PSTCL submitted that though there is no financial implication to PSTCL in reference to the issues raised by petitioner, yet requisite comments have been submitted.

6. PSPCL submitted a rejoinder to the reply filed by Railways vide memo no. 5563 dated 17.04.2017, wherein it submitted as under:

- i) As Railways has applied for grant of MTOA for purchase of power from JITPL under Bilateral Transaction so it has been arrayed as respondent.
- ii) Appeal No. 276 of 2015 is still pending and matter is sub-judice before APTEL.
- iii) PSPCL is asking for charges applicable only as per as per Electricity Act, 2003 and Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011.

7. During the hearing on 18.04.2017, the Counsel for PSPCL sought time to file additional submissions for appropriate adjudication of the matter in hand. The representative appearing on behalf of PSTCL also sought time to engage an Advocate to represent it before the Commission. The Commission vide Order dated 20.04.2017 ordered PSPCL to meanwhile consider the request of Railways to issue an N.O.C. so that PSTCL could proceed with the Open Access application, subject to the final outcome of the present petition.

8. PSTCL, vide memo no.1319 dated 03.05.2017, filed its rejoinder to the reply filed by Railways. It submitted that the matter raised in the petition with regard to different charges e.g. Standby Charges, Imbalance Charges, Additional Surcharge etc. relate only to the petitioner and PSTCL has no part to play other than preparation of imbalance/UI/Deviation charges account of the Railways based on its ABT data to be supplied by the petitioner.

9. During hearing on 04.05.2017, PSPCL filed copy of Interim order dated 23.02.2017 passed by Haryana Electricity Regulatory Commission (HERC) in the case no. HERC/PRO-11 of 2017.

10. Railways filed an affidavit dated 24.05.2017 stating that in the meeting of Western Regional Power Committee (WRPC), it was agreed that Railways would make agreements with respective states for drawl of power and the power would be billed at temporary tariff of the respective states. This would be applicable after the generator trips or when scheduled generation is reduced. A copy of the Minutes of Meeting held on 22.02.2017 was also attached. The above decision of WRPC would be applicable only when the JITPL is unable to make alternate arrangements. It was also stated that Railways is already availing the open access in the States of Gujarat, Maharashtra, Madhya Pradesh and has further received NOC in Haryana on 26.04.2017 and enclosed the copies of the NOC's issued by the respective State utilities.

11. During the hearing on 25.05.2017, Counsel for PSPCL submitted that they have issued the NOC and the terms and conditions are to be fixed by the Commission. Counsel for PSTCL submitted that HERC has approved terms & conditions for issuance of NOC for open access to Railways and that the terms & conditions on the same lines may be considered to be issued by PSERC. In the Order dated 31.05.2017, the Commission noted that the Railways have received NOC from a few States already and asked the Railways to submit information as to standby charges, rates of tariff for emergent use of power from local utilities, landed rate of bilateral purchase of power under open access (with breakup of prices) prevalent in other States where

Indian Railways has already got approval for open access. Railways were also required to submit copies of the orders of State Electricity Regulatory Commissions regarding allowing open access in the States by 01.06.2017.

12. Railways vide its affidavit dated 30.05.2017, submitted the State-wise landed cost of bilateral purchase of power by it under open access. The Commission observed that copies of the orders of the State Electricity Regulatory Commissions allowing open access in other States as directed vide Order dated 31.05.2017 have not been submitted and directed Railways vide Order dated 07.06.2017, to file copies of orders passed by the Regulatory Commissions, interim or final, allowing open access/imposing general or specific conditions under section 16 of the Act in other States by 29.06.2017.

13. Railways filed an affidavit dated 22.06.2017 and submitted as hereunder:

- i) Open access has been granted to Railways in the State of Gujarat, Jharkhand, Maharashtra and Madhya Pradesh by the respective SLDCs/STUs without approaching the respective State Commissions and have been operational for more than a year. Copies of the NOCs granted have already been furnished by it.
- ii) Open access has been granted and operationlized in the State of Rajasthan without any order of the State Commission. In Karnataka, the NOC for Open Access has been granted and would be operationlized by October, 2017 subject to availability of transmission corridor. A copy of the NOC in Rajasthan and Karnataka is attached.

iii) In Haryana, the NOC has been granted pursuant to an interim Order of the Haryana Electricity Regulatory Commission in a petition filed by Dakshin Haryana Bijli Nigam (DHVBN), Hisar. The order of the Haryana Commission has been placed on record.

iv) Odisha Power Transmission Corporation Limited has filed a petition being Case No. 55 of 2016, before the Odisha Electricity Regulatory Commission, inter alia, on open access and conditions to be imposed on Railways. The matter was heard on admissibility of the petition. No orders have been passed with regard to open access.

14. Railways filed an affidavit dated 29.06.2017 and submitted the NOC granted to Railways for the power procurement through open access by other SLDCs/STUs.

15. During the hearing on 06.07.2017, the Commission heard the Counsel for all the parties to the petition and vide Order dated 11.07.2017 directed all parties to file written submissions by 21.07.2017 and to come up for final arguments on 08.08.2017.

16. Railways vide its affidavit dated 18.07.2017, reiterated its earlier submissions including its submission that it is ready and willing to comply with all the terms and conditions of the Open Access Regulations as applicable to distribution licensees, however there can be no additional condition on it in order to safeguard the interest of the Petitioner. Railways further submitted as hereunder:

i) Railways applied for MTOA to PSTCL on 28.05.2016. PSTCL sought NOC from PSPCL. The said NOC has since been granted by PSPCL on 11.05.2017. However, PSTCL

has not processed the Open Access application of Railways.

- ii) There are no operational issues on grant of open access to Railways and the issues pending in the present Petition are commercial issues. There is no reason for PSTCL to withhold processing of the open access application during the pendency of the petition filed by the petitioner. It has been more than a year since Railways has applied for open access and the same has not yet been granted.
- iii) Even if the deemed distribution licensee status under the third proviso to Section 14 is to be invoked in the peculiar facts and circumstances of the case where Railways is undertaking distribution of electricity within its area of operation and restricted to the purposes and in connection with the working of Railways. Though Railways may supply electricity to shops in the Railway Stations, colonies etc., the same is in connection with the working of the Railways and Railways is not in the business of supplying electricity to public at large as in the case of other licensees. Therefore, Section 16 providing for conditions of distribution license issued under the Electricity Act, 2003 has no application to the Railways.

17. In compliance to Commission's Order dated 11.07.2017, PSTCL vide Memo No. 2679 dated 21.07.2017, reiterated its earlier submissions made with regard to ATC limit, charges proposed by PSPCL and RPO compliance. PSTCL also submitted that issue of grant of NOC for open access to Railways is not a part of the main petition filed by PSPCL, but has been raised by Railways during the course of proceedings of the petition and in

the written submission filed by it before the Commission. PSTCL further submitted as hereunder:

- i) Railways requested PSTCL for grant of STOA and MTOA for purchase of upto 25 MW power under bilateral transaction. The application was forwarded to PSPCL along with requisite documents & details, for grant of consent in line with prevailing Intra-state STOA procedures approved by the Commission, to enable issue of NOC by PSTCL.
- ii) PSPCL vide letter dated 11.05.2017, which was amended vide letter dated 12.05.2017, issued a common letter for grant of STOA/ MTOA to Railways with regard to STOA & MTOA applications imposing two no. conditions as hereunder:
 - Railways shall abide by all the conditions/ all type of applicable charges that the Commission may decide and applicable from the date of issue of NOC.
 - Railways shall abide by all the conditions laid down in the Open Access regulations of PSERC and CERC as amended from time to time and State and Central Grid Code/ other relevant regulations/ guidelines.
- iii) As per the prevailing Intra State STOA procedures approved by the Commission, the consent for STOA is to be issued by PSPCL for a period of one year along with requisite terms & conditions, whereas the validity period for MTOA consent may range between 3 months to 3 years as per the prevailing Open Access Regulations issued by PSERC. However, PSPCL issued common consent for STOA/ MTOA without mentioning any validity period or detailed terms &

conditions. Also, the Commission vide Punjab State Electricity Regulatory Commission (Terms & Conditions for Intra-state Open Access) Regulations, 2011 (as amended from time to time) provide for nominating different Nodal Agencies for grant of STOA and MTOA (SLDC for STOA and STU for MTOA) and due to different procedures for grant of STOA & MTOA, separate consents for STOA & MTOA are required from petitioner. Accordingly, PSPCL was requested vide letter dated 12.05.17, followed by reminder dated 30.05.17, to issue separate consents for STOA & MTOA, clearly mentioning the validity of consent and requisite terms & conditions to be imposed while granting consent/ NOC, which is still awaited from PSPCL.

iv) Due to unavailability of valid STOA and MTOA, consent of the petitioner in prescribed format, NOC for STOA/MTOA could not be issued by PSTCL to Railways till date.

v) Further, as the MTOA & LTOA procedures have not been framed till date and are presently being drafted by PSTCL in coordination with PSPCL, the requisite conditions are required to be mandatorily imposed on Railways while granting STOA/MTOA, as done by Haryana SLDC/HVPL, in view of conditions imposed by HERC vide interim order dated 23.02.2017 in petition no. 11 of 2017.

18. PSPCL, vide its memo no. 6612 dated 02.08.2017, filed written submission reiterating its earlier submissions.

19. During the hearing on 14.09.2017, counsel for Railways submitted that NOC has been issued by PSPCL to PSTCL with regard to allowing open access to the Railways though commercial

issues involving various charges e.g. imbalance charges, standby charges and RPO compliance etc., which are relevant to the issue, are yet to be finalized. PSPCL submitted that it has issued NOC to the extent that there are no pending dues/charges payable by Railways to PSPCL. The counsel for PSTCL submitted that PSTCL has sought approval of the Commission to the procedure for medium term open access and long term open access on 21.07.2017, separately. The Commission vide order dated 20.09.2017 directed PSPCL and PSTCL to submit their proposals and details with regard to the levy of various charges and conditions to be imposed on Railways for availing open access with a copy to Railways by 29.09.2017. Railways was directed to file reply to the same by 16.10.2017 along with a copy of contract/agreement signed between Indian Railway and GUVNL with a copy to PSPCL and PSTCL.

20. In compliance of Commission's Order dated 20.09.2017, PSTCL vide Memo No. 3265 dated 29.09.2017 submitted its proposal with regard to the conditions to be imposed on Railways. PSTCL's proposal contained terms & conditions relating to type of Metering System infrastructure, Installation, Reading/Communication/Transfer of metering data to the SCADA system of SLDC control room on real time basis, Billing and Payment of applicable Charges and Grid Security. It was further submitted as hereunder:

- i) Terms and Conditions to be followed shall be as per Metering Guidelines approved by the Commission in Intra-state STOA procedures, State Grid Code, CEA (Installation and Operation of Meters) Regulations, 2006 with subsequent

amendments, CEA's "Functional Requirements for Advanced Metering infrastructure" and provisions in SAMAST (Scheduling, Accounting, Metering a Settlement of Transaction in Electricity) report issued by FOR technical committee (as and when implemented) and other Regulations/ guidelines issued by CERC/PSERC from time to time along with required provisions of CERC/PSERC Open Access Regulations as well as IEGC/State Grid Code.

- ii) To fulfill its RPO as per Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its compliance) Regulations, 2011, as amended from time to time.

21. Railways filed the reply to PSTCL's proposal vide letter dated 17.10.2017 as under:

- i) Even if the deemed distribution license status under the third proviso to Section 14 is to be invoked in the peculiar facts and circumstances of the case where Indian Railways is undertaking distribution of electricity within its area of operation and restricted to the purposes of Railways and there being no business of distributing electricity to public at large as in the case of other licensees, Section 16 providing for conditions of distribution license issued under the Electricity Act, 2003 has no application. Also, the existing conditions of license and standards of performance as applicable to the other distribution licensees in the State would not be applicable to it.
- ii) Railways is ready and willing to comply with all the terms and conditions of the Open Access Regulations as applicable to

distribution Licensees. However, there can be no additional condition on the Railways in order to safeguard the interest of PSPCL, as requested by PSTCL.

- iii) Railways would provide for compliant meters/equipment as per the appropriate Regulations and approved specification of metering equipment (ABT Meters and CT/PT unit) provided by PSTCL to Railways.
- iv) For scheduling and energy accounting, the ABT meters will be installed as per the Regulations. These meters have their clock synchronized by GPRS and therefore there is no issue of mismatch or difference in data downloading for all TSS. Railway shall also provide facilities/equipment for communication/transfer of metering parameters to the SCADA system of SLDC control room on real time basis from the above meters.
- v) Railways as distribution licensee would pay the applicable transmission charges and losses and SLDC Operating Charges as per the Appropriate Regulations framed by the Commission and within the time as provided in such Regulations/Orders.
- vi) PSTCL is seeking to treat Railways similar to Open Access Consumers of PSPCL which is incorrect. Railways has applied for open access as a licensee and not as a consumer of PSPCL. Railways will pay the charges as applicable to a distribution licensee as per the Regulations/Orders framed by the Commission. Further all such conditions should be consistent with Regulations, Codes etc as applicable in case of open access customers.

vii) Railways will comply with the Regulations and Orders of the Commission as applicable. However, there cannot be any additional charge on Railways.

viii) With regard to operation and security of grid and conditions of open access related to such operation and security of the grid, the Railways will comply with the necessary conditions and would cooperate for efficient and coordinated operation of power system in the State.

ix) Railways is not a licensee under the Electricity Act, 2003 but under Railways Act, 1989 and therefore conditions of distribution license including RPO cannot be applicable to the Railways. Without prejudice to the above, Railways as the Central Government is making significant efforts to promote renewable power and procuring renewable energy, which it will continue to do.

x) Railways would comply with the conditions of open access and it may be considered that the same is operationalised at the earliest. Further, as per CERC procedure, CTU shall grant MTOA effective from fifth month after submission of application complete in all respect by Railways i.e. inclusive of NOC from Punjab. Railways can be granted open access pending the adjudication of the present petition. Railways is already availing the open access/received NOC in the States of Maharashtra, Gujarat, Madhya Pradesh, Jharkhand, Rajasthan, Karnataka and Haryana.

22. In compliance to Order dated 20.09.2017, PSPCL vide its memo no. 5282/TR-5/825 dated 17.10.2017, submitted its proposal regarding levy of various charges on Railways as under:

i) Stand by Charges:

Railways would not be consumer of the petitioner after the STOA and MTOA is allowed to it and it would be a deemed Licensee, taking electricity from alternate sources other than PSPCL. There may be instances when no power is wheeled/scheduled on account of outage/shutdown of the generator or due to some interruption in distribution system of the petitioner or in transmission line(s) or grid. In that eventuality the respondent would take electricity from the petitioner and for that situation, the petitioner is entitled to recover charges/stand by charges. So for such situations following two types of charges are to be recovered from the respondent due to obligation to supply of PSPCL as per Section 42(4) of the Act.

a) Charges for actual use of Power:

Railways may be asked to pay temporary tariff as determined by the Commission for the units consumed by it. This tariff should be the highest from temporary tariffs for different categories.

b) Charges for stranded power due to obligation to supply by PSPCL as per Section 42(4) of the Act:

Railways can be asked to pay an amount, to be determined by the Commission, as additional surcharge for the industrial consumers availing open access.

ii) Fixed Charges:

The petitioner is also entitled to get fixed charges from Railways and the calculations of the same is as under:

Maximum Demand in FY 2017-18:	11681 MW
Total Fixed Cost as per ARR submitted for FY 2017-18:	Rs. 20,794.61 crore
Fixed Cost	Rs. 14,83,506.69 per MW per month

As such, Fixed Cost per month for 25 MW would be Rs.3,70,87,667.29 or say Rs. 3.71 crore (approx).

iii) Fuel Cost Adjustment Charges (FCA):

As determined by the Commission for that specific period.

iv) ToD Charges/Peak Load Exemption Charges:

Railways would also take electricity during peak load hours and there would be stress on the system during peak load hours. So respondent should either pay ToD Charges or Peak Load Exemption Charges as determined by the Commission for that specific period.

v) RPO Compliance:

As per clause 3(1) of Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its compliance) Regulations, 2011, every obligated entity shall purchase electricity from renewable energy sources including solar, not less than a percentage specified by the Commission from time to time, of its consumption of electricity (energy input in the system of obligated entity at its boundary) under the Renewable Purchase Obligation (RPO). So Railways is also liable to comply RPO norms in regard of the electricity taken under open access.

vi) Transmission losses:

PSTCL is paid by the petitioner, a lumpsum amount towards

transmission losses and after the Railways cease to be a consumer of the petitioner, then PSTCL would be compensated by the Railways for transmission losses for the power used by it. The Petitioner has to be given the credit of such transmission losses recovered by the PSTCL from Railways towards the total amount to be paid by PSPCL to PSTCL towards transmission losses.

vii) Metering arrangement:

Proper metering has to be done by PSTCL and Railways to measure the electricity consumed.

23. Railways vide its letter dated 03.11.2017 filed reply to PSPCL's proposal as under:

- i) Indian Railways is authorized to distribute electricity under the Railway Act, 1989, independent of the Electricity Act, 2003 and in terms of Section 173 of the Electricity Act, 2003, the Railways Act having a superior application, the requirements and procedures for deemed distribution status under the Electricity Act, 2003 is not necessary to be invoked to the Indian Railways. The submissions already made by the Indian Railways are reiterated. In any event the general or special conditions applicable to a Distribution licensee of an area of supply under the Electricity Act has no applicability to Distribution of Electricity by the Indian Railways for traction and other purposes as envisaged in Section 11 of the Railways Act, 1989.
- ii) There is a difference in conditions of distribution license and conditions of open access on PSTCL's network. PSTCL being under the regulatory supervision of the Commission

and open access being provided under the Electricity Act, 2003, the conditions of open access on PSTCL's network are applicable to all users of the network including Railways and the transmission charges of PSTCL as determined by the Commission shall be applicable to Railways.

iii) In so far Railways are concerned, Railways being a distribution licensee under the Railways Act, 1989, the functioning of Railways cannot be subjected to conditions being generally imposed under the Electricity Act, 2003. The Commission may examine the various conditions imposed on the Distribution Licensees in the State which will show that those have no application for Railways.

iv) Railways, as deemed licensee, will comply with the necessary conditions with regard to operation and security of grid. These are required to be followed by any entity connected to the grid.

v) Railways is ready and willing to comply with all the terms and conditions of the open access Regulations as applicable to distribution licensees. It is however submitted that no additional condition can be imposed upon Railways.

vi) PSPCL has arbitrarily claimed various charges which have no relation or relevance for grant of open access. Further, such charges would result in unreasonable amounts being imposed on Railways which is contrary to the intent and spirit of open access.

a) Stand by Charges

It is submitted that the PPA with the JITPL provides to

arrange for alternate supply by JITPL in case the generator shuts down. Therefore, the issue of stand-by would be applicable only when the JITPL is unable to make alternate arrangements.

The stand by charges cannot be at temporary tariff for the entire month. The concept of stand by charges at temporary tariff is based on the fact that the temporary tariff are usually much higher than normal tariff and therefore compensates the licensee providing standby power for arranging power when such power is required for very short periods of time and not on a continuous basis. Thus, the distribution licensee may charge temporary tariff for the said time (day or hours) of supply. Railways also submitted the Agreement with GUVNL wherein the temporary charges are being charged for the power actually consumed and the fixed charges are paid for the days on which power is actually supplied. Further, PSPCL has claimed additional surcharge/charges for stranded power as standby power though there is no relation between the two.

c) Fixed Charges

PSPCL has not submitted any provision under Electricity Act, 2003 under which such Fixed Charges are being claimed. Railways would no longer be a consumer of PSPCL. The fixed cost determined by the Commission is for the power purchased by PSPCL for supply to its consumers. Railways are seeking supply of 25 MW from JITPL and not from PSPCL. Therefore, there is no

rationale for it to pay any fixed charges to PSPCL.

d) Fuel Cost Adjustment Charges

It is reiterated that the Railways is seeking supply from JITPL and would no longer be a consumer of PSPCL. Therefore there is no reason or rationale for Railways to pay for fuel costs/adjustment charges to PSPCL.

e) ToD Charges/Peak Load Exemption Charges

Railways would not be taking supply from PSPCL but from JITPL. Therefore, there is no reason for any stress on PSPCL's system during peak load hours or otherwise. PSPCL is merely seeking to recover multiple charges from Railways to discourage open access. There is no basis under the Electricity Act, 2003 for the above charges.

f) Compliance with Renewable Energy Obligation

With regard to compliance with renewable power, it is submitted that Railways is a licensee under the Railways Act, 1989 and therefore conditions of distribution license under the Electricity Act, 2003 including RPO cannot be enforced on Railways. The deemed licensee status under Section 14 Third Proviso of the Electricity Act, 2003 is in addition to the Railways Act, 1989 and would not negate or otherwise affect the status of Railways under the Railways Act, 1989.

PSPCL is selectively reading the Central Commission's Orders. The Central Commission has recognized Railways as a licensee under two different heads - (i)

under the Railways Act, 1989; and (ii) under Third Proviso of Section 14 of the Electricity Act, 2003. While under the second head, the Central Commission has held that the deemed licensee is bound by conditions of licence specified under Section 16 of the Electricity Act, 2003, there is no such finding under first head. This is because under the Railways Act, 1989, the Railways cannot be subjected to any conditions of distribution licensee under the Electricity Act, 2003.

Without prejudice to the above, Railways as the Central Government is making significant efforts to promote renewable power and procuring renewable energy which it will continue to do so.

g) Transmission Losses

Railways is connected to PSTCL, not PSPCL and is seeking inter-state open access for transmission of power from JITPL in State of Odisha. The transmission loss, if any, has to be accounted for as per the Appropriate Regulations. It may be considered that the transmission charges and losses, if any, as per the agreement of the Railways with JITPL, are to be paid by the JITPL.

h) Metering Arrangement

Railways is willing to cooperate for installation of appropriate metering arrangement as required by this Commission/Central Commission and appropriate Regulations.

24. PSPCL vide memo no. 5937 dated 19.12.2017 filed rejoinder to the reply of Railways dated 03.11.2017, wherein, PSPCL reiterated its earlier submissions/proposal. PSPCL further submitted as hereunder:

i) CERC vide its Order dated 05.11.2015 passed in petition No. 197/MP/2015 has held that as a deemed licensee, Railways shall be bound by the terms and conditions of licensee specified or to be specified by the Appropriate Commission under proviso to Section 16 of the Electricity Act. Railways are liable to comply with all additional conditions imposed by the Commission.

ii) There is lot of difference between the distribution licensee and the Railways. PSPCL would be required to keep the arrangement for that power and also ready its system.

iii) PSPCL claimed rightful charges in its proposal. PSPCL cannot be put to bear the loss at the cost of Railways and clarified regarding:

a) Stand by Charges:

The petitioner is entitled to recover charges/stand by charges. The tariff rate for temporary connections would be chargeable for actual use of power. Besides the charges for actual power consumption, the petitioner is also entitled to get charges for stranded power, due to its obligation to supply as per Section 42(4) of the Act, as determined by the Commission for the Industrial Consumers availing open access.

b) Fixed Charges:

Railways is deemed licensee but the petitioner would still be having obligation to supply as per section 42(4) of the Electricity Act, 2003 and as such the petitioner is entitled to get Fixed Charges as claimed in the proposal.

c) Fuel Cost Adjustment Charges (FCA):

Railways are deemed licensee but for the respondent the petitioner would still be having obligation to supply as per section 42(4) of the Electricity Act, 2003 and as such the petitioner is entitled to get Fuel Cost Adjustment Charges (FCA) as determined by the Commission.

d) ToD Charges/Peak Load Exemption Charges:

In the eventuality of the respondent taking electricity from the petitioner, this time period can be any time slot within 24 hours including during peak load hours and there would be stress on the system during peak load hours. So, Railways should either pay ToD Charges or Peak Load Exemption Charges as determined by the Commission for that specific period.

e) RPO Compliance:

The proposal submitted by the petitioner is reiterated. Central Electricity Regulatory Commission vide its Order dated 05.11.2015 in petition no. 197/MP/2015 held that Railways is a deemed licensee under third proviso to Section 14 of the Electricity Act and further held that it shall be bound by the terms and conditions of license specified or to be specified by the Appropriate

Commission under proviso to Section 16 of the Electricity Act. More over as per clause 3(1) of Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its compliance) Regulations, 2011 also, Railways is liable to comply RPO norms in regard of the electricity taken under open access.

f) **Transmission Losses:**

The respondent has failed to understand the claim of the petitioner for transmission losses. PSPCL is not claiming any transmission losses from Railways but requesting this Commission to give benefit of the transmission losses paid by the respondent to PSTCL. PSPCL has to be given the credit of such transmission losses recovered by PSTCL from Railways towards the total amount to be paid by PSPCL to PSTCL towards transmission losses.

PSPCL has prayed that the petition filed by it may kindly be allowed and necessary charges to be recovered from Railways as claimed in the proposal submitted by it and terms and conditions of allowing STOA and MTOA may kindly be determined.

25. Commission's Observations, Findings and Decision

The Commission has examined the submissions made in the petition, the replies filed by the respondents, the rejoinder submitted by the petitioner to the reply and additional submissions made by the parties and other documents placed on record during the course of hearing of the matter. The Commission observes as hereunder:

- a) PSPCL is the sole distribution licensee in the state of Punjab and Railways is bulk supply consumer of the petitioner.
- b) Pursuant to CERC decision dated 05.11.2015 in petition No. 197/MP/2015 filed by Indian Railways, Railways applied for grant of MTOA for purchase of power from JITPL under bilateral transactions and drawl of the power purchased at its 9 nos. existing and 3 nos. upcoming Railway Traction Sub-Station (TSS) points situated in Punjab. It has also applied for grant of STOA.
- c) To safe guard its interest, PSPCL filed the present petition with the prayer that necessary conditions may be imposed upon Railways, as per section 16 of the Electricity Act, 2003 to follow while getting open access and it may be directed to follow the terms and conditions required to be followed while getting STOA and MTOA as per regulations of Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access) Regulations, 2011.
- d) The Commission vide Order dated 20.09.2017 directed PSPCL and PSTCL to submit their proposals with regard to the levy of various charges and conditions to be imposed on Railways for availing open access.
- e) PSTCL submitted its proposal vide its letter dated 29.09.2017. PSTCL's proposal contained terms & conditions as per Metering Guidelines approved by the Commission in Intra-state STOA procedures, State Grid Code, CEA (Installation and Operation of Meters) Regulations, 2006 with subsequent amendments, CEA's "Functional Requirements for Advanced Metering infrastructure" and provisions in

SAMAST (Scheduling, Accounting, Metering a Settlement of Transaction in Electricity) report issued by FOR technical committee (as and when implemented) and other Regulations/ guidelines issued by CERC/P SERC from time to time along with required provisions of CERC/P SERC Open Access Regulations as well as IEGC/State Grid Code.

f) Railways in its reply dated 17.10.2017 while submitting that, it is ready and willing to comply with all the terms and conditions of the Open Access Regulations as applicable to distribution licensees and would also provide for compliant meters as required under the Regulations, have contended that there can be no additional condition on the Railways in order to safeguard the interest of PSPCL and expressed reservations regarding the RPO compliance.

g) Proposal submitted by PSPCL, vide its letter dated 17.10.2017, contains various charges to be recovered from the Railways. The Commission's observations on the same are as hereunder:

i) Stand by Charges:

PSPCL has proposed stand by charges at the highest tariff rate for temporary connections, for actual use of power. Besides the charges for actual power consumption, it also proposes to charge additional surcharge due to its obligation to supply as per Section 42(4) of the Act, as determined by the Commission for the Industrial Consumers availing open access.

Railways in its response have submitted that the distribution licensee may charge temporary tariff for the

said time (day or hours) of supply. But, it is not agreeable to PSPCL's claim for charging additional surcharge/charges.

The Commission refers to Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access) Regulations, 2011, and observes that such exigencies/overdrawals by open access customers are to be dealt under 'Imbalance Charges' and provision for standby charges as proposed by PSPCL does not exist in the existing Regulations. However, the petitioner is at liberty to file a separate petition for consideration of amendment to the Regulations by the Commission.

Further, the Commission notes that Regulation 31(1)(a) of Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011, in case of overdrawal by Open Access Customers, provides for charging of Highest tariff for any permanent consumer category applicable at that point of time. This provision was made during the applicability of Single Part Tariff regime. Since, now Two Part Tariff structure has been implemented in the State w.e.f. 01.01.2018, the Commission is of the view that it would not be fair to charge fixed charges applicable for the full month for overdrawal even for a single time slot during the month. **Accordingly, the Commission clarifies that the term "Highest tariff" under the Regulation 31(1)(a) be considered as "Highest Single Part Tariff" as**

determined for working out of Two Part Tariff, in the Tariff Order for the respective year. No MMC charges shall be applicable in this case.

ii) Fixed Charges:

PSPCL has proposed Fixed Charges @ Rs. 14,83,506.69 per MW per month, calculated on the basis of its total fixed cost liability and accordingly worked out Fixed Cost of Rs. 3.71 crore (approx) per month for 25 MW load of the Railways.

Railways have contended that it would no longer be a consumer of PSPCL and therefore there is no rationale for payment of fixed charges as proposed by PSPCL.

The Commission observes that, under existing Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011, provision for payment of Fixed Charges on total demand of open access customers as proposed by PSPCL does not exist. However, the petitioner is at liberty to file a separate petition containing proposal for charging Fixed Charges for actual demand recorded by open access customers, if any from PSPCL, for consideration of amendment to the Regulations by the Commission.

iii) Fuel Cost Adjustment Charges (FCA) and Time of Day (ToD)/Peak Load Exemption Charges:

In this regard, the Commission refers to Regulation 31(1) of Punjab State Electricity Regulatory Commission (Terms

and Conditions for Intra-state Open Access) Regulations, 2011, which provides as under:

“31(1) Open Access customer

When the Open Access customer is not a consumer of the licensee, the mismatch of scheduled entitlement and actual drawal for any 15 minutes time block shall be met from the grid and will be paid/charged as under:

a) Overdrawal

UI charges + Congestion charges, if any, as notified by CERC from time to time.

or

Highest tariff for any permanent consumer category at that point of time (including PLEC), approved by the Commission in its Tariff Order for that year.

whichever is higher, will be paid by the Open Access customer to the distribution licensee.

.....”

The Commission observes that, “Imbalance Charges” for over drawl by open access customers are linked to “Highest tariff for any permanent consumer category at that point of time (including PLEC) approved by the Commission for the year”. Further, the Commission in its Tariff Order for FY 2016-17 has decided as a policy to remove PLEC and introduce ToD tariffs. Also, Tariff Order(s) for the respective year(s) provide for charging of FCA charges for the relevant period, if any, in addition to Energy Charges. Thus, FCA and ToD charges are already factored in

the provision of “Imbalance Charges” made in the Regulations, for overdrawal, if any, by open access customers. Thus the concern of the petitioner relating to ToD and FCA already stand addressed in the existing regulations.

iv) RPO Compliance:

During hearing on 10.01.2018, the counsel for Railways reiterated the commitment of Railways to follow “Terms and Conditions” of CERC/P SERC Regulations as applicable to other similar open access customers.

The Commission refers to Regulation 42 of Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011, which provides as under:

“42 (1) Each Open Access customer shall fulfill its RPO as per Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its Compliance) Regulations, 2011. The minimum percentages of RPO are prescribed in clause 3(1) of these Regulations. The RPO shall be met by Open Access customers either by purchase of electricity (in kWh) from renewable sources or by purchase of Renewable Energy Certificate(s) (RECs) from the Power Exchange.”

Accordingly, the Commission is of considered view that Railways as open access customer in the State of Punjab, would be required to strictly comply with

RPO as specified by the Commission from time to time.

v) Transmission Losses:

Petitioner has proposed that it be given the credit of such transmission losses recovered by PSTCL from Railways towards the total amount to be paid by the PSPCL to PSTCL towards transmission losses.

The Commission observes that transmission losses recovered by PSTCL from Railways would be contributing toward the income of PSTCL resulting in lowering of its net ARR/Transmission Charges to be paid by PSPCL.

vi) Metering arrangement:

PSPCL has proposed that proper metering arrangements are required to be done by PSTCL and Railways to measure the electricity consumed by it and PSTCL proposed the terms and conditions as per Metering Guidelines approved by the Commission in Intra-state STOA procedure, State Grid Code, CEA (Installation and Operation of Meters) Regulations, 2006 with subsequent amendments, CEA's "Functional Requirements for Advanced Metering infrastructure" and provisions in SAMAST (Scheduling, Accounting, Metering a Settlement of Transaction in Electricity) report issued by FOR technical committee (as and when implemented) and other Regulations/guidelines issued by CERC/PSERC from time to time along with provisions of CERC/PSERC

Open Access Regulations as well as IEGC/State Grid Code. **The Commission observes that, Railways has agreed in its submissions to install appropriate metering arrangement as required by the Commission/CERC and the appropriate Regulations.**

For scheduling purposes Railways will be considered as a single customer, however the metering/billing will be done at the individual points where Railways draws power, for which Railways will declare the maximum demand at each point before being granted open access. The Railways would also have to comply with all conditions of connectivity at individual points where it draws power, as set out in the Commission/CERC and relevant Regulations/Grid Code, in order to ensure safety and stability of the grid at these points.

- h) Available Transfer Capacity (ATC) Limit: The Commission observes that PSPCL has raised the issue of allocation of ATC limit in its initial submissions, but did not press for the same while submitting its proposals and details with regard to the levy of various charges and conditions to be imposed on Railways for availing open access vide its memo dated 17.10.2017, in compliance to the Commission's Order dated 20.09.2017. **However, the Commission is of the view that practically there will not be any change to PSPCL's availability of power to its consumers. Moreover, determination/allocation of ATC limit is being carried out by NRLDC/SLDC, accordingly issue regarding the same,**

if any, needs to be taken up with the concerned authority.

- i) The Commission further notes that, Regulations 17(1) &18(1) of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011 provides that in case of Open Access involving inter-State transmission system, as is the instant case, procedure for inter-State Short/Medium-term Access shall be as per CERC Regulations or its statutory re-enactments as amended from time to time. Provided that in respect of a consumer connected to a distribution system, the SLDC, before giving its consent to the RLDC as required under the CERC Regulations, shall obtain the consent of the distribution licensee concerned. **Accordingly, PSTCL is directed to process the application of Railways for issuance of No Objection Certificate for availing MTOA and STOA, as per the provisions contained in CERC/PSERC Regulations, in a time bound manner.**

The petition is disposed of accordingly.

Sd/-

(Anjuli Chandra)
Member

Sd/-

(S.S. Sarna)
Member

Sd/-

(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: 28.02.2018