

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

**Petition No. 42 of 2017
Dated of Order: 06.03.2018**

In the matter of : Petition under Section 142, 146 and 149 read with other relevant provisions of the Electricity Act, 2003 and chapter XI of PSERC (Conduct of Business) Regulations, 2005, as amended up to date and other relevant rules and regulations as approved by Hon'ble Commission for non-compliance of Orders dated 18.10.2016 passed by this Hon'ble Commission in Petition No.64 of 2016 and for other reliefs as prayed for.

AND

- In the matter of:
1. M/s Bhawani Castings Pvt. Ltd., Ambey Majra, Mandi Gobindgarh, District Fatehgarh Sahib.
 2. M/s Hansco Iron & Steel Pvt. Ltd., Village Jalalpur Chowk, Amloh Road, Mandi Gobindgarh, Distt: Fatehgarh Sahib (Pb).
 3. M/s Punjab Steel Forging & Agro Industry, G.T.Road Khanna Side, Mandi Gobindgarh, Distt. Fatehgarh Sahib (Pb)
 4. M/s Hind Alloys, Amloh Road, Village: Kumbh, Mandi Gobindgarh, Distt. Fatehgarh Sahib (Pb)
 5. M/s Dashmesh Castings Pvt.Limited, Village: Jalalpur, Amloh Road, Mandi Gobindgarh, Distt. Fatehgarh Sahib (Pb)
 6. M/s Dasmesh Alloys, Amloh road, Mandi Gobindgarh, Distt. Fatehgarh Sahib (Pb)

7. M/s Shiva Casting Pvt. Ltd., Village Tooran, Amloh Road, Mandi Gobindgarh, Distt. Fatehgarh Sahib (Pb)
8. M/s Ved Jyoti Alloys Pvt. Limited, Village: Jalalpur, Amloh Road, Mandi Gobindgarh, Distt. Fatehgarh Sahib (Pb)
9. M/s R.P. Multimetals Pvt. Limited, Amloh Road, Village Salani, Mandi Gobindgarh, Distt. Fatehgarh Sahib (Pb)

...Petitioners

Versus

Punjab State Power Corporation Limited Patiala

...Respondent

Present:

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

ORDER

The petitioners have filed the present petition against Punjab State Power Corporation Limited (PSPCL) for non-compliance of orders dated 18.10.2016 passed by the Commission in Petition No.64 of 2016 and praying to direct the respondent to comply with the directives of order dated 18.10.2016 and to rectify the bills of the petitioners accordingly. The petition was admitted vide order dated 18.07.2017 directing PSPCL to file reply by 20.07.2017. PSPCL submitted reply vide memo. no. 6553 dated 21.07.2017. Vide order dated 25.10.2017 , PSPCL was directed to file an affidavit dated 22.01.2017 with regard to detailed information of the bills, amounts refunded to the petitioners, whether full amount refunded or not

and reasons for not refunding the amount / part refunding as well as the details of interest payable as per the relevant regulations. In compliance of the order Er.-in-Chief / Coml./ PSPCL filed an affidavit vide memo. no. 5864 dated 06.12.2017. Vide order dated 01.01.2018, PSPCL was directed to submit its report regarding refund of the amount to Bhiwani Casting Pvt. Ltd. by 08.01.2018 and in compliance of the order, PSPCL submitted reply vide memo no. 6167 dated 11.01.2018. After hearing the parties, order was reserved vide order dated 15.02.2018.

2. The submissions made by the petitioners, in brief, are as under:

- i) That the petitioners are having their works/ factories in the area in an around Mandi Gobindgarh, in Distt. Fatehgarh Sahib, in the State of Punjab and for running their factories they have taken different electricity connections from the respondent. The petitioners are Large Supply (LS) consumers of the respondent. The petitioners have common cause of action as PSPCL and its officials, have violated the Tariff Order passed by the Commission for the FY 2016-17 and clarification given vide Commission' Order dated 18.10.2016 in Petition No. 64 of 2016, for levying base tariff of ₹4.99 for consumption in FY 2016-17 over the threshold limit worked out on the basis of consumption of FY 2014-15 and FY 2015-16.
- ii) The Commission in its Tariff Order dated 27.07.2016 for FY 2016-17 observed that PSPCL in the ARR for FY 2016-17 has projected a surplus of 18124 MU during FY 2016-17. The Commission further worked out the financial impact of power to

be surrendered, on the basis of data supplied by PSPCL in the ARR as ₹2075 Crore for the year 2016-17. The Commission approved base tariff rate of ₹4.99/kVAh for incremental power consumption above a stipulated threshold limit. The Commission also specified the criteria for working out the threshold consumption under Para 7.4.3 of the Tariff Order.

- iii) A clarification with respect to calculation of threshold limit has been also provided by the Commission vide Order dated 18.10.2016. The rationale behind Order dated 18.10.2016 is aimed at achieving the objective of encouraging Industrial units to consume more PSPCL power, to lessen the burden of fixed cost of surplus/surrendered power, by increasing drawl of power from PSPCL.
- iv) PSPCL filed an Appeal No. 06 of 2017 before the Hon'ble APTEL against the order dated 18.10.2016 passed by the Commission, which stands admitted and is pending adjudication before the Hon'ble APTEL. The Order dated 18.10.2016 passed by the Commission is still in operation as the same has been neither set aside nor stayed by the Hon'ble APTEL as of today, but, PSPCL is not following the Order dated 18.10.2016 while making calculations as to render the Tariff of ₹ 4.99/- in a self designed manner best suited to it.
- v) In case of Petitioner No. 1, M/s Bhawani Castings Pvt. Ltd.;
 - a) PSPCL granted the reduction in monthly consumption bills for consumption being above the threshold limit from the

month of December, 2016 onwards in the bills issued in January, March and April 2017. But, did not adjust the ED & IDF amount on the rebate which should have been allowed because of this reduced (SOP) amount.

- b) Increase in Contract demand (CD) was released on 19.12.2016. Thus, it availed CD of 5977 kVA from 01.04.2014 to 18.12.2016 and 9310 KVA from 19.12.2016 to 31.03.2017 during the period under consideration. In the calculations, PSPCL has considered the total consumption i.e. sum of PSPCL power and open access power and also increased the threshold limit for increase in CD.
- c) To account for the increase in CD, PSPCL increased the actual consumption during the corresponding period of last year i.e. 19.12.2015 to 31.03.2016 and the total consumption of FY 2015-16 so arrived at is considered as threshold limit. The threshold limit is to be adjusted pro-rata if there is increase/decrease in CD in the last 2 years as is evident from the para 7.4.3 of the Tariff Order. Since, the increase in contract demand happened on 19.12.2016 when the petitioner had already crossed the threshold limit; as such the action of PSPCL to increase the threshold limit is wrong.
- d) As per Order dated 18.10.2016, petitioner No. 1 is entitled to refund of ₹1,20,38,071.
- vi) In case of petitioners no. 3, 4, 5, 8 & 9, PSPCL had made

calculations contrary to the Commission's Order dated 18.10.2016, while giving benefit of threshold consumption in their respective energy bills. However, if the calculations were made as per Order dated 18.10.2016, these Petitioners are also entitled to seek the additional amount receivable.

- vii) That Petitioners no. 2, 6 & 7 have not been given the benefit of base tariff though they have crossed the threshold limit worked out as per the Orders of the Commission dated 18.10.2016 after excluding the open access power.
- viii) That PSPCL is trying to defeat the objective of the Commission of utilizing surplus power, as the rationale behind the Commission's Orders dated 18.10.2016 and 27.07.2016 was utilization of stranded capacity and thereby ensuring competitiveness and survival of existing Industry. Thus, the PSPCL and its officers at the helm of the affairs are liable to be prosecuted/punished for the deliberate disobedience/violation of the Order dated 18.10.2016 passed by the Commission.
- ix) The Tariff Order is unambiguous that after crossing the threshold limit, the applicable Tariff for consumption above the threshold limit will be ₹4.99/- per unit. It is evident that the ED & IDF will also be applicable on this base tariff, however, PSPCL while refunding the amount has not refunded the ED & IDF so charged from the Petitioners. PSPCL is liable to refund the excess amount so charged on the aforesaid counts from the Petitioners.
- x) The continuous default by the PSPCL is pinching the Petitioners

financially and also causing mental agony to the Petitioners. The market conditions are not favourable for last few years and blockage of these huge funds has forced the Petitioners to arrange working capital from open market at high cost. PSPCL is enjoying on these funds in utter disregard to the orders passed by the Commission. In case, the Petitioners had not deposited the bills on due dates, the Petitioners would have been penalized by PSPCL on account of huge late payment surcharge and would have also faced threat of disconnection. Keeping in view the hardship faced by the Petitioners, PSPCL may be directed to pay the amounts due to the Petitioners in compliance of the Order dated 18.10.2016 along with penal interest as per the provisions of the Electricity Act, 2003 and the Supply Code, 2014.

xi) The petitioners have prayed as under:

- (i) to Summon the respondent and punish/penalise the respondent and its officials at the helm of the affairs for violation of Order dated 18.10.2016 in Petition No. 64 of 2016 in accordance with Section 142/146/149 of Electricity Act, 2003 and Chapter XI of Conduct of Business Regulations, 2005 and other relevant Sections/provisions of the Act and the regulations made by the Commission;
- (ii) Direct the respondent-PSPCL to comply with the directives passed by the Commission vide its Order dated 18.10.2016.
- (iii) Direct the respondents to rectify the bills of the petitioners

according to order dated 18.10.2016 and refund/adjust the amount receivable by the Petitioners along with ED, IDF and Penal Interest thereof.

(iv) Pass any such further orders as the Commission may deem fit in the facts and circumstance of the case.

3. Submissions of PSPCL in reply to the petition, in brief, are as under:

- i) Aggrieved by the impugned order of the Commission dated 18.10.2016; PSPCL filed an Appeal No. 6 of 2017 and I.A. No. 14 of 2017 for stay before the Hon'ble APTEL. When the matter came up after notice on 08.03.2017, the respondent therein who had appeared took time to file their reply. When PSPCL (the Appellant therein) had mentioned about the interim application being filed, it was represented by the respondent therein that the matter could be finally heard and separate hearing of the interim application was not necessary. It was further represented that nothing would occur in the meanwhile to jeopardize the rights of the Appellant and the matter could be heard on an early date. On 03.05.2017, the matter came before the Hon'ble Tribunal but the pleadings were not completed by then and the respondents sought further time to file their reply. There was no delay whatsoever on the part of PSPCL. It is stated that coercive action now sought to be taken is incorrect and contrary to the nature of proceedings and the specific representation given before the Hon'ble Tribunal. Moreover, Order of the Commission dated 18.10.2016 in Petition No. 64 of 2016 has already been implemented by PSPCL vide letter no.

716/Petition/64/26/36 dated 07.07.2017 without prejudice to outcome of judgment in Appeal No. 06/2017 filed by PSPCL before Hon'ble APTEL. In this matter, the final decision of Hon'ble APTEL or any higher Court shall be applicable.

- ii) The implementations of Order dated 18.10.2016 of the Commission in Petition No. 64 of 2016 has been implemented and bills are being adjusted accordingly. In this case, the consumer did not prefer any application in the Dispute Settlement Committee to resolve the issue. Even though after final adjustments, if consumers have any grievances, they are at liberty to approach the appropriate authority for redressal of their grievances.
- iii) With regards to ED & IDF, it is submitted that these levies are imposed by the State Government. The revenue received on these accounts is passed on to the State Government. At present ED & IDF is calculated on normal tariff rate of ₹6.03/₹6.22 per kVAh on incremental consumption above threshold limit. In view of no specific instruction in this regard, PSPCL on its own without consent of State Govt./ PSERC cannot decide the matter of ED & IDF calculation on concessional tariff for consumption above threshold limit.

4. The Commission vide its Order dated 25.10.2017 ordered as under:

“PSPCL is directed to file an affidavit by 01.12.2017 with a copy to the petitioners with regard to detailed information of the bills, amounts refunded to the petitioners, whether full amount refunded or not and reasons for not refunding the amount / part

refunding. Further, PSPCL shall also inform the details of interest payable as per the relevant regulations.

Chief Engineer/Commercial, PSPCL shall remain present on the next date of hearing. In case the amounts are not refunded by 01.12.2017, the Commission shall be constrained to impose penalty on PSPCL for not implementing the order of the Commission dated 18.10.2016 and submitting wrong information to Hon'ble APTEL and the Commission."

In compliance to the order, PSPCL filed an affidavit, submitting that the refund has been made and the same will be reflected in their accounts and the detail of refunds so made was also provided. Vide Order dated 01.01.2018, the Commission observed and Ordered as under:

"Learned counsel for the petitioners has submitted that in case of Bhiwani Castings Pvt. Ltd., PSPCL has not fully refunded the amount due to it. PSPCL shall submit its report in this regard by 08.01.2018.

It has been further submitted by the counsel of the petitioners that the interest on the amount due and refund of the amount of ED and IDF has not been paid. PSPCL has submitted that interest is payable as per relevant regulations subject to the outcome of the appeal against the Order dated 18.10.2016 in Petition No. 64 of 2016, which is pending before the Hon'ble APTEL.

As regards refund of ED and IDF, PSPCL has submitted that the same are collected by it on behalf of the Government of Punjab and the issue of its refund shall be taken up by PSPCL with the Government."

PSPCL vide its letter dated 11.01.2018 submitted the report containing details of threshold consumption and the refund thereof regarding the petitioner M/s Bhawani Castings Pvt. Ltd., stating that:

- i) Commission's Tariff Order for FY 2016-17 provides that, in case, there is reduction or extension in load/demand, threshold consumption for financial year shall be worked out on pro-rata basis. The consumer has enhanced his CD on dated 19.12.2016 and accordingly consumption for the corresponding period of FY 2014-15 and FY 2015-16 was enhanced.
- ii) The Consumer is also adding amount of Rs. 34,17,369/- for ED & IDF refund in his calculations.
- iii) Rebate for the month 01/2017 was given manually and also by SAP. Therefore, excess rebate given for month of 01/2017 was charged in the bill of 02/2017.
- iv) Above calculations and comments have already been sent to the consumer and he was informed that in case of any discrepancies or clarification required regarding calculations, he may contact PSPCL again on any working day.

5. Commission's observations and Decision:

The Commission has examined the petition, reply submitted by PSPCL, submissions made by the parties during the course of hearings and other documents adduced on record. The Commission notes that Appeal No. 06 of 2017 filed by PSPCL before the Hon'ble APTEL, against the Order dated 18.10.2016 passed by the Commission in Petition No. 64 of 2016, is still pending. However, PSPCL has issued instructions for compliance of the Order dated 18.10.2016 in Petition No. 64 of 2016, vide its letter no. 716/Petition/64/26/36 dated 07.07.2017, without prejudice to the outcome / judgment of the Hon'ble APTEL. And, in compliance of the

directions given by the Commission vide order dated 25.10.2017, PSPCL submitted an affidavit dated 06.12.2017 confirming the refunds made by it and stating that all EICs / CEs (DS) have certified that no case of refund to the petitioners is pending in their jurisdiction as per Commission's Order dated 18.10.2016 in Petition No.64 of 2016.

During the hearing on 13.12.2017, PSPCL submitted that interest is payable as per relevant regulations subject to the outcome of the Order of the Hon'ble APTEL in appeal no. 06 of 2017 against the order dated 18.10.2016 in petition no. 64 of 2016. As regards the refund of ED and IDF, PSPCL submitted that the same are collected by it on behalf of the Government of Punjab and the issue of its refund is being taken up by PSPCL with the Government.

However, in case the petitioners are not satisfied with the revised bills as per clarification / directions contained in the Commission's orders, the petitioner shall be free to approach the Grievance settlement mechanism of the licensee as per law.

This Order shall be applicable to all similar cases.

The petition is disposed of accordingly.

-Sd/-
(Anjuli Chandra)
Member

-Sd/-
(S.S. Sarna)
Member

-Sd/-
(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: 06.03.2018