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

**Petition No. 26 of 2017**
**Date of Order: 01.08.2017**

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| Present: | Shri D.S. Bains, Chairman<br>Shri S.S. Sarna, Member |
| In the matter of: | Petition under section 142/146 of Electricity Act, 2003 for violation of Order dated 18.10.2016 passed in Petition No.64 of 2016. |
| | AND |
| In the matter of: | Siel Chemical Complex, A Unit of Mawana Sugars Limited, Village Khadauli, Rajpura, District Patiala-140401. |
| | ..…Petitioner |
| | Versus |
| In the matter of: | Punjab State Power Corporation Limited Patiala. |
| | ..… Respondent |

**ORDER**

The petitioner has filed the present petition for violation by the respondent of the Order dated 18.10.2016 passed by the Commission in petition No. 64 of 2016, requesting the Commission to punish the contemnor/respondent in accordance with Section 142/146 of Electricity Act, 2003 and direct the respondents to rectify the bill for the month of February and March, 2017 as per the Commission's order dated 18.10.2016. The petition was admitted by the Commission vide order dated 11.05.2017. The petitioner has submitted that -

i) For calculating threshold limit, maximum of the annual power consumption of PSPCL power of last two financial years has to be considered which would entitle Large Supply Industrial Consumers in the State of Punjab for base tariff rate of Rs. 4.99/KvAh for power consumed beyond threshold limit as per paragraph 7.4.3 of Tariff Order for Financial year 2016-2017.

ii) That PSPCL had filed Petition No. 70 of 2015 for approval of this Commission for special tariff of Rs 4.99 for new industries which would be established as a result of Progressive Punjab Investors Summit 2013 and 2015. PSPCL sought approval of the Commission for New Tariff under Section 62 of the Electricity Act 2003. The Special Tariff was to be applicable for 5 years period starting from the date of connection and was for total consumption of power. PSPCL had worked out in the Petition that it has large surplus/idle/stranded capacity for which it was bearing fixed charges which are already loaded on to the consumers through tariff. Setting up new industry in the state would increase the sale of power and fixed charges for idle capacity would reduce which would further reduce the burden on other consumers. The Commission decided vide order dated 26.7.2016 that the special tariff would be applicable with difference between Normal tariff and Special Tariff to be given by GOP as subsidy. The Commission on its own motion and internal discussions, approved the base tariff of Rs 4.99/unit for the LS industry consuming power above the threshold limit. It is stated that the order passed by this Commission has attained finality as no appeal was filed by the Respondent.

iii) That the commission further worked out the financial impact of power to be surrendered, on the basis of data supplied by PSPCL in ARR as Rs 2075 Cr. for the year 2016-17. PSERC directed a base tariff rate of Rs.4.99 per KVAH for incremental PSPCL power consumption above a stipulated threshold limit. Under Para 7.4

titled “Sale of Surplus Power” in the Tariff Order 2016-17, this Commission vide Para 7.4.3 (i) provides for calculation of threshold limit as under:-

*“7.4.3 The criterion for allowing rate of Rs.4.99 per kVAh shall be as under:*

*(i) It shall be allowed for any consumption during the financial year exceeding the consumption worked out on the following methodology:*

*The maximum annual consumption in any of the last two financial years shall be taken as threshold. In case, period is less than two financial years i.e. if connection has been released after 31.03.2014, tariff @ Rs.4.99 per kVAh shall not be permissible. Further, in case, there is reduction or extension in load/demand, threshold consumption for a financial year shall be worked out on pro-rata basis.”*

iv) That the Tariff order unequivocally grants existing LS consumers a base tariff rate of Rs. 4.99 per KVAh for PSPCL power consumed above threshold limit as per para 7.4.3. All other surcharge and rebates as approved by the Commission and Government Levies as notified by the State Government shall be charged extra. Subsequently PSPCL also issued CC No. 31 of 2016 reproducing the above paragraph of the Tariff Order.

v) That M/s Steel Furnace filed a petition seeking clarification in the Tariff Order with respect to calculation of Threshold limit which was allowed by this 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 more drawl of power from PSPCL. In fact this would be amply clear from the tariff order dated 27.7.2016. The relevant extract of order dated 18.10.2016 is as under:

***“1.2 Economic Profile of Punjab***

**---------***The Compound Annual Growth Rate (CAGR) of Punjab’s secondary sector State Gross Domestic Product (SGDP) has decreased from 13.18% between 2005-06 and 2008-09 to 3.16% between 2012-13 and 2015-16. In the comparative periods the CAGR of India’s secondary sector GDP has reduced from 9.53% to 5.52%. What is significant is that the growth rates in the secondary sector for Punjab, which were higher than that for the country during 2005-06 to 2008-09 have become lower than that for the country during 2012-13 to 2014-15............*

*The CAGR of Punjab’s tertiary sector SGDP has decreased from 8.10% between 2005-06 and 2008-09 to 7.68% between 2012-13 and 2015-16. In the comparative periods, the CAGR of India’s tertiary sector GDP has reduced from 10.30% to 8.85%. Thus, Punjab’s tertiary sector has performed worse than the country..................*

*In light of the above and the national Make in India campaign, there is a significant opportunity to promote the secondary (industry) sector, followed by the tertiary (services) sector...........*

*2.3 Proposed Changes in Tariff & Related Matters*

*2.3.1 Promote Industry*

*...........there is a scope and need to promote industrial sector in order to increase the overall SGDP growth and to provide*

*employment opportunities to the People of Punjab, given that agriculture growth has almost saturated as 99% of cultivable land is already under the plough which means there is no further scope of increasing the land under agriculture, with no change in crop pattern. The industrial and service sector CAGR between 2012-13 and 2015-16 was at 3.16% and 7.68% compared to national CAGR of 5.52% and 8.85%. The decline in Industrial growth in Punjab between 2012-13 and 2015-16 is too significant to fail to notice.*

*In addition to competition from Chinese goods and high electricity costs, Punjab's industry has to face other disadvantages such as faraway ports for import in raw material and exporting finished goods and more taxes compared to other states. This has resulted in closure of many industrial units and little or no expansion of existing industry. The industrial centres of Ludhiana, Jalandhar and Mandi Gobindgarh have been declining fast since 2010 (M Rajashekhar, Dec 11, 2015). For instance Punjab State Government levies electricity duty of 13%, infrastructure development fee of 5% and octroi of 10 paisa per unit of electricity, thereby increasing the landed cost of electricity by about 20%. Electricity forms an important input cost and in case of LS industry, electricity forms 40% to 70% of the total production cost (HANSCO Iron & Steel Pvt. Ltd., 2016 and SIEL Chemical Complex, 2016). Hence any reduction in the landed cost of electricity, either in the form of reduced tariff by PSPCL, reduced taxes by the Punjab state government, or a combination of both, would reduce the production cost of industry and would help industries become competitive enough to survive. [emphasis added]*

*In terms of efficiency, the industry segment contributed 37.32% of* *the revenue of PSPCL (taxes go the state government) with a consumption share of 32.77% in 2015-16. The negative externalities created by industries have been well controlled by environmental standards imposed from time to time, unlike in the case of the AP segment. Given the higher input costs for industry in Punjab due to higher transportation costs (both for raw materials and finished goods) and higher taxes (M Rajashekhar, Dec 11, 2015), the affordability of industry in enhancing power consumption by expansion is not great unless the landed cost of power tariff is reduced substantially to the additional consumption of existing industries, and possibly even to consumption of existing industries on par with the proposed tariff of INR 4.99 for new industries. This would send a clear signal for industry revival. The power consumption of LS industry has decreased from 11097 MU in 2014-15 to 10, 826 MU in 2015-16. Hence, in the absence of such signals, it may be difficult to reverse a decline. [Emphasis added]*

*The commission while determining the tariff structure for FY 2016-17, particularly for industry kept the above very significant observations of the consultants in view. In order to encourage consumption of surplus power available in the State, the commission in para 7.4 of the Tariff order for FY 2016-17 underlined its views unambiguously and also laid down mechanism to incentivize higher consumption by the industrial consumers.*

*................”*

vi) That the Respondent preferred an appeal being Appeal No. 06 of 2017 before the Appellate Tribunal for Electricity which has been admitted and now the same is fixed for 16.05.2017. It is important to state here that Hon’ble Appellate Tribunal for Electricity has, while admitting the appeal, not passed any interim order staying the order dated 18.10.2016 meaning thereby calculation of Threshold limit has to be done in accordance with Order dated 18.10.2016 and base tariff/concessional tariff of Rs. 4.99 per KvAh has to be accorded to eligible consumers. It is further stated that vide order dated 08.03.2017 the Petitioner herein has been impleaded as Respondent No. 3 in the said Appeal.

vii) That in Bill no.1001026960 dated 10.03.2017 for the month of Feb.'17, an amount of Rs.1,51,44,456 was subtracted from the Energy Charges on account of difference in tariff rate viz. normal rate of Rs.6.22 and base rate of Rs.4.99 per KVAh for those units which exceeded the threshold limit as well as ED + IDF amount which should have been reduced because of this subtracted (SOP) amount. This was informed to CBC vide letter no. SCC/03-17/1007 dated 17.03.2017 and the Petitioner requested for adjustment in the next bill. However to the utter surprise of the Petitioner, the Respondent instead of adjusting the above said amount of ED(@13%) +IDF(@5%) and the amount of Rs. 1,51,44,456 subtracted from Feb.'17 bill was charged back under the heading "Miscellaneous Charges" in the bill for March 2017. The bill contains no explanation or clarification in respect of the reversal of the sum of Rs. 1,51,44,456 subtracted in Feb.'17. The Petitioner has consumed total units eligible for base rate tariff @ Rs. 4.99 above threshold limit and same is 21825012 units and thus energy charges charged extra in the month of March, 2017 comes to Rs. 2,68,44,764/- (Rupees Two Crores Sixty Eight Lakhs Forty Four Thousand Seven Hundred Sixty Four Only) and including the EDF Rate and IDF Rate, the excess billing in the month of March, 2017 is of Rs. 3,16,77,000 (Rupees Three Crores Sixteen Lakhs Seventy Seven Thousand Only).

viii) That the conduct of the Respondent is violative of the order passed by this Commission as there is no stay granted on the base tariff above threshold limit. The Respondent PSPCL is trying to defeat the objective of this Commission of utilizing surplus power as the rationale behind the order dated 18.10.2016 and 27.07.2016 was utilization of stranded capacity and thereby ensuring competitiveness and survival of existing Industry.

**2.** The respondent vide memo No. 6211 dated 06.06.2017 submitted its reply as under:-

i) That the present petition has been preferred by the SIEL Chemical Complex – a unit of M/s Mawana Sugar Limited, seeking penal proceedings to be initiated for alleged violation of order dated 18.10.2016 passed by the Commission which is pending before the Hon'ble Tribunal as Appeal No. 06 of 2017.

ii) That aggrieved by the order dated 18.10.2016 passed by the Commission, PSPCL filed appeal No. 06 of 2017 and IA for stay being I.A. No.14 of 2017 before the Hon'ble Tribunal and notice has been issued in the Appeal as well as I.A.No.14 of 2017.

iii) That the matter came up before the tribunal on 8.03.2017 and the respondents therein appeared and took time to file reply. It was represented by the respondents 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. The I.A.No.14 of 2017 is pending before the Hon'ble Tribunal.

iv) That an impleadment application was also filed by M/s Mawana Sugar Ltd. for being impleaded as a party respondent in Appeal No. 06 of 2017, which has been allowed by the Hon'ble Tribunal. The I.A.No.14 of 2017 was listed along with the main appeal on 03.05.2017 wherein the Commission is also a respondent. The respondents sought time to file reply and there was no delay on the part of PSPCL.

v) That the petitioner being the respondent in Appeal No. 06 of 2017 is fully aware of the above circumstances and despite that the petitioner has filed the present petition even though the appeal against the impugned order is pending before the Hon'ble Tribunal.

vi) 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. It is not correct on the part of the petitioner to seek to take coercive steps against PSPCL at this stage.

vii) That PSPCL has been constrained to approach the Hon'ble Tribunal by way of abundant caution for directions to the Hon'ble Commission not to proceed with coercive steps, as it will cause grave prejudice to PSPCL. PSPCL has filed application to this effect before the Tribunal in Appeal No. 06 of 2017 and a copy of the same is also annexed.

viii) Action on the part of the petitioner is not bonafide and the petitioner has acted unreasonably and has ignored the fact that the appeal filed by PSPCL against the impugned order is being proceeded before the Tribunal with an observation by the Tribunal that the rights of PSPCL may not be jeopardized in the meantime. Thus, the present petition deserves to be dismissed at this stage, pending the proceedings before the Hon'ble Appellate Tribunal.

**3. Commission's observations and findings**

i) The Petitioner has raised the following issues in the petition:

a) To punish the respondent for violation of order dated 18.10.2016 in petition no. 64 of 2016 in accordance with the section 142/146 of Electricity Act, 2003 and Chapter XI of Conduct of Business Regulations, 2005.

b) To direct the respondents to rectify the bills for the month of February and March, 2017 according to order dated 18.10.2016.

ii) PSPCL in its reply has submitted, that aggrieved by the order dated 18.10.2016 passed by the Commission, it has filed appeal no. 06 of 2017 and IA for stay being I.A. No.14 of 2017 before the Hon'ble Tribunal. The petitioner being the respondent in the said Appeal is fully aware of the above circumstances and despite that filed the present petition even though the appeal against the impugned order is pending before the Hon'ble Tribunal. The I.A.No.14 of 2017 was listed along with the main appeal on 03.05.2017 wherein the Commission is also a respondent. The respondents sought time to file reply and there was no delay on the part of PSPCL. 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.

iii) In the matter of above, the Commission observes that Hon'ble APTEL vide its order dated 12.07.2017 in IA No. 14 & 464 of 2017 has ordered as under:

*"Mr. Anand K. Ganesan, learned counsel for the Appellant, on instructions, states that subject to the outcome of the appeal and without prejudice to the Appellant's rights, the impugned order is being implemented.*

*In view of the above statement, these applications have become infructuous and are disposed of as such."*

Further, PSPCL vide Memo No. 716/Petition No. 64/26/36 dated 07.07.2017 has also issued instructions as under:

*"The matter has been considered by the Competent authority and it has been decided to implement PSERC's order dated 18.10.2016 in Petition no. 64 of 2016 without prejudice to outcome of APTEL/Court judgment in appeal no. 06/2017 filed by PSPCL before APTEL, New Delhi. In this matter, the final decision of APTEL or any higher court shall be applicable."*

In view of above, no further order is called for by the Commission on this issue. However, PSPCL is directed to submit compliance report of the action taken in the matter of this issue raised by the petitioner.

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| Sd/- | Sd/- |
| **S .S. Sarna** | **D.S. Bains** |
| **(Member)** | **(Chairman)** |

**Chandigarh**
**Dated: 01.08.2017**