

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

**Review Petition No.6 of 2017
in Petition No. 90 of 2016
Date of Order: 22.02.2018**

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

In the matter of: Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 64, 69 to 71 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for reviewing the 'Tariff Order for PSPCL MYT Control Period from FY 2017-18 to FY 2019-20' only with regard to levy of arbitrary and unreasonable "Fixed Charges" on the basis of total Demand in respect of Captive / Co-generation Power Plant Industrial Consumers;

AND

Petition under Section 9, 61 (h) and (i) read with Section 86 (1) (e), 86(4) of the Electricity Act, 2003, read with Clause 5.12, 6.3, 8.5.6 of the National Tariff Policy, 2016 read with Regulation 9 & 10 of the "Punjab State Electricity Regulatory Commission (Harnessing of Captive Power Generation) Regulations, 2009" for amendment / review so as to make adequate provisions for levying reasonable fixed charges in respect of load / demand fed from T.G./C.P.P./Co-Generation installed by various Industries as per Government Policies issued from time to time;

AND

During the pendency of present Petition, applicability of “Two Part Tariff”, which has been deferred upto 01.01.2018 be continued to be deferred / postponed in respect of Class of Industrial Consumers having installed T.G. / C.P.P. / Co-Generation with due permission from Distribution Licensee / Chief Electrical Inspector. In other words, till the present petition is decided, only energy charges as fixed by the Commission in Table 8.2 of Tariff Order dated 23.10.2017 may be charged, levy of fixed charges as provided in said table be deferred / stayed.

AND

- In the matter of:
1. Nahar Industrial Enterprises Limited, Focal Point, Ludhiana through authorized signatory Sh. H.N. Singhal.
 2. KRBL Limited, 5190, Lahori Gate, Delhi-110006
 3. Satia Industries Ltd., Village Rupana, Muktsar-Malout Road, Muktsar, Punjab.
 4. Khanna Paper Mills Ltd., B-26, Infocity-1, Sector 34, Gurgaon-122002, Haryana.
 5. JCT Limited, Village and Post Office Chohal, Hoshiarpur-146024; with one Unit at Hoshiarpur and the 2nd one at Phagwara Distt. Kapurthala.
 6. Trident Limited, Raikot Road, Sanghera, for both units, other at Dhaura Distt. Barnala.
 7. Shreyans Industries Ltd., Unit Shreyans Paper, Ahmedgarh, Distt. Sangrur and also unit Shree Rishabh Papers at Banah, Distt. SBS Nagar through its authorised signatory Sh. R.K. Mahajan.

... Petitioners

Versus

Punjab State Power Corporation Limited,
(PSPCL), The Mall, Patiala through its
Chairman-cum-Managing Director.

.....Respondent

ORDER

The petitioners have filed the present petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 64, 69 to 71 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulation 2005, under Section 9, 61 (h) and (i) read with Section 86 (1) (e), 86(4) of the Electricity Act, 2003, read with Clause 5.12, 6.3, 8.5.6 of the National Tariff Policy, 2016 read with Clause 9 & 10 of the “Punjab State Electricity Regulatory Commission (Harnessing of Captive Power Generation) Regulations, 2009” for reviewing the ‘Tariff Order for PSPCL MYT Control Period from FY 2017-18 to FY 2019-20’ only with regard to levy of arbitrary and unreasonable “Fixed Charges” on the basis of total Demand in respect of Captive / Co-generation Power Plant Industrial Consumers, for amendment / review so as to make adequate provisions for levying fixed charges in respect of load / demand fed from T.G./C.P.P./Co-Generation installed by various Industries as per Government Policies issued from time to time and during the pendency of present Petition, applicability of “Two Part Tariff”, which has been deferred upto 01.01.2018 be continued to be deferred / postponed in respect of Class of Industrial Consumers having installed T.G. / C.P.P. / Co-Generation with due permission from Distribution Licensee / Chief Electrical Inspector.

2. It has been submitted by the petitioners as under:

i) The petitioners are large supply consumers of Punjab State Power Corporation Limited (PSPCL) and have also installed captive power plants under Co-Generation mode within their factory premises. The said C.P.Ps etc. are connected and operating in either synchronization with the PSTCL / PSPCL Grid or in standby mode. In order to run the manufacturing process smoothly and without interruption, some auxiliary load / other process load / demand has been taken and got sanctioned by the Review Petitioners from the Distribution Licensee as well. All the Review Petitioners have been granted Continuous Process Industry Status by PSPCL and require continuous power for their operations and had been paying Continuous Process Surcharge as fixed by the Commission. Petitioner no.4 is connected with STU Grid at 132 kV while all other Review Petitioners are connected with Grid at 66 / 33 kV Voltage level being controlled and maintained by PSPCL.

ii) All the petitioners have installed TG Sets in their factories and meet the requirements of Captive Power Plants as per Rule 3 of Electricity Rules, 2005. The plants also meet the requirement under Co-Generation Scheme and have been set up as per policies framed by Government of India / Punjab Government where the input heat is gainfully utilized for generation of power and meeting the heat requirement of the manufacturing process through the process of Co-Generation.

iii) The petitioners are also using Biomass, Agro wastes and Industrial wastes in various proportions available in house or through

purchase from open market, balance being the conventional fuel mainly coal. The main beneficiary of the purchase from open market is the farmer of the State. The usage of NRSE fuel also helps in climate control and betterment of environment.

iv) The petitioners are covered under the relevant instructions as contained in the Electricity Supply Instructions Manual, 2017 notified by PSPCL. The provisions regarding standby T.G. Sets are contained in the Instruction no. 121, for Cogeneration plants in the Instruction no.122, for T.G. sets using New and Renewable Energy Sources in the Instruction no.123 and Captive Power Plants in the Instruction no.124. Instruction no.125 contains other general conditions applicable to NRSE / CPP Plants.

v) The petitioners have depicted the Sanctioned Contract Demand maintained with PSPCL, the capacity of Cogeneration plant(s), the fuel used (which is generally agriculture waste / environmental friendly with or without conventional fuel) and the Capital Investment incurred by such Industrial Consumers. The capital investment made in the State is more than Rs. 100 crore in respect of most of the petitioners individually. Furthermore, since the manufacturing process demand is normally met from the CPP, the utilization factor with reference to utilization of PSPCL power is quite less, being in the range of 4% to 50% depending upon the availability of CPP and Utilization Factor average works out to around 24%. Most of these CPPs have been set up keeping in view the requirement of the State and paucity of availability of power at the point of time when such Cogeneration facilities were installed.

vi) The Commission also observed in para 6.3.5 (ii) of the Tariff Order dated 23.10.2017 that the inherent nature of the Two Part Tariff is where consumers with utilization factor more / higher than the utilization factor at which the Tariff has been designed, get automatically benefited by having lower rate of electricity. The Commission proceeded to levy fixed charges on 80% of the sanctioned contact demand or actual demand recorded during the billing cycle, whichever is higher. The petitioners are the worst affected category of consumers as they will have to pay very high effective rate of electricity having an average Utilization Factor of as low as 24%.

vii) That almost 70 to 90% of the requirement of power is met by the petitioners from their own CPP / Cogeneration plants and only a fraction of power, fundamentally required as standby during planned / forced outages is drawn from PSPCL. The standby power is drawn during few hours in case of sudden tripping of CPP or for few days during shut down of the CPP, but demand recorded (MDI) is almost full as being Continuous Process Industries. Since, the CPP is grid connected, in case of tripping of the CPP automatically the entire load normally fed through said CPP shifts to PSPCL and gets counted towards CD.

viii) That upon passing of the Tariff Order dated 23.10.2017, the Two Part Tariff was initially introduced with effect from 01.04.2017. Subsequently, vide Order dated 09.11.2017, the Two Part Tariff has been made applicable with effect from 01.01.2018. Through the Two Part Tariff, the petitioners being LS/General Industry Consumers

having CD above 2500 KVA are liable to pay 'fixed charges' @Rs.230 per KVA.

ix) The Commission could have provided for reasonable fixed charges by classifying such CPP / Co-gen. being a class apart as provided in Section 62 (3) of the Electricity Act, 2003. The Clauses 5.2, 6.3, 8.5.6 of the National Tariff Policy, 2016 read along with the mandate provided in the Electricity Act, 2003 clearly make out that the petitioners as well as all other industries having installed CPP / Co-gen. is a class separate from other Industrial Consumers without such facilities. So the fundamental error which is sought to be corrected through the present petition is treating un-equal as equal by the levy of same fixed charges under the Two Part Tariff Scheme as reflected in Table 8.2 contained in the Tariff Order for FY 2017-18 as it stands now.

x) That in the light of Tariff Orders passed in the State of Maharashtra and also Regulations / Commitment Charges fixed by the State of Madhya Pradesh, it would be important to mention that as per Regulation 4(2)(d) of Punjab State Electricity Regulatory Commission (Harnessing of Captive Power Generation) Regulations, 2009 same charges of Rs.20 per KVA per month as commitment charges have been mentioned / provided. These charges, however, have been mentioned only in respect of a CPP owner who is not a consumer of the Distribution Licensee. Thus, in case the provision as contained in sub-regulation (2) is adopted and applied for sub-regulation (1) as well, the entire difficulty would be cured.

xi) That while some of the petitioners are using totally agro-waste material for generating power, some others use it in combination of conventional fuel. If such Co-Gen./CPP are made un-viable in the sense that they are made to pay same fixed charges as is being levied upon other industries, who do not utilize urban / agro waste, then the same will cause huge environmental hazard.

xii) That while granting permissions to install such Co-Gen./CPP, PSPCL allowed such TGs being standby, meaning thereby the Distribution Licensee is fully aware and conscious of the fact that load connected to such TG / CPP will normally be fed through Co-gen. only. In such circumstances, charging of fixed charges at the same rate where the other industry normally feed such load through the grid alone is discriminatory and arbitrary.

xiii) The petitioners pray as under:

- A. To allow Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Clause 64, 69 to 71 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 and review the 'Tariff Order for PSPCL for MYT Control Period from FY 2017-18 to FY 2019-20' only with regard to levy of arbitrary and unreasonable "Fixed Charges" on the basis of total Demand in respect of Captive / Co-generation Power Plant Industrial Consumers;
- B. The Table 8.2 contained in Tariff Order under review be modified in respect of Fixed Charges prescribed @Rs.230/KVA per month (for industrial consumer with CD above 2500 KVA) for class of industrial consumer having installed Co-gen. / CPP;

- C. Petition under Section 9, 61 (h) and (i) read with Section 86 (1) (e), 86(4) of the Electricity Act, 2003, read with Clause 5.12, 6.3, 8.5.6 of the National Tariff Policy, 2016 read with Clause 9 & 10 of the “Punjab State Electricity Regulatory Commission (Harnessing of Captive Power Generation) Regulations, 2009” for amendment / review so as to make adequate provisions for levying reasonable fixed charges in respect of load / demand fed from T.G./C.P.P./Co-Generation installed by various Industries as per Government Policies issued from time to time;
- D. During the pendency of present Petition, applicability of “Two Part Tariff”, which has been deferred upto 01.01.2018 be continued to be deferred / postponed in respect of Class of Industrial Consumers having installed T.G. / C.P.P. / Co-Generation with due permission from Distribution Licensee / Chief Electrical Inspector. In other words, till the present petition is decided, only energy charges as fixed by the Commission in Table 8.2 of Tariff Order dated 23.10.2017 may be charged, levy of fixed charges as provided in said table be deferred / stayed;
- E. Any other relief deemed fit in the facts and circumstances of the case may be granted in favour of the Review Petitioners.

3. The petition was taken up for admission on 10.01.2018 and the counsel for the petitioners submitted to limit the prayer in the petition to only reviewing the Tariff Order for PSPCL for MYT Control Period from FY 2017-18 to FY 2019-20. He further submitted that a separate petition will be filed qua rest of the prayers made in the petition. After

hearing the counsel for the petitioners, order was reserved vide order dated 15.01.2018.

4. The Commission has examined the submissions made in the petition and arguments advanced by the counsel for the petitioners. The petitioners have filed the present Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Clause 64, 69 to 71 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005. The counsel for the petitioners, during hearing on 10.01.2018, submitted that he is limiting the prayer in the petition to review of the Tariff Order for PSPCL for MYT Control Period from FY 2017-18 to FY 2019-20 only and shall file separate petition qua the rest of the prayers made in the petition. Accordingly, the scope of the petition is confined to the issue of review of the Tariff Order dated 23.10.2017 only with regard to levy of 'fixed charges' on the basis of total demand in respect of Captive / Co-Generation Power Plant Industrial Consumers.

The Commission notes that Regulation 64 (1) of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 reads as under:

"64. Review of the decisions, directions and orders:-

(1) Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decision/order was passed by the Commission or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, may apply for review

of such order within 60 days of the date of decision/ order of the Commission.

xxx xxx xxx xxx....”

It is observed that Regulation 64 (1) of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 clearly stipulates that any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decision / order was passed by the Commission or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, may apply for review of such order.

The Commission further notes that in the suggestions and objections received from public and stakeholders, similar objections and suggestions similar to the pleadings made in the petition were received. After careful consideration of the same and response of PSPCL in each such objection/suggestion, the Commission in para 6.3.5 (vii)(c) in the tariff order for PSPCL for MYT control period from 2017-18 to 2019-20 had observed as under:

***“CPPs / Co-Gen plants / consumers:** The Commission recognizes the role played by CPPs/Co-Gen plants/consumers in helping the State when it was facing an acute shortage of power. But, is of the view that since the requirement of the load/contract demand for utilization by the CPPs/Co-Gen plants/consumers has to be met by the Utility, it has to tie up the power and keep its capacity reserved, for which it has to*

commit the fixed costs. Therefore, CPPs/Co-Gen plants/consumers are also liable to pay the Fixed Charges for the same to the Utility.”

Accordingly, the Commission observes that submissions made by the petitioners for review of the tariff order dated 23.10.2017 have already been examined and considered while passing the tariff order dated 23.10.2017 and no new ground or evidence has been brought on record in the review petition. Further, the grounds on account of some mistake or error apparent on the face of record have not been pleaded and no other sufficient reason has been shown for review.

Since none of the conditions for review stipulated in the Regulations have been satisfied, the Commission is constrained to dismiss the review petition, being devoid of merit.

The review petition is disposed of accordingly.

Sd/-
(Anjuli Chandra)
Member

Sd/-
(S.S. Sarna)
Member

Sd/-
(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: 22.02.2018