

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO 220-221, SECTOR-34 A CHANDIGARH**

Petition No.32 of 2017

Date of order: 15.12.2017

In the matter of: Petition under Regulation 4.2 & 44.3 of the PSERC (Electricity Supply Code and Related Matters) Regulations, 2014 read with Section 142/143/146 of Electricity Act, 2003.

AND

In the matter of: M/s Shreyans Industries Ltd. (Unit Shreyans Paper), Village Malikpur, Ahmedgarh through its Executive Director & CEO, Sh.Anil Kumar.

-----Petitioner

Versus

1. Punjab State Power Corporation Ltd. (PSPCL) through its Chairman-cum- Managing Director.
2. Senior Executive Engineer/CBC, PSPCL, Ludhiana.
3. Assistant Executive Engineer (Distribution), PSPCL, Sub Division, Ahmedgarh.

-----Respondents

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

Order:

- 1.0 The present petition has been filed by Shreyans Industries Ltd. (Unit Shreyans Paper), Village Malikpur, Ahmedgarh under Regulation 4.2 & 44.3 of the PSERC (Electricity Supply Code and Related Matters) Regulations, 2014 read with Section 142/143/146 of Electricity Act, 2003 for punishment to the respondents to comply with the notification dated 05.10.2016 issued by the

Commission and clarification that sub-regulation 4.2.2 of PSERC (Electricity Supply Code and Related Matters) (2nd amendment) Regulations, 2016, does not mandate signing of fresh A&A form in case such A&A form already entered between the parties specifies supply voltage at 11 kV thereby setting aside the demand raised by the respondents vide letter dated 06.03.2017. The gist of the submissions is as under:

- 1.1 The petitioner is a Large Supply (general category) consumer with a sanctioned load of 5241.360 kW and a contract demand of 4000 kVA, which was sanctioned in the year 1997 on 11 kV supply voltage. The said position was reiterated in the last A&A form entered into between the parties in the year 2004.
- 1.2 As per Sales Manual Instructions (SMI), applicable at that time, the specified voltage for a large supply industrial consumer was on 11kV/33/kV/66 kV depending on the load. As per clause 39 of SMI, the power intensive loads such as Arc Furnace, above 2500 kVA were catered at 33 kV/66 kV so as to avoid line losses to the Board. The position was finally clarified by the respondent-Board through its Sales Regulations contained in Commercial Circular No.18/95 (issued on 02.03.1995). The position continued till March, 2007 i.e. even after entering into above A&A Form.
- 1.3 The then Punjab State Electricity Board (PSEB) started levying Voltage Surcharge w.e.f April 2007 on the basis of 'General Condition of Tariff' issued by CC No. 36 of 2006. Finally, the matter regarding said surcharge up to 2008-09 was resolved by the Hon'ble Supreme Court and voltage surcharge was fixed at 7% thereafter. However, the A&A form continued to be the same till 02.03.2017.
- 1.4 Uptil 05.10.2016, as per sub-regulation 4.2 (iii) of the Supply Code, 2014, the supply voltage for Large Supply consumers (General and Power Intensive Industry) with contract demand not exceeding 2500 kVA was specified as 11 kV. Since contract demand of the petitioner

was exceeding 2500 kVA, therefore under clause 13.1 of General Conditions of Tariff, a voltage surcharge @ 7% was being paid by the Petitioner since March, 2007 even though approved A&A Form envisaged supply voltage at 11 kV.

- 1.5 The Commission vide notification dated 05.10.2016, issued 2nd amendment to Supply Code, 2014 and as per regulation 4.2(iii), the supply voltage for Large Supply consumers (General and Power Intensive Industry) with contract demand not exceeding 4000 kVA, was specified as 11 kV. Thus after 05.10.2016, as per the amended Regulations, no voltage surcharge is applicable in the case of the petitioner, as contract demand of the petitioner is 4000 kVA. The liability to pay 7% voltage surcharge under clause 13.1 of General Conditions of Tariff ceases as the petitioner became again eligible to be catered at supply voltage of 11 kV.
- 1.6 After 05.10.2016, the petitioner received electricity bill on 17.11.2016, wherein an amount of ₹8,17,159/- was charged towards voltage surcharge and electricity duty @ 13% and I.D.F @ 5% thereon for the full billing cycle. The petitioner then approached the respondent No.3 and requested that voltage surcharge is not payable from 06.10.2016 onwards. Accordingly, the proportionate amount for the period 06.10.2016 onwards was adjusted in the subsequent bill except the I.D.F.
- 1.7 For the subsequent months of January and February, 2017, the respondents rightly did not charge or levy the voltage surcharge in the consumption bills. The amended regulation 4.2.2 envisages execution of fresh A&A form only in situation where existing A&A form is on 33/66 kV supply voltage, so as to enable the consumer to execute the agreement with appropriate 11kV supply voltage. However, in the case of the petitioner, the existing A&A form is already at 11 kV supply voltage. The contract demand of the consumer remains the same i.e.

4000 kVA. In such circumstances there was no need for entering into a fresh A&A form.

- 1.8 The petitioner then came to know that some auditors of the CBC wing of the respondent PSPCL are misreading and misinterpreting the provisions of amended regulations. In order to avoid further complications and on the asking of Respondent No.3, fresh A&A form with same specifications i.e. contract demand of 4000 kVA and supply voltage at 11 kV, was submitted by the petitioner on 02.03.2017.
- 1.9 Contrary to regulation 4.2.2 and conscious decision taken by the respondent No.2 and 3, not to levy voltage surcharge in the consumption bills of the petitioner from October, 2016 to February, 2017, the petitioner received a Revised Bill Statement (RBS) vide letter dated 06.03.2017 from the respondent wherein voltage surcharge right from the months of October, 2016 to January 2017 was levied.
- 1.10 Against the impugned demand, the petitioner submitted representation dated 07.03.2017 highlighting the fact that the contract demand of the petitioner is only 4000 kVA and there is no need for signing fresh A&A form as the same is already for supply voltage at 11 kV.
- 1.11 The respondents failed to take any action on the representation dated 07.03.2017. On the contrary, in the month of March, 2017, the petitioner received another bill for the month of February, 2017 with voltage surcharge amounting to ₹6,08,239/- (plus electricity duty & I.D.F thereon). The petitioner vide letter dated 14.03.2017 reiterated the objections as contained in representation dated 07.03.2017 and deposited the bill containing the disputed voltage surcharge under protest.
- 1.12 The respondents failed to resolve the issue and thus the petitioner was constrained to deposit the disputed amount of ₹36,94,444/- towards voltage surcharge under protest. The total disputed amount, wrongly recovered from the petitioner, is ₹44,41,207/-.

1.13 The petitioner prayed that the Commission may issue the following orders/ directions:

- a) For punishment to the respondents under section 142 read with section 146 of the Electricity Act, 2003, for their failure to comply with PSERC (Electricity Supply Code and Related Matters) (2nd amendment) Regulations, 2016 issued vide notification dated 05.10.2016 and mis-interpreting amended regulation 4.2.2 .
- b) For clarification that regulation 4.2.2 of PSERC (Electricity Supply code and Related Matters) (2nd amendment) Regulations, 2016 does not mandate signing of fresh A&A form in case such A&A form already entered between the parties specifies Supply Voltage at 11 kV, thereby setting aside impugned RBS No.25/2017 issued vide letter dated 06.03.2017.
- c) To issue suitable interim orders/directions to the respondents to adjust/account for /refund wrongly recovered amount of ₹44,41,207/- being Voltage Surcharge for the period from October, 2016 to March, 2017 along with 18% interest.

2.0 After hearing the learned counsel for the petitioner on 18.05.2017, the petition was admitted. PSPCL was directed to file its reply to the petition with a copy to the petitioner by 15.06.2017 (through email and hard copy) and the petitioner may file its rejoinder, if it so desired, with a copy to the respondent by 06.07.2017 (through e-mail and hard copy). The next date of hearing was fixed for arguments on 13.07.2017.

3.0 PSPCL filed its reply vide Engineer-in-Chief/ARR&TR, PSPCL Patiala Memo No.6237 dated 12.06.2017 and submitted as under:

3.1 The load of the petitioner was sanctioned as per prevailing instructions of the Board. As per amendments in PSERC (Electricity Supply Code and Related Matters) Regulations, 2014 issued vide notification dated 05.10.2016 the sub regulation 4.2.2 reads as under;

“The existing consumers having specified Supply Voltage of 33/66 kV but catered at 11 kV or having specified Supply Voltage of 132/220 kV but catered at 33/66 kV as per the provisions of regulation 4.2.1 of Supply Code, 2014 or note (ii) below clause 5.2 of the Conditions of Supply by payment of surcharge in accordance with clause 13 of General Conditions of Tariff, shall be allowed to convert their Supply Voltage as per the amended limits specified in regulation 4.2 by signing a fresh A&A form with the distribution licensee. The amended specified Supply Voltage shall be applicable for all intents and purposes from the date of approval of such A&A form by the competent authority of the distribution licensee. The approval to the A&A form shall be affected within 15 days by the distribution licensee from the date of submission of A&A form complete in all respects by the consumer failing which it shall be deemed to have been approved by the distribution licensee”.

As per above mentioned regulations 4.2.2, the consumer has not submitted fresh A&A form initially so the voltage surcharge continued in bills.

- 3.2 The petitioner submitted fresh A&A form in city sub division, Ahmedgarh on 02.03.2017 and the same was approved by Chief Engineer/Central Zone, Ludhiana on 25.04.2017. After the approval, the admissible voltage of consumer was allowed at 11 kV for contract demand 4000 kVA. The amended provisions were applicable from the date of approval of A&A form by the competent authority i.e 25.04.2017 and the petitioner was liable to pay the surcharge till that date. The audit party has rightly pointed out that the petitioner is liable to pay Voltage Surcharge till approval of A&A form.
- 3.3 The petitioner was fully aware of the fact that he has not submitted the fresh A&A form and is liable to pay the Voltage Surcharge till approval of fresh A&A form. It is incorrect that the auditors of respondent are mis-reading and mis-interpreting the amended regulations. The Revised Bill Statement (RBS) for the period October, 2016 to January,

2017 was rightly sent and the demand is not contrary to regulation 4.2.2 of the Supply Code, 2014.

- 3.4 The petitioner was advised to submit fresh A&A form in terms of amended provisions and thereafter the petitioner submitted the fresh A&A form which was subsequently approved by competent authority.
 - 3.5 The respondents have acted lawfully as per the provisions of the Act/Regulations and no penal action is required. The petitioner is not entitled to get refund of ₹44,41,207/- along with interest because this amount was charged as per regulations.
- 4.0 The petitioner thereafter, filed the IA No.29 of 2017 and prayed that the supplementary demand of ₹15,40,239/- raised on 21.06.2017 be stayed during the pendency of the present petition. The petitioner submitted as under:
- 4.1 After filing of reply by PSPCL on 12.06.2017, the respondents raised a fresh/supplementary demand of ₹15,40,239/- again for voltage surcharge for the period from October, 2016 to March, 2017 and had further directed the petitioner to pay the amount within a period of 7 days.
 - 4.2 The issuance of this demand, when the petition has already been admitted by the Commission, is sheer abuse of the process by the respondent PSPCL and actually amount to contempt. The respondents are misreading and misinterpreting the provision of Regulation 4.2.2 and Order dated 26.10.2016 passed by the Commission while amending clause 13 of General Conditions of Tariff, to give effect to the 2nd amendment in Supply Code, 2014.
- 5.0 The petitioner also submitted a short rejoinder to the reply filed by PSPCL and submitted as under:
- 5.1 It is apparent from the reading of regulation 4.2.2 that the need to sign a fresh A&A form is qualified with the expression used in the 1st line

itself i.e. *“The existing consumers having specified Supply Voltage of 33/66 kV but catered at 11 kV...”* means that wherever in the A&A form the specified supply voltage is mentioned as 33/66 kV, only there the requirement of fresh A&A form has been provided. In the existing case, the specified supply voltage has already been mentioned as 11 kV.

- 5.2 The fresh A&A form was submitted by the petitioner in March, 2017 on the asking of the respondent and is a paper formality, which the petitioner had to undertake because of the misreading and misinterpretation of the provisions by the Audit party of the PSPCL.
- 6.0 During hearing on 13.07.2017, the representative of the PSPCL submitted that copy of the I.A. No.29 of 2017 has not yet been supplied to them. A copy of the I.A.No.29 of 2017 was supplied to the representative of PSPCL. The Commission directed PSPCL to file a reply to the I.A. No.29 of 2017 with a copy to the petitioner by 24.07.2017 (through email and hard copy) and the petitioner may file a rejoinder, if it so desired, to the reply filed by PSPCL before the next date of hearing (through email and hard copy) with a copy to PSPCL. The next date for hearing arguments on the I.A. as well as on the main petition, was fixed on 01.08.2017.
- 7.0 The Chief Engineer/ARR & TR, vide Memo No.6562 dated 24.07.2017 submitted the reply to IA No.29 of 2017 as under:
- 7.1 The demand of ₹15,40,239/- was raised in terms of amendments in clause 13 (voltage surcharge/rebate) of General Condition of Tariff circulated vide Commercial Circular No.06/2017. The Commission made the amendments in clause 13.1 and 13.2 of General Condition of Tariff and the present case is covered under the amended General Condition of Tariff.
- 7.2 The sub para (ii) of clause 13.1 reads as under:
- “All consumers catered at 11 kV against specified voltage of 33/66 kV shall be levied surcharge at the rate of 10%’.*

Earlier, as per Commercial Circular No.12/2011, this surcharge was 7%. It is further clarified in Commercial Circular No.06/2017 that *“the above amendment in General Condition of Tariff shall come into force from the date of issue of PSERC order i.e. 26.10.2016”* and the revised demand of ₹15,40,239/- was raised from the said date i.e from October, 2016 to March 2017, which is payable by the consumer as per the amended provisions.

- 8.0 During hearing on 01.08.2017, the learned counsel for the petitioner submitted a copy of comparison chart of new and old A&A form, which was taken on record. PSPCL was directed to clarify regarding the difference between the new and the old A&A Form.

The learned counsel for the petitioner argued that vide letter No.999 dated 21.06.2017, the respondents have again raised a fresh/supplementary demand for voltage surcharge for the period from October, 2016 to March, 2017 against the petitioner, directing the petitioner to pay an amount of ₹15,40,239/- within a period of seven days.

After hearing the learned counsel for the petitioner and officers of PSPCL on the I.A., the supplementary demand raised by PSPCL on 21.06.2017 for ₹15,40,239/- was stayed till the next date of hearing. The next date for arguments on the main petition was fixed on 29.08.2017.

- 9.0 The hearing fixed for 29.08.2017 was adjourned and it was decided that the next date for hearing the arguments will be intimated later on. The next date for hearing was fixed on 18.10.2017, which was adjourned to 01.11.2017 on the request of the petitioner.

- 10.0 PSPCL vide Chief Engineer/ARR & TR memo No.5252 dated 12.10.2017 filed reply to the rejoinder of the petitioner and submitted a comparison chart of new and old A&A form pertaining to the petitioner. As per the comparison chart, the connection to Shreyans Paper Mills Ltd. was released in 1989 under general industry category with a sanctioned load 4743.858 kW and a contract demand of 3815 kVA with supply voltage of 11 kV. In the year 1994, the load was extended to 5241.358 kW along with change of name to Shreyans

Industries Ltd. with same contract demand and supply voltage. In the year 1995, the contract demand was raised to 4000 kVA and approval of TG Set of 2995.65 kW was also granted to the petitioner. In the year 2004, the capacity of TG Set was increased to 3988.45 kW with same sanctioned load, contract demand and supply voltage. In the remarks, it has been mentioned that A&A form was approved at 11 kV in view of Commercial Circular No.44/2003 according to which if a consumer with contract demand above 2500 kVA and up to 4000 kVA is fed at 11 kV, the energy recorded at 11 kV shall be increased by 10% and then billed at the prevalent tariff. The A&A form in the year 2017, has been approved with the same parameters, as existed in 2004, in view of amended sub regulation 4.2.2 of the Supply Code read with Commercial Circular No.51/2016.

11.0 After hearing the arguments of both the parties on 01.11.2017, the order was reserved.

12.0 Commission's Findings and Order:

The petitioner is a large supply general category consumer with a sanctioned load of 5241.360 kW and a contract demand of 4000 kVA. The claim of the petitioner is that as per the A&A form, which was last signed in year 2004 between the petitioner and erstwhile PSEB, he was allowed to be fed at 11 kV which has been mentioned as Supply Voltage in the A&A form. Thus, he was not required to sign a fresh A&A form as stipulated in sub regulation 4.2.2 of PSERC (Electricity Supply Code and Related Matters) (2nd Amendment) Regulations, 2016 issued vide notification dated 05.10.2016. The petitioner prayed that the Commission may clarify that sub regulation 4.2.2 of the Supply Code, 2014 as inserted vide 2nd amendment does not mandate signing of fresh A&A form in case such agreement has already been entered between the parties with specified Supply Voltage at 11 kV and consequently to direct the respondent to refund the wrongly recovered amount of ₹44, 41,207/- on account of voltage surcharge from October, 2016 to March, 2017 along with interest.

Before interpreting the requirements of sub-regulation 4.2.2 inserted vide 2nd amendment to Supply Code, 2014, we have to go into the genesis of the issue relating to Supply Voltage specified for different category of consumers and payment of voltage surcharge in case the consumer is fed at voltage lower than specified.

The commercial matters in the erstwhile PSEB before the constitution of Punjab State Electricity Regulatory Commission in year 2002, were regulated as per Sales Regulations. During proceedings, PSPCL submitted a copy of the commercial circular no. 44/2003 dated 24.06.2003 wherein it has been mentioned that as per CC no. 51/2000 dated 7.7.2000, the Supply Voltage for general/power intensive industry with contract above 2500 kVA and upto 20 MVA was 33/66 kV. However, in view of the demand of industry, the Sales Regulation no. 4.2 was amended vide CC no. 44/2003 and the Supply Voltage for general/power intensive industry at 11 kV was raised from 2500 kVA to 4000 kVA subject to payment of 10% surcharge by the consumer. Thus, it is evident that at the time of signing of A&A form in year 2004, the terms and conditions as contained in the above referred instructions/regulations were applicable.

The Commission approved the General Conditions of Tariff and Schedules of Tariff vide letter No.1372 dated 06.03.2006. As per clause 13.3 of the General Conditions of Tariff, it was provided that a large supply consumer with contract demand exceeding 2500 kVA and up to 4000 kVA catered at 11 kV was liable to pay a surcharge of 10% on the consumption charges including demand charges, if any, or MMC as compensation for transformation losses/incremental losses etc.

The Commission in its Tariff Order for FY 2009-10 issued on 08.09.2009, discussed the issue of Supply Voltage to different category of consumers and payment of surcharge/rebate thereof in detail in para 5.5 and observed as under:

“5.5.3 The Commission notes that as per existing General Conditions of Tariff and Schedules of Tariff, surcharges and rebates are being dealt with in the following manner.

- i) -----*
- ii) -----*
- iii) Large Supply consumers with contract demand exceeding 2500 KVA and upto 4000 KVA catered at 11 KV are liable to pay a surcharge @ 10% on the consumption charges including demand charges, if any, or monthly minimum charges as compensation for transformation losses and incremental line losses.*
- iv) -----*
- v) -----*

*The Commission observes that voltage at which supply is to be given to different category of consumers has been specified in the Conditions of Supply since last more than 10 years and the Board was required to release all new connections/change load/demand at the voltage specified in the Conditions of Supply.**The Commission also observed that there is a need for the existing consumers getting supply at lower voltage to convert to the specified voltage for the benefit of system and to reduce T&D losses, however, actual conversion of supply voltage of the existing consumers will require some time. There could also be technical constraints in the conversion of supply voltage or release of a new connection or additional load/demand at the prescribed voltage which merits consideration.....**”.* [Emphasis Added]

The Commission thus decided as under:

“In the light of the above observations, the Commission decides to discontinue all voltage rebates w.e.f. 1st April, 2010. The Board will henceforth release all new connections or additional load/demand only at the specified voltage. Furthermore, the Board will take steps to ensure that existing consumers getting supply at voltages lower than the specified voltage will be provided supply at the specified voltage within a period of 18 months. In case there are constraints in releasing a

***new connection and/or additional load/demand at the prescribed voltage or in converting the supply voltage of an existing consumer, the supply may be given/ continued to be given at a lower voltage on the condition of payment of surcharge specified in the General Conditions of Tariff. ----
-----”***

Thus, the order of the Commission, as referred above was very clear that the existing consumers getting supply at voltage lower than that specified in ‘Conditions of Supply’ shall be required to convert to the specified voltage within a period of 18 months and only in case of constraint, supply may be continued to be given at lower voltage by paying voltage surcharge.

The Commission, in exercise of the powers conferred under section 181 read with various provisions of the Electricity Act, 2003, notified PSERC (Electricity Supply Code and Related Matters) Regulations, 2007 (hereinafter referred as Supply Code, 2007) vide notification dated 29.06.2007. As per regulation 3.2 of the Supply Code, 2007, the Commission vide letter dated 25.02.2010 approved ‘Conditions of Supply’ (CoS) which was effective from 01.04.2010. As per condition 5.2 of the Conditions of Supply, the Supply Voltage of large supply general category consumers with contract demand exceeding 2500 kVA and up to 20 MVA was specified as 33/66 kV. Further, as per Note (ii) (a) under condition 5.2 of CoS, all existing large supply consumers availing supply voltage at a voltage less than that specified above were directed to convert their system, so as to receive the supply at the specified voltage. Till the conversion of the specified supply voltage, the consumer was required to pay surcharge as specified in General Conditions of Tariff. Thus as per the orders of the Commission dated 08.09.2019 referred above read with condition 5.2 of the CoS, the petitioner was required to convert to specified voltage of 33/66 kV or in case of constraint pay voltage surcharge as provided on General Conditions of Tariff. The voltage surcharge of 10% was reduced to 7% vide Commission’s order dated 19.01.2011 in petition no. 31 of 2010.

Thereafter, the Commission issued 5th amendment to Supply Code, 2007 vide notification dated 10.12.2013 and inserted regulation 5.7 wherein the Supply Voltages for different category of consumers were specified. The specified

Supply Voltage for large supply consumers (General and PIU) with contract demand exceeding 2500 kVA but not exceeding 20 MVA was specified as 33/66 kV. Further sub-regulation 5.7.2 of the Supply Code, 2007 inserted vide 5th amendment provides as under:

*“5.7.2 The distribution licensee shall release new connections or additional load/demand only at the specified voltage. In case of constraint(s) in releasing a new connection or additional load/demand at the prescribed voltage or **in converting the supply voltage of an existing consumer**, the supply may be given/continued to be given at a lower voltage subject to technical feasibility and payment of surcharge as specified in the General Conditions of Tariff, as amended from time to time. -----“*

Thus, all the previous instructions or regulations of erstwhile PSEB with regard to Supply Voltage and payment of surcharge were superseded. The Hon'ble Supreme Court in its Judgment in Civil Appeal No. 3902 of 2006, titled PTC India Ltd v/s CERC has held that regulations made under the Act has the effect of interfering and overriding the existing contractual relationship between the regulated entities. A regulation is a subordinate legislation which can even override the existing contracts including PPAs which have to be aligned with the regulations. [2010(4)SCC603]. **Thus there is no ambiguity that the specified Supply Voltage of the petitioner running a general industry with a contract demand of 4000kVA was 33/66 kV but was allowed to avail supply at 11 kV as per the provisions of sub-regulation 5.7.2 of the Supply Code, 2007 as amended vide 5th amendment.**

The Commission notified PSERC (Electricity Supply Code and Related Matters) Regulations, 2014 (hereinafter referred as Supply Code, 2014) vide notification dated 05.11.2014 (hereinafter referred as Supply Code, 2014) repealing both Supply Code, 2007 and Conditions of Supply. The provisions of regulation 5.7 of the Supply Code, 2007 were provided in regulation 4.2 of the Supply Code, 2014. The condition No.13.1 of the General Conditions of Tariff annexed as Annexure-I to the Tariff Order for FY 2014-15 provided that the large supply consumer with contract demand exceeding 2500 kVA and up

to 4000 kVA catered at 11 kV against the specified voltage 33/66 kV shall be levied surcharge @ 7%. The petitioner has admitted this fact that he was paying 7% surcharge as per condition No.13 of the General Conditions of Tariff.

On the persistent demand of the Industry and to encourage the consumers to consume more power in view of the surplus power in Punjab, the Commission vide notification dated 05.10.2016 issued 2nd amendment to Supply Code, 2014 and the limit of Supply Voltage for large supply (General & PIU) industrial consumers has been raised from 2500 kVA to 4000 kVA. For demand exceeding 4000 kVA but not exceeding 20 MVA, the Supply Voltage has been specified as 33/66 kV.

Further as per sub regulation 4.2.2 of the Supply Code, 2014, it has been provided that the existing consumers having specified supply voltage 33/66 kV but catered at 11 kV as per provisions of regulation 4.2.1 to Supply Code, 2014 or note (ii) below clause 5.2 of General Conditions of Supply by payment of surcharge in accordance with clause 13 of General Conditions of Tariff shall be allowed to convert their supply voltage as per the amended limits specified in the regulation 4.2 by signing a fresh A&A form with the distribution licensee. The sub-regulation 4.2.2 of the Supply Code, 2014 reads as under:

4.2.2 The existing consumers having specified Supply Voltage of 33/66 kV but catered at 11 kV or having specified Supply Voltage of 132/220 kV but catered at 33/66 kV as per the provisions of regulation 4.2.1 of Supply Code, 2014 or note (ii) below clause 5.2 of the Conditions of Supply by payment of surcharge in accordance with clause 13 of General Conditions of Tariff, shall be allowed to convert their Supply Voltage as per the amended limits specified in regulation 4.2 by signing a fresh A&A form with the distribution licensee. The amended specified Supply Voltage shall be applicable for all intents and purposes from the date of approval of such A&A form by the competent authority of the distribution licensee. The approval to the A&A form shall be affected within 15 days by the distribution licensee from the date of

submission of A&A form complete in all respects by the consumer failing which it shall be deemed to have been approved by the distribution licensee.”

From the above, it is evident that the specified Supply Voltage of the petitioner was 33/66 kV but was catered at 11 kV as per provisions of regulation 4.2.1 of Supply Code, 2014 by payment of 7% surcharge in accordance with clause 13 of the ‘General Conditions of Tariff’ approved by the Commission. Thus, the petitioner was required to sign fresh A&A form with the distribution licensee as provided in regulation 4.2.2 inserted through 2nd amendment to Supply Code, 2014 vide notification No. PSERC/Secy./Regu.116 dated 05.10.2016.

During the pendency of petition, PSPCL raised supplementary demand of ₹15,40,239/- vide letter dated 21.06.2017 as additional voltage surcharge from October, 2016 to March, 2017 on the ground that voltage surcharge for consumers catered at 11 kV against specified voltage of 33/66 kV has been raised from 7% to 10% vide commercial circular no. 6 of 2017. This shows total lack of understanding of the regulation/specific order of the Commission on the part of PSPCL’s officers. While amending clause 13 of the ‘General Conditions of Tariff’, the Commission in its Order dated 25.10.2016 has clearly mentioned that the existing consumers paying surcharge as per sub clause (ii) or (iv) of clause 13.1 of ‘General Conditions of Tariff’ annexed as Annexure-1 to the Tariff Order for FY 2016-17 **shall continue to be governed by existing provisions till conversion to amended supply voltage** in accordance with regulation 4.2 read with sub regulation 4.2.2 of PSERC (Electricity Supply Code and Related Matters) (2nd Amendment) Regulations, 2016. Thus all the existing consumers who were paying surcharge @ 7% according to sub clause (ii) of clause 13.1 of ‘General Conditions of Tariff’ shall continued to be levied the same surcharge till their supply voltage is converted to the amended supply voltage as per the amended regulation 4.2 of the Supply Code, 2014. **Thus, the supplementary demand of ₹15,40,239/- raised by PSPCL vide letter No.999 dated 21.06.2017, is contrary to the Order of the Commission and is thus set aside.**

Having clarified the provisions of regulation 4.2.2 of PSERC (Electricity Supply Code and Related Matters) (2nd Amendment) Regulations, 2016 and amendment in clause 13 of 'General Conditions of Tariff' issued vide Commission's Order dated 25.10.2016, now we will examine whether the demand raised by PSPCL on account of voltage surcharge through Revised Bill Statement vide letter no. 125 dated 06.03.2017 is sustainable particularly in view of the fact that PSPCL refunded the surcharge recovered from the petitioner in the bill of November, 2016 in the subsequent bill and also stopped the levy of voltage surcharge in the bills issued in January & February, 2017. To settle this issue, the sequence of events resulting in issue of RBS is required to be examined. The petitioner claimed that he received a bill for the month of October, 2016 on 17.11.2016 wherein voltage surcharge was levied. According to the petitioner, he approached respondent No.3 and argued that voltage surcharge is not payable after the issue of 2nd amendment to the Supply Code, 2014 on 06.10.2016. Although, no evidence has been provided by the petitioner of such a request but PSPCL in its reply has not denied it. In the energy bill received by the petitioner in December, 2016, the voltage surcharge levied from 06.10.2016 in the bill for the month of October, 2016 was adjusted on proportionate basis. The petitioner produced a copy of the bill and this fact has been admitted by PSPCL. Thereafter, no voltage surcharge was levied for the months of January and February. The petitioner claimed that on the advice of respondent No.3, he submitted the fresh A&A form on 02.03.2017. This fact has been admitted by PSPCL in its reply submitted vide Chief Engineer/ARR & TR letter dated 12.06.2017 and reproduced at para 3.4 above. The voltage surcharge was levied till approval of petitioner's A&A form on 25.04.2017 although as per regulation 4.2.2, the A&A form shall be deemed to have been approved after 15 days from the date of submission of A&A form complete in all respect and thus no surcharge thereafter is payable in accordance with regulation 4.2.2 of the Supply Code, 2014.

The above sequence of events clearly shows that instead of refunding the surcharge in the bill of December, 2016, had concerned PSPCL officers

advised the petitioner to submit fresh A&A form, as required under regulation 4.2.2 of the Supply Code, 2014 when he first approached respondent No.3 on 17.11.2016 against levy of voltage surcharge, the petitioner could have submitted the A&A form as there was no plausible reasons on record on the contrary. Once PSPCL refunded voltage surcharge levied in the energy bill received in December, 2016 and stopped levying the voltage surcharge during the subsequent months, there was no occasion for the petitioner to know that he was required to submit fresh A&A form. Thus, it was a clear negligence on the part of PSPCL for which the petitioner cannot be penalized or allowed to suffer. Further, as per regulation 4.2.2, the A&A form shall be deemed to have been approved after 15 days from the date of submission of A&A form complete in all respect. Thus had the petitioner submitted the A&A form on 17.11.2016, when he first approached the respondents on the issue, the same shall be deemed to have been sanctioned after 15 days i.e 02.12.2016.

In view of the above, the Commission decides that the petitioner is liable to pay the voltage surcharge @ 7% in accordance with regulation 4.2.2 of the PSERC (Electricity Supply Code and Related Matters) (2nd Amendment) Regulations, 2016 read with first proviso to condition 13.2 of 'General Conditions of Tariff' only up to 02.12.2016. PSPCL is directed to revise the bills of the petitioner accordingly and refund the excess amount, recovered from the petitioner in the immediate next energy bill(s) to be issued to the petitioner after the issuance of this order.

The petition is disposed of accordingly.

Sd/-

**(Anjali Chandra)
Member**

Sd/-

**(S.S.Sarna)
Member**

Sd/-

**(Kusumjit Sidhu)
Chairperson.**

Chandigarh

Dated: 15.12.2017