

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

**Petition No. 48 of 2017
Date of Order: 13.12.2017**

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

In the matter of: Petition for determination of Additional Surcharge under Section 42 (4) of the Electricity Act, 2003, read with Regulation 27 of the PSERC (Terms and Conditions for Intra-state Open Access) Regulations, 2011, to be made applicable on the open access consumers availing power from the sources other than Punjab State Power Corporation Limited for the period 01.10.2017 to 31.03.2018.

AND

In the matter of: Punjab State Power Corporation Limited,
Patiala.

.....Petitioner

ORDER

The present Petition has been filed by the Punjab State Power Corporation Limited (PSPCL) under Section 42 (4) of the Electricity Act, 2003, read with Regulation 27 of the PSERC (Terms and Conditions for Intra-state Open Access) Regulations, 2011 (Open Access Regulations) for determination of Additional Surcharge, to be made applicable on the open access consumers availing power from the sources other than PSPCL for the period from 01.10.2017 to 31.03.2018.

2. For the computation of the Additional Surcharge for the

period from 01.10.2017 to 31.03.2018, PSPCL has submitted the following data for the corresponding period of previous year i.e. 01.10.2016 to 31.03.2017:

- i) Month-wise available installed capacity of Punjab from all the sources (Own Thermal & Hydro Generating Stations + Central Sector Allocations + Share from BBMB power stations).
- ii) Summary of Open Access Power availed by open access consumers of PSPCL along with hourly based (month wise) details.
- iii) Summary and details of hourly based (month wise) data for Total Availability/Total Scheduled Power/Total Surrendered Power from Own Thermal, Own Hydro, Central Sector (ISGS+BBMB) and IPPs.
- iv) Summary and details of hourly based (month wise) data for Declared Capacity/Scheduled Power/Surrendered Power from IPPs.
- v) Summary and details of hourly based (month wise) data for Entitlement/Scheduled Power/Surrendered Power from ISGSs along with BBMB.
- vi) Summary and details of hourly based (month wise) data for Availability/Scheduled/Surrendered Power from Own Hydro Plants.
- vii) Summary and details of hourly based (month wise) data for Availability/ Scheduled/ Surrendered Power from Own Thermal Plants.

- viii) Details of Annual Fixed Cost (AFC) of Generating Stations from which PSPCL received power during the period from October, 2016 to March, 2017.
 - ix) Draft Computation of Additional Surcharge for the period 01.10.2017 to 31.03.2018, to be levied on open access consumers.
3. The submissions made by PSPCL in the petition are summarized as under:
- i) PSPCL had adequate generating capacity available to meet with the entire demand of power of the consumers of PSPCL, including the open access consumers, during the relevant period, and on account of sourcing of power by open access consumers from alternate sources (other than PSPCL), the available generation capacity remained stranded during the period from October, 2016 to March, 2017. A similar situation is likely to persist during the upcoming lean demand period from October, 2017 to March, 2018 and in the event of sourcing of power from alternate sources other than PSPCL, the available generating capacities are likely to remain stranded during this period.
 - ii) Para 8.5 of the Tariff Policy, 2016 and Regulation 27 of the Open Access Regulations provide for applicability of Additional Surcharge to be paid by open access consumers. The Commission has notified the Open Access Regulations, in accordance with the provisions of the Electricity Act, 2003 and the Tariff Policy framed there under, so as to compensate the distribution licensee for its stranded

generation capacity arising out of the universal supply obligations. The Additional Surcharge is payable under the regulations notwithstanding that only the inter-state transmission system is being used for availing open access and even when the transmission/distribution lines of the licensee are not used.

- iii) The burden of fixed cost is adversely affecting the financial interests of PSPCL, which in turn is adversely affecting the end consumers in the State buying power from PSPCL. As such, it is necessary that Additional Surcharge as provided under Section 42(4) of the Electricity Act, 2003 and the Open Access Regulations be determined and made applicable to open access consumers in the State.
- iv) PSPCL has prayed as under:
 - a) Admit the Petition for determination of Additional Surcharge for the period from 01.10.2017 to 31.03.2018 payable by PSPCL's consumers purchasing power from within/outside PSPCL's area of supply/State periphery;
 - b) Hold that the obligation of PSPCL in terms of power purchase commitments has been and continues to be stranded and there is an unavoidable obligation and incidence to bear fixed costs consequent to such commitments;
 - c) Determine the Additional Surcharge payable by open access consumers for the period from 01.10.2017 to 31.03.2018 on the quantum of power purchase through Open Access using the network of PSPCL on the basis

of data submitted by the petitioner.

- d) Make applicable the Additional Surcharge for the relevant period on the power purchased by open access consumers from within/outside PSPCL's area of supply/ State periphery under Open Access.

4. The Petition was taken up for hearing on 29.08.2017. The Commission in its Order dated 30.08.2017 observed and ordered as under:

“After hearing the Learned Officers of PSPCL, the petition is admitted. It was pointed out that page no.2 of the petition needs to be amended by PSPCL due to wrong statement of facts in sub para (viii) and (ix). PSPCL submitted the necessary amendment, which is taken on record. PSPCL will publish the public notice latest by 01.09.2017 inviting suggestions & objections from general public and stakeholders on the amended petition, to be submitted within a period of fifteen days. The public notice and the amended petition shall be uploaded forthwith on the website of PSPCL in compliance of Regulation 67 of the PSERC (Conduct of Business) Regulations, 2005. PSPCL shall file its comments / reply on the suggestions & objections received from public and stake-holders by 18.09.2017.”

5. The public notice was published by PSPCL on 30.08.2017 in the leading newspapers namely, 'The Times of India (Delhi edition)', 'The Tribune' and 'Ajit', for inviting objections from general public/ stakeholders. The last date for submission of objections/ comments was fixed as 15 days from the publication of the notice i.e. 15.09.2017. No objection/comment has been received from the general public/stakeholders against the said public notice.

6. The Commission vide its Order dated 26.09.2017, ordered

as under:

“The Commission vide its Order dated 26.06.2017 in case of Petition No. 02 of 2017, determined the Additional Surcharge payable by the Open Access Consumers for the period from 01.04.2017 to 30.09.2017. The processing of present Petition No. 48 of 2017, filed by PSPCL seeking determination of Additional Surcharge for the period from 01.10.2017 to 31.03.2018, is under process and is likely to take some more time. As such, the Additional Surcharge @ ₹1.13 per kWh as determined by the Commission vide Order dated 29.06.2017 in Petition No. 02 of 2017 will continue to be levied on the open access power brought by the Open Access Consumers, till the decision of present petition, and the difference, if any, in the Additional Surcharge ordered to be levied by the Commission (i.e. ₹1.13 per kWh) and the Additional Surcharge to be determined by the Commission in present petition shall be payable/refundable by/to Open Access Consumers.”

7. Findings and Decision

A. The Commission has carefully gone through the petition. The findings and decisions of the Commission is as under:

- i) The Electricity Act, 2013, Tariff Policy, National Electricity Policy and PSERC Regulations provide for payment of Additional Surcharge by open access consumers receiving supply of electricity from a person other than the distribution licensee of his area of supply, based on the fixed cost of stranded power of utility arising out of its Universal Supply Obligation as under:

Section 42(4) of the Act;

“Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply,

such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.”

Clause 8.5.4 of Tariff Policy

“The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.”

Clause 5.8.3 of the National Electricity Policy

“5.8.3 Under sub-section (2) of Section 42 of the Act, a surcharge is to be levied by the respective State Commissions on consumers switching to alternate supplies under open access. This is to compensate the host distribution licensee serving such consumers who are permitted open access under section 42(2), for loss of the cross-subsidy element built into the tariff of such consumers. An additional surcharge may also be levied under sub-section (4) of Section 42 for meeting the fixed cost of the distribution licensee arising out of his obligation to supply in cases where consumers are allowed open access. The amount of surcharge and additional surcharge levied from consumers who are permitted open access should not become so onerous that it eliminates competition that is intended to be fostered in generation and supply of power directly to consumers through the provision of Open Access under Section 42(2) of the Act. Further it is essential that the Surcharge be reduced progressively in step with the reduction of cross-subsidies as foreseen in Section 42(2) of the Electricity Act 2003.”

Regulation 27 of the PSERC (Terms & Conditions for Intra-State Open Access) Regulations, 2011

“27. Additional Surcharge

- 1) *An open access consumer, receiving supply of electricity from a person other than the distribution licensee of his area of supply, shall pay to the distribution licensee an additional surcharge on the charges of wheeling, in addition to wheeling charges and cross-subsidy surcharge, to meet out the fixed cost of such distribution licensee arising out of his obligation to supply as provided under sub-section (4) of section 42 of the Act.*
- 2) *This additional surcharge shall become applicable only if the obligation of the licensee in terms of power purchase commitments has been and continues to be stranded or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The distribution licensee shall indicate the quantum of such stranded costs and the period over which they would be stranded. The Commission shall scrutinize the statement of calculation of fixed cost submitted by the distribution licensee and obtain objections, if any, and determine the amount of additional surcharge.*

Provided that such additional surcharges shall not be levied in case distribution access is provided to a person who has established a captive generation plant for carrying the electricity to the destination of his own use.

- 3) *The additional surcharge shall be determined by the Commission.*
- 4) *The consumers availing Open Access exclusively on interstate transmission system shall also pay the additional surcharge as determined under this Regulation.*

- 5) *The consumers availing Open Access through dedicated lines even without involving licensee's transmission and / or distribution system shall be liable to pay same additional surcharge as determined under this Regulation.*"

Further, the Hon'ble Supreme Court in its judgment dated 25.04.2014 in Civil Appeal No. 5479 of 2013 under para 25 has also observed as under:

"25 The issue of open access surcharge is very crucial and implementation of the provision of open access depends on judicious determination of surcharge by the State Commissions. There are two aspects to the concept of surcharge – one, the cross subsidy surcharge i.e. the surcharge meant to take care of the requirements of current levels of cross-subsidy, and the other, the additional surcharge to meet the fixed cost of the distribution licensee arising out of his obligation to supply. The presumption normally is that generally the bulk consumers would avail of open access, who also pay at relatively higher rates. As such, their exit would necessarily have adverse effect on the finances of the existing licensee, primarily on two counts- one, on its ability to cross-subsidise the vulnerable sections of society and the other, in terms of recovery of the fixed cost such licensee might have incurred as part of his obligation to supply electricity to that consumer on demand (stranded costs). The mechanism of surcharge is meant to compensate the licensee for both these aspects".

In view of above and the fact that PSPCL have adequate contracted capacity from various tied up sources and a part of the same is likely to remain stranded, the distribution utility is entitled to recover Additional Surcharge from the open access consumers as compensation for the fixed cost of the stranding power it

has contracted to meet its universal obligation to supply on demand.

- ii) The data submitted by PSPCL as detailed in para 2 above is in line with the directions issued to PSPCL vide Commission's letter no. 2294-95 dated 06.06.2016, in the matter of petition no. 28 of 2016 for determining the Additional Surcharge for the period April, 2016 to September, 2016. Also, PSPCL's methodology of calculating the amount of total fixed charges, that it was expected to pay considering all the major power plant sources is in order, in view of the fact that the power surrendered every day is not from a specific power plant and the fixed cost associated with every plant is different. Further, in the real time system operation, PSPCL has to follow the principle of merit order dispatch in compliance of the Commission's directions.
- iii) The Commission decides to adopt the same methodology as adopted earlier in the previous petitions for determination of the Additional Surcharge. The same methodology has also been adopted by other State Electricity Regulatory Commissions. However, the data for Additional Surcharge submitted by PSPCL is based on the Single Part Tariff structure. Whereas, in its Order dated 09.11.2017, the Commission has decided that Two Part Tariff structure is applicable w.e.f. 01.01.2018.

Accordingly, the Commission determines the Additional Surcharge to be paid by the open access consumers on the Open Access power brought by them as ₹1.08 per

kWh (Annexure-A), applicable for the period from 01.10.2017 to 31.12.2017, subject to the condition that the contracted capacity of PSPCL continue to remain stranded during the period. And, PSPCL is directed to refund the excess amount of Additional Surcharge charged during the period in terms of Commission's Order dated 26.09.2017 in this petition, to the concerned open access consumers.

The Additional Surcharge for the period from 01.01.2018 to 31.03.2018 i.e. for the period when Two Part Tariff is applicable, shall be determined separately after following the due procedure, upon submission of the revised calculations by PSPCL, factoring-in the impact of Fixed Charges payable under Two Part Tariff structure (approved by the Commission in its Order dated 09.11.2017) on the cost of stranded power.

**Sd/-
(Anjuli Chandra)
Member**

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

**Sd/-
(Kusumjit Sidhu)
Chairperson**

Chandigarh

Dated: 13.12.2017

Annexure-A

Calculation of Additional Surcharge		
(i)	Average Contracted Capacity	13506 MW
(ii)	Maximum Availability	10396 MW
(iii)	Minimum Availability	5876 MW
(iv)	Average Availability	8723 MW
(v)	Maximum Scheduled	7867 MW
(vi)	Minimum Scheduled	2134 MW
(vii)	Average Scheduled	4911 MW
(viii)	Capacity not availed (Maximum)	7028 MW
(ix)	Capacity not availed (Minimum)	933 MW
(x)	Capacity not availed (Average)	3812 MW
(xi)	Open Access Availed (Maximum)	27 MW
(xii)	Open Access Availed (Minimum)	0 MW
(xiii)	Open Access Availed (Average)	0.45 MW
(xiv)	Capacity Stranded due to Open Access	0.45 MW
(xv)	Fixed Charges for the total power received	₹4198.59 crore
(xvi)	Fixed Charges per MW available (xv÷iv)	₹0.48 crore
(xvii)	Fixed Charges of Stranded Capacity on account of Open Access (xvi × xiv)	₹0.22 crore
(xviii)	Open Access energy Scheduled	2 MU
(xix)	Additional Surcharge (xvii ÷ xviii)	₹1.08 per kWh.