

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

**Petition No. 02 of 2017  
Date of Order: 29.06.2017**

Present: Shri D.S. Bains, Chairman  
Shri S.S. Sarna, 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 PSPCL for the period from 01.04.2017 to 30.09.2017.

AND

In the matter of: Punjab State Power Corporation Limited, The Mall, Patiala-147001.

.....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, 2011) for determination of additional surcharge, to be made applicable on the open access consumers availing power from the sources other than Punjab State Power Corporation Limited for the period from 01.04.2017 to 30.09.2017.

2. For the computation of the additional surcharge for the period from 01.04.2017 to 30.09.2017, PSPCL has submitted the following data for the corresponding period of previous year i.e. April, 2016 to September, 2016:

- (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 + IPPs).
- (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 a) Own Thermal; b) Own Hydro; c) Central Sector (ISGS+BBMB); and d) 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 form 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 April, 2016 to September, 2016.
- (ix) Draft Computation of Additional Surcharge for the period April,

2017 to September, 2017, to be levied on Open Access Consumers.

3. The submissions made by PSPCL in the Petition are summarized as under:
  - (i) PSPCL is having adequate generating capacities available to meet with the entire demand of power of the consumers of PSPCL, including the open access consumers, during the relevant period, but on account of sourcing of power by open access consumers from alternate sources (other than PSPCL), the available generation capacities remained stranded during the period from April, 2016 to September, 2016. A similar situation is likely to persist during the upcoming peak demand period from April, 2017 to September, 2017 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. In addition, more power is likely to be available from new generating stations during FY 2017-18 with the scheduled commissioning of the new generating units i.e. Mukerian Hydel project Stage-II (18 MW) in the state sector and Bokaro Thermal Plant (Total Capacity: 500 MW, PSPCL Share: 59 MW), Meja Thermal Plant (Total Capacity: 1320 MW, PSPCL Share: 30 MW), Tiesta-3 HEP (Total Capacity: 1200 MW, PSPCL Share: 332 MW and Kishanganga HEP (Total Capacity: 330 MW, PSPCL Share: 32 MW), under the central sector.
  - (ii) The provision as regards to applicability of Additional Surcharge to be paid by open access consumers has also been made under para 8.5 of the Tariff Policy, 2016, which is

reproduced as under:

*“.....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 covered through wheeling charges.....”*

- (iii) The provision as regards Additional Surcharge is made in Regulation 27 of PSERC (Terms and Conditions for Intra-state Open Access) Regulations, 2011, reproduced by PSPCL as under:

*“27. Additional Surcharge*

- a) An open access consumer, receiving supply 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.*
- b) The additional surcharge shall become applicable only if the obligation of the licensee in terms of power purchase commitments has been made 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 surcharge shall not be levied in case distribution access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.*

- c) The additional surcharge shall be determined by the Commission.*
- d) The consumers availing Open Access exclusively on interstate transmission system shall also pay the additional surcharge as determined under these Regulations.*
- e) 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 these Regulation."*

The Commission has notified the Open Access Regulations, 2011 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 supply

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

- (iv) 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, 2011 be determined and made applicable to open access consumers in the State.
- (v) PSPCL has prayed as under:
  - (a) Admit the Petition for determination of Additional Surcharge for the period from April, 2017 to September, 2017 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 April, 2017 to September, 2017 on the quantum of power purchase through open access using the network of PSPCL.
  - (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.

(e) Pass such further and other order(s) as the Commission may deem just and proper in the facts and circumstances of the present case.

4. The Petition was taken up for hearing on 24.01.2017. The Commission in its Order dated 24.01.2017 observed and ordered as under:

*“After hearing the representatives of PSPCL, the petition stands admitted. The Commission noted that the subject matter in the present petition involves the interests of public at large, Therefore, PSPCL is directed to issue a public notice inviting objections from the general public.*

*During the hearing, PSPCL has submitted a copy of a draft public notice for approval from the Commission under regulation no. 67 of the PSERC (Conduct of Business) Regulations, 2005.*

*PSPCL shall publish the public notice as per the above regulations inviting suggestions/ comments from the general public and stake-holders immediately after approval of the Commission.”*

5. The draft public notice was approved by the Commission for publication and the same was conveyed to PSPCL vide letter no. 6919-20 dated 09.02.2017. PSPCL was directed to ensure that the public notice must appear in the press on 11.02.2017. The draft public notice was got published by PSPCL in various newspapers on 04.03.2017, for inviting suggestions/comments from the general

public and the stakeholders. PSPCL vide its letter no. 5260 dated 16.03.2017 submitted that due to imposition of Election Code, the approval for publication had to be taken from the Election Commission, which was approved by the Election Commission vide letter no. Elec-2017/R Clarification/2884, received on dated 03.03.2017. Accordingly, the public notice appeared in various newspapers on 04.03.2017. The last date for submission of objections/ comments was fixed as 24.03.2017 (i.e. 20 days from the publication of the notice).

6. The suggestions/comments from the following 4 objectors have been received:-
- a) Nahar Spinning Mills Ltd., Regd. off., Ind. Area-A, Ludhiana.
  - b) Mandi Gobindgarh Induction Furnace Association, Mandi Gobindgarh.
  - c) Siel Chemical Complex, Rajpura.
  - d) Indian Energy Exchange Ltd., New Delhi.

The suggestions/comments received from above objectors are summarized as under:

- i) The Electricity Act, 2003 provides for "development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff etc." Further, Tariff Policy provides for "availability of electricity to consumers at reasonable and competitive rates and to Promote competition, efficiency in operations and improvement in quality of supply". Clauses 8.0, 8.3, 8.5.1 and 8.5.4 of the Tariff Policy have been reproduced by the objectors in their objections.

The provisions of the Tariff Policy makes it clear that the Act and Policies provide for introducing open access in the transmission



and distribution systems of the licensees so as to create competition in the power distribution business in the larger interest of the consumers. The Policy clearly lays down that the impact of cross subsidy surcharge, additional surcharge and wheeling charges etc. should not be so onerous that it eliminates competition. Further, the Policy envisages a scenario where every electricity consumer pays for the cost of service or cost to serve to the distribution licensee.

- ii) The sub-section (4) of Section 42 of the Electricity Act, 2003 provides that the additional surcharge could be recovered in specific circumstances only i.e. firstly, if it is to meet out the fixed cost of distribution licensee arising out of his obligation to supply as provided under sub-section (4) of Section 42 of the Act, and secondly, 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 component to such a contract.

Further, to claim any such charges, the licensee has to submit all the details and the Commission has to scrutinize the details and then invite comments of the stake holders. A simple statement that there is an element of Fixed Cost being incurred due to purchase of power by the embedded consumers from any other person under open access, does not justify the claim. It has to be seen whether the Licensee exercised due diligence while entering into long term power purchase agreements or this situation has arisen due to poor planning of the Licensees. Indiscriminate signing of PPAs without linking it with the supporting accurate Demand Forecast and capability of the transmission & distribution system will result in such a dismal condition. Why should the poor

consumers be loaded with undue costs because of the inefficiencies and lack of financial control by the Licensees?

The proposal of PSPCL to levy additional surcharge on open access power is just to kill open access. It is a continuation of the earlier steps taken by PSPCL to curtail open access since it started in the year 2009. Instead of providing power to industrial consumers at market competitive prices, PSPCL wants to compel the consumers to buy its power at higher than market rates by imposing unreasonable conditions and charges. These have been summarized as under:

- A. Changes made while introducing Open Access Regulations, 2011:
  - a) Formula for calculation of Cross subsidy surcharge was changed, resulting in imposition of heavy cross subsidy surcharge on open access.
  - b) Transmission charges on short term open access were increased from 20% to 100%.
  - c) Wheeling charges on short term open access were revised from 20% to 30% for 11 KV consumers and to 15% for 66 KV consumers.
  - d) UI charges which were earlier as per CERC rates, were made punitive.
  - e) Restrictions were imposed on availing open access power during peak load hour restrictions.
  - f) Stiff requirements and time consuming procedure was prescribed for grant of NOC.
  - g) Scheduling charges were increased from ₹1000/- per day to ₹2000/- per day.

B. Subsequent changes:

- a) In May, 2012, wheeling charges were revised to @100% for all open access consumers, irrespective of voltage level.
  - b) In Dec., 2012, Wheeling and Transmission charges for NRSE projects for wheeling of power from outside the State/consumers availing NRSE power from outside the State were increased from 2% of energy injected to 100% of transmission and wheeling charges determined by the Commission.
  - c) In June, 2015, restrictions were imposed on the back up and support being given by PSPCL for variations in open access schedule and concept of admissible drawl for the day was introduced.
  - d) CC No. 29 of 2015 issued by PSPCL had to be challenged before the Commission and the relief given to the open access consumers has not been fully given to the consumers in CC 8 of 2016, showing bias of PSPCL against open access.
- iii) The Commission while approving the ARR and Retail Tariff of the Distribution Licensees takes into account all the factors, as provided for in the Electricity Act, 2003, Tariff Policy and other Regulations framed for the purpose. Also, the Commission looks at the financial health and performance of the State Power Utilities. The Commission also takes into consideration the efficiency with which the Licensee discharges its duties. A non-performing Licensee cannot be rewarded for his perpetual and progressive inefficiencies. While the consumers pay for the genuine charges incurred by the Licensee, which are allowed by the Commission through annual ARR & Retail Tariff orders, it cannot be unduly loaded for the faults or inaction on the part of the Licensee.

- iv) PSPCL is acting against providing open access as an alternative source of power as per the Electricity Act, 2003 and at the same time not providing power at market competitive rates by economizing its operations/ reducing its ARR.

PSPCL has concealed the fact that it has invited bids for short term purchase of around 1400 MW power from May to Sept., of 2017 establishing that it is short of power during the period.

PSPCL has also not declared in the Petition regarding its intention of shutting down the GNDTP Bathinda project completely and thereby the capacity has been inflated to justify its claim for Additional Surcharge.

- v) PSPCL, in para 3(a) of the petition, has given the details of availability, schedule and surrender of energy and power from IPPs/Own Thermal/Own Hydel/Central Sector/BBMB Stations. The data shows that there is poor planning on the part of the PSPCL to contract long term power

It is evident from the data for H1 (first half) submitted in the Petition, out of 39019 MU available under long term contracts and own projects, 10880 MU have been surrendered, which is 28%. Similar, is the case with MWs. PSPCL had claimed excess availability and stranded capacity during H1 of FY 2015-16 as well. It is evident that long term arrangements of power have been made without proper planning and prudence. Consumers should not be made to suffer for these inefficiencies of the Licensee and Govt of Punjab. The situation is to further worsen in H1 of the current year as additional 453 MW capacities are being commissioned as mentioned in the Petition.

Further, consumers with load of 1 MW and above are only entitled for open access. The present day Contract demand of LS consumers as per ARR is plus 7000 MW and total Contract Demand/Connected Load of PSPCL is plus 34000 MW, while open access is being availed by only few consumers. Further, the power being sourced by open access consumers attained peak in FY 2011-12 and after PSPCL implemented the amended regulations of 100% wheeling charges and adopted other restrictive trade practices, it has declined over the years.

The Commission had determined the wheeling charges for the year 2016-17 as ₹1.32/unit and the Additional Surcharge calculated for the H1 period was worked out as ₹1.13/kWh, whereas for H2 (Second Half) of 2016-17, it was ₹1.25/kWh. Thus, the quantum of Additional Surcharge is almost equal to the Wheeling Charges, which is excessive and violative of the provisions of the Act, which says that additional surcharge levied on the charges of wheeling will be only a portion of the same.

Also, increase in open access power in FY 2015-16 was due to Amendment No. 5 to Open Access Regulations, 2011, after which consumers were procuring power on 24 hours basis.

- vi) As per Electricity Act 2003 and Tariff Policy, Transmission charges/ network costs are recoverable through Transmission/ wheeling charges applicable on open access and not through Additional Surcharge, which is to cover only the stranded power purchase costs. Further, the provisions of the Act, NTP and Open Access Regulations clearly lay down that it is not the calculated surplus power which is to form the basis for determination of Additional Surcharge, but the actual and continuing stranded

capacity only and that only due to open access power which is to form the basis of Additional Surcharge. Further, it is not the average but the contract wise stranded capacity which is to be worked out. Therefore, instead of taking the Tariff Order figures, PSPCL should have based its claim on actual figures of the FY 2015-16 and should have demonstrated that the position is to continue in the coming period.

The data submitted by PSPCL in the Petition are general statements and does not prove that the capacity stranded is solely and conclusively due to open access. The surplus capacity is not due to open access but due to faulty planning of PSPCL and GoP in recklessly contracting additional generating capacities. Further, as per submissions of the Petitioner, the contracted capacities are just sufficient to meet the projected demand on standard N-1 criteria and there is no surplus capacity. Thus, there is no case of additional surcharge on open access power.

- vii) It is apparent that PSPCL does not have any stranded capacity in the period from 1<sup>st</sup> May, 2017 to 30<sup>th</sup> September, 2017, as PSPCL has invited bids for short term purchase of around 1400 MW during the period. It is evident that in spite of the stated contracted capacity being more than the anticipated demand, PSPCL is anticipating shortage of power due to whatsoever reasons and thus, there is no stranded capacity during the period. Since PSPCL has based its petition and data for the period from 1<sup>st</sup> April to 30<sup>th</sup> September, there is no case of Additional Surcharge to be levied on open access consumers for the period.

- viii) It has also been observed that PSPCL has proposed total shut down of Bathinda Plant but has taken its Fixed Charges (FC) in the calculations, which needs to be ignored for calculation.

There is surrender of power by PSPCL due to:

- a) Natural calamities like wind storms and floods
- b) Rains resulting in no/less demand from agriculture pump sets of the area and decrease in cooling load in the succeeding days
- c) Replacement of CFLs with LED lamps
- d) Replacement of agriculture pumps with star rated pumps
- e) Installation of solar lights and solar irrigation pumps
- f) DSM initiatives of the Govt. of India and State Govt.
- g) Installations of roof top solar plants under net metering policy
- h) MSW plants and other biomass plants as captive/cogen plants.
- i) Forced and Planned Maintenance shut downs of the PSPCL and PSTCL grid system.

PSPCL has to factor-in the capacity becoming stranded due to above reasons in the Petition as these cannot be attributed to open access.

- ix) A perusal of the data submitted in the petition reveals that there is poor planning on the part of the PSPCL, to contract long term power. The open access regulations were notified in 2005, but market rates of power in open market were high due to large gap in demand and supply in the country and NOCs were issued initially to generators only. The open access by embedded consumers started after the IEX was made operational and PSPCL imposed heavy power cuts/ weekly off days in 2008/2009 paddy

and winter seasons. Industry was asked by GoP to source power under open access.

- x) PSPCL has given the details of availability, schedule and surrender of energy and power from IPPs/Own Thermal/Own Hydel/Central Sector/BBMB Stations. The reasons for surrender are purportedly being shown as due to open access, which claim is entirely wrong. The Power purchased by PSPCL under short term arrangement for H1 of FY 2016-17 (as per Vol. 1 Part 1 of ARR) is indicated as 1831 MU. Further, PSPCL also received 1562 MU of power under Banking arrangement and 10 MU under UI during H1, totalling to 3403 MU or 788 MW on average basis for 6 months. Further, NRSE power within the state is also not covered in schedules. This availability has been concealed by PSPCL, which needs to be accounted for. The statement of PSPCL that it has adequate capacity to meet the demand of LS consumers is a gross understatement, as it is not only adequate, but excessively high contracted capacity than requirement.

- xi) To balance the consumers interests, only a part of the burden of stranded fixed charges needs to be passed on to the OA consumers through Additional Surcharge and PSPCL should be made to bear the rest from its own resources for its poor planning.

While deciding the amount of Additional Surcharge, all the open access charges have to be considered collectively for being onerous or not as per National Tariff Policy and if it makes the open access unviable.

- xii) The data given in para 2 of the petition is on hourly basis, whereas, the availability, schedule and surrender are being managed on 15 minutes time block basis. Therefore, data need to be provided on



15 minutes basis for proper analysis. Further, effect of Banking import and export, effect of scheduling of purchase of short term power during the period and effect of NRSE projects situated within the State have not been brought out in the Petition.

- xiii) The figures of the Petition show that PSPCL has signed long term PPAs on wholesale basis without caring for its effects on the tariff and now consumers are bound to suffer. The declared long term contracted capacity and own generation as per SLDC web site as on 31.08.16 is 13583 MW and the petition states that 471 MW contracted capacity is to be commissioned during the period, totalling the capacity as 14354 MW. The Unrestricted Max Demand met in the year 2016-17 as per Petition No 1 of 2017 has been stated as 11408 MW. As per CEA web site, Highest Max. and Lowest Max. demand in the year 2016-17 recorded is 11228 MW and 5646 MW respectively. However, PSPCL has stated the AFC for contracted capacity of 13379 MW. Thus, PSPCL has much more than adequate capacity which is due to wrong planning and projections of PSPCL for which consumers should not be made to suffer and fixed charges for idle capacity should not be loaded on consumers. In fact, tariff should be lowered for industry when power at cheap rates is available in open market but consumers are being denied open access due to artificially inflated open access charges, like this additional surcharge.
- xiv) It is apparent that PSPCL does not have any stranded capacity during the period of 1<sup>st</sup> May, 2016 to 30<sup>th</sup> October, 2016 as it had purchased short term power purchase during this period. Again, PSPCL has invited tenders for purchase of up to 1400 MW power from 1<sup>st</sup> May to 30<sup>th</sup> Sept., 2017. From this, it is evident that in spite of the stated contracted capacity being more than the anticipated

demand, PSPCL was/is anticipating shortage of power due to whatsoever reasons and thus there is no stranded capacity during the above mentioned period. Thus, there is no case of Additional Surcharge to be levied on open access consumers for the period.

The Petitioner has also not given data regarding how much back down was done from which plants. This is also significant for determination of Additional Surcharge which can only be claimed against backed down generation and not against scheduled generation. Further, each power plant has different fixed cost and the fact that the Petitioner follows Merit Order dispatch while deciding on the backing down of generation, it is evident that the backing down generation due to Open Access in Merit Order should only be considered for calculation of Additional Surcharge.

On perusal of the Monthly Report on Short-term Transactions of Electricity in India of CERC for the month of April, 2016 to September, 2016. It may be seen that despite power procurement by Open Access consumers of Punjab to the tune of 962 MU, PSPCL has procured 3280 MU from short term market.

PSPCL has procured power through short term market to serve its consumers and therefore Open Access cannot be held accountable for backing down of generation. Therefore, there is no case of levy of Additional Surcharge for the period from April to September, 2017.

The Commission has approved procurement of power from NTPC. Therefore, those plants which were anyway planned to be backed down by PSPCL should not be considered for calculation of Additional Surcharge as these plants were planned to be backed down by PSPCL, irrespective of whether consumers procure

power from open access or not.

- xv) The Commission should revisit methodology of determination of Additional Surcharge and determine Additional Surcharge considering issues mentioned in above submissions.

PSPCL has proposed full recovery of FC (Fixed Cost) of stranded capacity based on single part tariff structure for LS consumers. However, they have already submitted a proposal of Two Part Tariff as per Vol. 2 of the ARR for MYT Control Period from FY 2017-18 to FY 2019-20. PSPCL has not worked out the quantum of Additional Surcharge in case the proposal of Two Part Tariff is accepted by the Commission for FY 2017-18. The Commission has been requested to consider the recovery of fixed charges of Two Part Tariff and reduce the same from FC worked out by PSPCL in the Petition, before working out Additional Surcharge in case Two Part Tariff is implemented.

7. PSPCL vide letter no. 5521/TR-5/824 dated 10.04.2017 and letter no. 5560/TR-5/824 dated 17.04.2017 submitted reply to the objections raised by Objectors, summarized as under:
- i) The Electricity Act, 2003 was introduced with an objective of improving the Quality, Economy, Security and Reliability of the power system. Also, while introducing Open Access and to strike a right balance between the consumers and the utility, in the event of sourcing of open access power by the consumers, a provision to compensate the utilities for their exposure to pay various charges for the long term arrangements made under its universal supply obligations, has been made in the Electricity Act, 2003. The sub system wise provisions of compensating the fixed charges obligations have been given by PSPCL as under:

Sr. No.	Compensating Charges for Sub System	Applicable charges
1	Stranded Generation Capacity	Additional surcharge
2	Transmission Network	Transmission charges
3	Distribution Network	Wheeling charges
4	Social Obligations/ Subsidizing Category	Cross subsidy surcharge
5	Operational Charges	SLDC charges & losses

All the aforementioned charges have been judiciously determined by the Commission and the present petition no. 02/2017 has only been filed in compliance to the directives of the Commission in Petition No. 28 of 2016.

- ii) The issue of applicability of additional surcharge was even elucidated by the Hon'ble Supreme Court of India in its judgment in Civil Appeal No. 5479 of 2013 dated 25.04.2015. The relevant extract has been reproduced by PSPCL 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-subsidize 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 (emphasis added)."*

*It is evident from the above judgment that additional surcharge is also in the nature of 'compensatory charge' payable to the Distribution Licensee of the area towards the cost of stranded power attributable to the open access consumers. hence, **it is settled law that Additional Surcharge is leviable.***

*Thus the Additional Surcharge (AS) becomes leviable if power being drawn by the consumers under open access mechanism is leading to backing down of generation and even after backing down intra- State generation capacity the Discoms are under drawing/power is being surrendered as the generation cannot be backed down further."*

As per the statute and under the provisions of Section 42(4) of Electricity Act, 2003, the discoms are entitled to recover from the Open Access consumers, additional surcharge estimated on the basis of fixed cost of its stranded power arising out of its universal supply obligation.

- iii) The ARR Determined Tariff are applicable to the consumers drawing power from PSPCL, whereas, the provision of charging and determination of additional surcharge is under section 42(4) of

Electricity Act, 2003 and are applicable to the consumers opting for open access power i.e. from sources other than Distribution Licensee. The applicability in both the cases are independent of each other.

- iv) The Distribution Licensee under the universal supply obligation, has to make long term power purchase arrangements for meeting the entire demand of all the consumers in a most reliable manner along with meeting the quality (Voltage & Frequency) of power system parameters on 24x7 hrs. basis for 365 days of the year. PSPCL has denied that there is any inefficiency in discharging the duties as made under the universal supply obligations. With all the available resources, PSPCL has been able to efficiently meet all time high demand of 11408 MW during the month of July, 2016.
- v) The available capacity is adequate enough to meet with the estimated demand, yet possibility of fault in a power system can never be ruled out. So, in order to keep a cold/hot spinning reserve in hand with a view of improving the reliability and economy in the power system real time operations.
- vi) The data in a specific format is submitted as per directions of the Commission given vide its letter dated 10.06.2016. The merit order principle is strictly followed, except for extreme emergent situations. The adequate data for the determination of additional surcharge has been submitted along with the petition. The detailed hourly data w.r.t. the Open Access Quantum of Power and the hourly data for quantum of surrender of power from generating stations of ISGS/IPPs/Own thermal Power plants along with their fixed cost has been submitted with the Commission for the determination of Additional Surcharge under the provisions of the

Electricity Act, 2003.

- vii) All the due legitimate charges have judiciously been determined by the Commission and are in accordance with the provisions of the Electricity Act, 2003 and other applicable regulations. However, the issuance of CC No. 29/2015 & CC No. 8/2016 is not relevant to this case, as the two commercial circulars were issued for complying with newly introduced Clause 28.3 of Open Access Regulation, 2011 and has nothing to do with the determination of additional surcharge, which is under the provisions of Section 42(4) of the Electricity Act, 2003.
- viii) Short Term Power during April, 2016 to September, 2016 was purchased on economical grounds to improve the reliability of the system. Additional Surcharge claimed is only for the quantum upto which open access power has been sourced by the open access consumers from sources other than PSPCL.
- ix) The adequate data for the relevant period (01.04.2016 to 30.09.2016) and the corresponding backing down/surrender of power has been provided to prove that the available power remained continuously stranded and needs to be compensated.
- x) The claim for the additional surcharge through this petition is only for the quantum of power sourced by open access consumers from the sources other than the distribution licensee.
- xi) The volume of Open Access has reduced as the applicable tariff is competitive as compared to the rate of power in market. Additional Surcharge is leviable on the stranded generation capacities and is in accordance with the provisions of Section 42 (4) of the Electricity Act, 2003.
- xii) The actual fixed cost is liable to be incurred despite of the fact that

no power has been proposed to be scheduled from GNDTP/other Central Sector allocations. The entire installed capacity of GNDTP shall be available till intensions become a reality.

- xiii) Additional surcharge is calculated as per methodology adopted by the Commission in its order dated 09.08.2016 in Petition No. 28 of 2016 & further the applicability of additional surcharge is as per the provisions of Section 42 (4) of the Electricity Act, 2003.
- xiv) The two part tariff is under active consideration and as and when the same is implemented, its impact shall be taken into account.

#### **8. Findings and Decision:**

**The Commission has carefully gone through the Petition made by PSPCL, objections raised by the Objectors and reply of PSPCL to the objections. PSPCL has satisfactorily replied to the objections raised by the various Objectors. The issues raised by the objectors in this petition are similar to the issues raised in Petition No. 28 of 2016 and Petition No. 57 of 2016. The main issues raised by the objectors regarding levy of additional surcharge on Open Access Consumers are discussed as under:**

**i) Petition for additional surcharge has been filed to kill the Open Access in Punjab:-**

**The Commission observes that additional surcharge based on the fixed cost of stranded power of utility arising out of its Universal Supply Obligation is payable by Open Access Consumers as per Regulation 27 of the PSERC (Terms & Conditions for Intra-State Open Access) Regulations, 2011, which specifies as under:-**



- 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."*

In view of the above, the utility is legally 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) Adequacy of data and its correctness regarding Contracted Capacity, Stranded Capacity and Fixed Charges:-

PSPCL has submitted month wise installed capacity, details of actual fixed cost, slot wise availability (Max/Min/Average), slot wise scheduled power (Max/Min/Average), slot wise surrendered power (Max/Min/Average) and slot wise Open Access power (Max/Min/Average) for the period from April, 2016 to September, 2016. The Commission has worked out the additional surcharge to be paid by Open Access Consumers on the open access power brought by them on the basis of data submitted by PSPCL.

iii) Only standard capacity contract-wise can be used for

**calculating additional surcharge instead of average fixed cost of all PPAs:**

The Commission finds that the quantum of power surrendered every day are not from a specific power plant, and the fixed cost associated with every plant is different. PSPCL has calculated the amount of total fixed charges that PSPCL was expected to pay, considering all the major power plant sources. Moreover, in the real time system operation, the principle of merit order dispatch is being followed by PSPCL.

**CONCLUSION:**

The methodology adopted by the Commission is correct and fair. The Commission has adopted the same methodology as adopted earlier in case of Petition No. 28 of 2016 while determining the Additional Surcharge for the period from April, 2016 to September, 2016 and Petition No. 57 of 2016 while determining the Additional Surcharge for the period from October, 2016 to March, 2017. Further, this methodology has also been adopted by other State Electricity Regulatory Commissions.

The Commission observed that PSPCL in the ARR petition (No. 90 of 2016) for MYT Control Period from FY 2017-18 to FY 2019-20 has submitted that it shall have surplus energy available from tied up sources from Central Generating Stations and other sources, during FY 2017-18, FY 2018-19 and FY 2019-20. Also, PSPCL in petition (No. 01 of 2017) in the matter of petition for regulatory measures to be taken for the Tariff year 2017-

**18, submitted that it had over the years taken measures to improve the power availability situation and presently expected to be surplus in electricity availability throughout the year 2017-18. But, PSPCL filed the Petition No. 28 of 2017 for procurement of power on short term basis for the period from June, 2017 to September, 2017 through a competitive bidding process to meet its demand as well as on economical ground.**

**Keeping in view the above facts, the Commission has determined the Additional Surcharge to be paid by the Open Access consumers on the open access power brought by them from the sources other than PSPCL as ₹1.13 per kWh, (Annexure-I).**

**The above determined Additional Surcharge is subject to the condition that the contracted capacity of PSPCL to fulfill its obligation to supply remain stranded and PSPCL has not purchased any additional power on account of deficit power. Further, (a) in case, PSPCL purchases additional power on account of deficit of power, the Additional Surcharge will not be applicable for that period and, (b) In case PSPCL purchases additional power only to swap its costly power on pure economical reason, the Additional Surcharge will be applicable.**

- iv) The Commission in its order dated 29.03.2017 in this Petition, ordered to levy ₹1.25 per kWh Additional Surcharge as an adhoc measure and further ordered that difference, if any, in the Additional Surcharge ordered to be levied by the Commission (i.e. ₹1.25 per kWh) and the**

**Additional Surcharge determined by the Commission in this petition shall be payable/refundable by/to Open Access Consumers. Hence, Additional Surcharge of ₹1.13 per kWh is ordered to be levied from 1<sup>st</sup> April, 2017 to 30<sup>th</sup> September, 2017, and excess amount of Additional Surcharge charged to the Open Access Consumers be refunded in their next bills.**

**The Petition is disposed of accordingly.**

Sd/-

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

Sd/-

**D.S. Bains  
(Chairman)**

**Chandigarh**

**Dated: 29.06.2017**

**Annexure-I**

<b>Calculation of Additional Surcharge based on data for the period from April, 2016 to September, 2016.</b>			
(i)	Average Contracted Capacity	12784	MW
(ii)	Maximum Availability	10783	MW
(iii)	Minimum Availability	6679	MW
(iv)	Average Availability	8884	MW
(v)	Maximum Scheduled	9209	MW
(vi)	Minimum Scheduled	2973	MW
(vii)	Average Scheduled	6407	MW
(viii)	Capacity not availed (Maximum)	6055	MW
(ix)	Capacity not availed (Minimum)	359	MW
(x)	Capacity not availed (Average)	2477	MW
(xi)	Open Access Availed (Maximum)	497	MW
(xii)	Open Access Availed (Minimum)	0	MW
(xiii)	Open Access Availed (Average)	219	MW
(xiv)	Capacity Stranded due to open access	219	MW
(xv)	Fixed Charges for the total power received during April, 2016 to September, 2016	₹4403.41	crore
(xvi)	Fixed Charges per MW available (xv÷iv)	₹0.50	crore
(xvii)	Fixed Charges of Stranded Capacity on account of Open Access (xvi × xiv)	₹108.55	crore
(xviii)	Open Access energy Scheduled	962	MU
(xix)	Additional Surcharge (xvii ÷xviii)	<b>₹1.13</b>	<b>per kWh.</b>