

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

Petition No. 36 of 2017

Date of Order: 01.01.2018

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

In the matter of : Petition under Section 142, 146 and 149 of the Electricity Act, 2003 and Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, chapter IX and in the matter of non-compliance of PSERC Order dated 18.10.2016 in Petition No.64 of 2016 related to clarification of threshold consumption.

AND

In the matter of: Steel Furnace Association of India, (Punjab Chapter) C/O Upper India Steel Mfg. & Engg. Co. Ltd., Dhandari Industrial Focal Point, Ludhiana.

...Petitioner

Versus

Punjab State Power Corporation Limited, The Mall, Patiala.

...Respondent

Order

The petitioner has filed the present petition alleging violation by the respondent of the Order dated 18.10.2016 passed by the Commission in petition No. 64 of 2016. The petition was admitted by the Commission vide order dated 16.06.2017 and the

respondent directed to file its reply by 29.06.2017. The petitioner submitted as hereunder:

- a) PSERC in its tariff order for FY 2016-17 stated that PSPCL, the distribution licensee is facing power surplus situation. This power is surrendered having large fixed cost as commitment charges to be paid to IPPs and others. The burden of the same is passed on to consumers of the state through ARR, without giving any benefit to them. To reduce the burden of fixed cost associated with surrendered power, the Commission has announced a lower base tariff of Rs.4.99/unit for large supply industrial consumers who consume power above the threshold limit, which is defined as maximum of the last two years consumption.
- b) The threshold consumption was defined by PSERC in its order dated 18.10.2016 in Petition No. 64 of 2016 and PSPCL was instructed to consider only the power supplied by it for calculating maximum annual consumption for any of the last two years, which is to be taken as threshold limit. The relevant part of the PSERC order is reproduced below:

“.....Thus, PSPCL is directed to consider only PSPCL consumption for calculating maximum annual consumption in any of the last two financial years which is to be taken as threshold limit under para 7.4.3 (i) and also for calculating consumption of Large Supply Industrial category consumers eligible for base rate of Rs.4.99 per kVAh under para 7.4.2 of the Tariff Order for FY 2016-17.....”

Based on the PSERC Tariff Order for FY 2016-17 and Order dated 18.10.2016 in petition no. 64 of 2016, the members of

the Steel Furnace Association had applied to PSPCL to charge base tariff of Rs.4.99/unit on the additional consumption over and above threshold consumption as defined by PSERC through letter dated 07.04.2017 addressed to Addl. SE(OP), PSPCL, Focal Point Special Division, Ludhiana, which forwarded the letter to CBC Ludhiana. It is learnt that PSPCL has not issued any circular relating to compliance of the PSERC order dated 18.10.2017.

- c) The petitioner prayed as under:
- i) Ensure the compliance of the PSERC order dated 18.10.2016 in Petition No. 64 and instruct PSPCL to charge base tariff of Rs.4.99/unit on the additional consumption over and above threshold consumption as defined by PSERC.
 - ii) It is apprehended that PSPCL may be interpreting the threshold consumption, actual consumption and additional consumption eligible for giving lower base tariff of Rs.4.99/unit, the precise formula for the same may also be stated to avoid any chance of misinterpretation later on.
2. The respondent vide memo. no. 6383 dated 29.06.2017 submitted its reply as under:
- a) That the present petition has been preferred by the petitioner seeking penal proceedings to be initiated for alleged violation of order dated 18.10.2016 passed by the Commission which is pending before the Hon'ble Appellate Tribunal for

Electricity as Appeal No. 06 of 2017.

- b) That PSPCL filed appeal No. 06 of 2017 and IA for stay being I.A. No.14 of 2017 before the Hon'ble Tribunal against the order dated 18.10.2016 passed by the Commission and notice has been issued in the Appeal as well as IA No.14 of 2017.
- c) That an application was also filed by M/s Mawana Sugar Ltd. for being impleaded as a party respondent in Appeal No. 06 of 2017, which was allowed by the Hon'ble Tribunal. The I.A.No.14 of 2017 was listed along with the main appeal on 03.05.2017, wherein PSERC is also a respondent. The respondents sought further time to file reply and there was no delay on the part of PSPCL.
- d) That the present petitioner (Steel Furnace Associate of India) being the respondent in Appeal No. 06 of 2017, is fully aware of the above circumstances and despite that the petitioner has filed the present petition even though the Appeal against the impugned order is pending before the Hon'ble Tribunal.
- e) That coercive action now sought to be taken is incorrect and contrary to the nature of proceedings and the specific representation given before the Hon'ble Tribunal. It is not correct on the part of the petitioner to seek to take coercive steps against PSPCL at this stage.
- f) That PSPCL has been constrained to approach the Hon'ble Tribunal by way of abundant caution for directions to the Hon'ble Commission not to proceed with coercive steps, as it will cause grave prejudice to PSPCL. PSPCL has filed

application to this effect before the Hon'ble Tribunal in Appeal No. 06 of 2017.

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

3. The petition was heard on 01.08.2017. During the hearing the officers of PSPCL submitted a copy of memo. no.2298/2302/DB-124 dated 18.07.2017 along with memo. no.2092 dated 10.07.2017 and memo. no.716 dated 07.07.2017 as to the compliance of the order of PSERC dated 18.10.2016 in Petition No.64 of 2016 to the Commission.

4. The petitioner submitted the additional submissions on 17.10.2017. The same in brief are as under:

- a) PSPCL has challenged PSERC order in the Hon'ble Tribunal but no stay has been granted. PSPCL has given a statement to the Hon'ble Tribunal for compliance of PSERC orders subject to the outcome of the Appeal before the Hon'ble Tribunal. This fact is documented in PSERC order dated 13.07.2017 in petition no. 42 of 2017. Further, our member unit, Vardhman Special Steels Ltd. has written to PSPCL for refund of excess amount charged from us on the electricity units consumed above the threshold consumption. CBC office of PSPCL has worked out the eligible electricity units for tariff of Rs.4.99/unit and calculated the refund amounting

to Rs.1,29,77,053/-. It was informed that as the refund pertains to FY 2016-17, it will be referred to the Committee constituted for this purpose as per circular no. 50 of 2016. The meeting of the committee headed by the Engineer-in-Chief, Central Zone was held on 16.10.2017 and it was informed that after pre-audit of the amount, the same will be refunded.

- b) The case has been sent to the committee wrongly by misinterpreting the circular no. 50 of 2016. The contents of the circular clearly reveal that it pertains to the disputed cases where the opinion of the audit party is different from concerned AEE/AE and needs clarification/ removal of doubt. In present case, there is no dispute. It is a commercial matter where amount worked out by CBC is to be refunded in the billing period as a routine matter. That the refund pertains to FY 2016-17 does not make it eligible for referring to the Committee as per circular no. 50 of 2016, which deals with disputed matter only.

It is pertinent to note that:

- i) Sales figures (Power consumption beyond threshold limit) worked out by CBC, which are already audited, have been considered for refund purpose. Consumer has not challenged the figures and accepted them as correct. Therefore, there is no question of doubting its own audited sales, refund calculated by its own officers in CBC. Sales figures worked out by CBC should have been used for refunding the amount.
- ii) However, it was informed in the Committee meeting

held on 16.10.2017 that a pre-audit will be done and then refund will be given. Now, it is absurd on the part of PSPCL to carry out pre-audit of the already audited sales and thereafter refund the amount calculated by its own officials although a clear statement was given before Hon'ble Tribunal by its lawyer to comply with PSERC order i.e. to refund the excess amount charged above the tariff at the rate of Rs.4.99/unit.

- iii) The above fact unambiguously established that PSPCL has been delaying refund of Rs.1,29,77,053/- as calculated by CBC, PSPCL. Therefore, it is requested for issuance of instructions to PSPCL to refund the said amount along with interest of Rs.14,97,516/-.

5. The petition was heard on 18.10.2017. During the hearing, the petitioner submitted that PSPCL has not refunded the amount due. It was further contended that PSPCL has submitted before Hon'ble APTEL in the proceedings in Appeal No.06/2017 that PSPCL is implementing the said Order of the Commission. Also, in reply to the petition, PSPCL has submitted that Commission's Order dated 18.10.2016 has been implemented. The Commission vide its Order dated 25.10.2017 ordered as under:

".....PSPCL is directed to file an affidavit by 01.12.2017 with a copy to the petitioners with regard to detailed information of the bills, amounts refunded to the petitioner, whether full amount refunded or not and reasons for not refunding the amount / part refunding. Further, PSPCL shall also inform the details of interest payable as per the relevant regulations.

Chief Engineer/Commercial, PSPCL shall remain present on the next date of hearing. In case the amounts are

not refunded by 01.12.2017, the Commission shall be constrained to impose penalty on PSPCL for not implementing the order of the Commission dated 18.10.2016 and submitting wrong information to Hon'ble APTEL and the Commission.....”

6. PSPCL vide its memo. no. 5866 dated 06.12.2017 has filed an affidavit in compliance to the Commission's Order dated 25.10.2017, vide which PSPCL has submitted that the refund has been made and the same will be reflected in their accounts. The details of refunds so made have also been provided.

Commission's observations and decision

7. The Commission has examined the petition, reply submitted by PSPCL and the additional submissions made by the petitioner. **The Commission notes that PSPCL, in compliance of the Commission's Order dated 25.10.2017, submitted an affidavit dated 06.12.2017 confirming the refunds made by it. PSPCL submitted that all EICs / CEs (DS) have certified that no case of refund to the petitioners is pending in their jurisdiction as per Commission's Order dated 18.10.2016 in Petition No.64 of 2016.**

During the hearing on 13.12.2017, the petitioner confirmed that the amount due has been refunded by PSPCL. However, the interest on the refunded amount and the amount of ED and IDF collected by PSPCL has not been refunded. PSPCL submitted that interest is payable as per relevant regulations, subject to the outcome of the Appeal against the Order of the Commission dated 18.10.2016 in Petition No.64 of 2016, which is pending before the Hon'ble APTEL. As regards the refund of ED and IDF, PSPCL submitted that the same are

collected by it on behalf of the Government of Punjab and the issue of its refund shall be taken up by PSPCL with the Government. On the suggestion of PSPCL, the petitioner agreed to approach PSPCL for refund of interest and ED/IDF.

Accordingly, the petition is disposed of in terms of the above. The Commission further directs that this Order shall be applicable to all similar cases.

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

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

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

Chandigarh
Dated: 01.01.2018