

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

**Petition No. 36 of 2016
&
I.A. No. 24 of 2016
Date of Order: 03.11.2016**

Present: Shri D.S. Bains, Chairman
Shri S.S. Sarna, Member

In the matter of: Petition under Section 142 read with Section 23, 57 and 86(1)(i) of Electricity Act, 2003 read with Regulation 9 of PSERC (Electricity Supply Code and Related Matters) Regulations, 2007, as amended upto date for setting aside PR Circular No.23/2009 dated 27.06.2009 and subsequent communications / telephone messages dated 27.06.2009, 30.06.2009, 15.07.2009, 17.07.2009, 04.08.2009, 18.08.2009, 27.08.2009, 02.09.2009, 05.09.2009, 08.09.2009 and other circulars / messages reducing Peak Load Exemptions being in violation to the orders dated 27.05.2009 passed by the Commission in Petition No. 7 of 2009 and also in Review Petition No. 12 of 2009 which was decided alongwith Petition No. 3 of 2010 vide Order dated 30.04.2010.

With a further prayer to quash original letter / Bill dated 05.02.2010 vide which demand of

Rs.4,56,92,364/- has been raised towards penalty for peak load violation alongwith subsequent letter / bill dated 02.02.2015, 04.11.2015 and 21.04.2016 vide which demand of Rs.90017381/- has been raised (which included interest of the intervening period) by the respondent Corporation upon the Petitioner Company and for refund of Rs.4,50,08,690/- alongwith interest deposited by the Petitioner company under protest with the respondent Corporation.

And for taking action against PSPCL (erstwhile PSEB) and its officials for raising impugned demand / bill alongwith interest of intervening period on account of penalty towards Peak load violation charges by setting aside the aforesaid illegal demands and for strict implementation of direction given by the Commission vide Order dated 27.05.2009 passed in Petition No. 7 of 2009, Order dated 30.04.2010 passed in Petition No. 12 of 2009 and Petition No. 3 of 2010.

With a further prayer to stay the operation of letter dated 21.04.2016 vide which the balance amount of Rs.4,75,40,084/- has been raised by the respondent Corporation during the pendency of instant Petition.

AND

In the matter of: National Fertilizers Limited, Nangal Unit, Naya Nangal, District Roopnagar, through its authorized representative Shri R. Mishra, D.G.M. (Electrical).

-----Petitioner

Versus

Punjab State Power Corporation Limited, The Mall, Patiala, through its Chairman.

-----Respondent

ORDER

M/s. National Fertilizers Limited (NFL) filed this Petition along with I.A. under Section 142, read with Section 23, 57 and 86(1)(i) of Electricity Act, 2003, read with Regulation 9 of PSERC (Electricity Supply Code and Related Matters) Regulations, 2007, as amended upto date and other relevant rules and regulations as approved by the Commission, for setting aside PR Circular No.23/2009 dated 27.06.2009 and subsequent communications / telephone messages dated 27.06.2009, 30.06.2009, 15.07.2009, 17.07.2009, 04.08.2009, 18.08.2009, 27.08.2009, 02.09.2009, 05.09.2009, 08.09.2009 and other circulars / messages reducing Peak Load Exemptions, being in violation to the Order dated 27.05.2009, passed by the Commission in Petition No. 7 of 2009 and also in Review Petition No. 12 of 2009, which was decided alongwith Petition No. 3 of 2010 vide Order dated 30.04.2010.

With a further prayer to quash original letter / Bill dated 05.02.2010 vide which demand of Rs.4,56,92,364/- has been

raised towards penalty for peak load violation alongwith subsequent letters / bill dated 02.02.2015, 04.11.2015 and 21.04.2016 vide which demand of Rs.9,00,17,381/- has been raised (which included interest for the intervening period) by the respondent Corporation upon the Petitioner Company and for refund of Rs.4,50,08,690/- alongwith interest deposited by the Petitioner company under protest with the respondent Corporation.

And for taking action against PSPCL (erstwhile PSEB) and its officials for raising impugned demand / bill along with interest of intervening period on account of penalty towards peak load violation charges by setting aside the aforesaid illegal demands and for strict implementation of direction given by the Commission vide Order dated 27.05.2009 passed in Petition No. 7 of 2009, Order dated 30.04.2010 passed in Petition No. 12 of 2009 and Petition No. 3 of 2010.

With a further prayer to stay the operation of letter dated 21.04.2016 vide which the balance amount of Rs.4,75,40,084/- has been raised by the respondent Corporation during the pendency of instant Petition. Along with this petition, an I.A. has been also filed by the petitioner with the prayer that operation of the further demand Bill of Rs.4,75,40,084/- raised by respondent Corporation upon the Petitioner may be stayed during the pendency of the instant Petition to meet the ends of justice.

2. After hearing the petitioner on 10.05.2016, Commission admitted the petition along with I.A. and the operation of the

demand Bill amounting to Rs.4,75,40,084/- raised by PSPCL, was stayed vide Order dated 12.05.2016. PSPCL was directed to file reply to the petition.

3. (i) M/s.NFL submitted that NFL is a Government of India undertaking, Schedule A and a Mini Ratna (Category 1) Company, under the Administrative Control of Ministry of Chemical and Fertilizer, engaged in the manufacturing of Urea, which is covered under Essential Commodities Act, 1955, and has two power connections:-
- a) A/c No.R15-NL01-00001 (FC-1)
- | | | |
|---------------------|---|-----------|
| Connected load | - | 43024 KW |
| Peak Load Exemption | - | 21000 KW |
| Contract Demand | - | 35000 KVA |
- b) A/c No.R15-NL01-00002 (FC-II)
- | | | |
|---------------------|---|----------|
| Connected load | - | 1340 KW |
| Peak Load Exemption | - | 650 KW |
| Contract Demand | - | 1500 KVA |
- (ii) NFL averred that a committee consisting of the officials of the respondent and headed by Industrial Advisor cum Additional Director of Industries, Punjab, inspected the premises of the petitioner on 08.12.1982 and it was recommended that NFL has a continuous one line operation and it may not be possible to close down, have a contract demand of 18 MW and in order to continue manufacturing, they need a continuous power supply for the expansion unit and it is technically not possible to operate the plants with 50% or 75% or any level of peak

load exemption which is less than 100%. The marginal reduction in load will lead to taking out the plant under shut down. PSEB/PSPCL has granted the status of a continuous process and essential industry.

- (iii) NFL submitted that PSPCL filed Petition No.7 of 2009 under Section 23 of the Electricity Act, 2003, seeking authorisation to impose power cuts, peak load hour restrictions & other regulatory measures for the year 2009-10, wherein conditional approval was granted vide Order dated 27.05.2009. Condition No.6 (vi) and (vii) of this order being relevant have been reproduced as under:-

“vi) The Board will not withdraw peak load exemptions where already granted while imposing power restrictions during peak load hours. It will also review its own policy regarding grant of such exemptions and seek the approval of the Commission for the same.

vii). The Board would seek prior approval of the Commission in adopting any other power regulatory measure.”

- (iv) The Order dated 27.05.2009 issued by the Commission was followed by a communication dated 11.06.2009 (from the Commission) addressed to CE/ARR&TR clarifying that peak load exemptions to all consumers, who have been availing the same in the past is to be continued.

- (v) NFL further submitted that respondent PSPCL filed Review Petition No.12 of 2009 against Commission's Order dated 27.05.2009 and communication dated 11.06.2009, which were dismissed vide Order dated 30.04.2010, along with bunch of other petitions. However, in utter disregard to the order dated 27.05.2009 of the Commission, the respondent PSEB/PSPCL issued circular No.23/2009 dated 27.06.2009 whereby peak load exemption allowed to category –IV LS Consumers was reduced to the extent of 50% from 28.06.2009 onwards followed by series of communications/ telephonic messages, emphasizing to reduce the load, against which the petitioner filed a large number of representations. However, no reply was given by the respondent. The respondent vide communication dated 12.10.2009 restored 100% peak load exemption to the petitioner company w.e.f. 12.10.2009, followed by PR Circular No.6 dated 31.05.2010, stating that in case of PSU i.e. NFL, there will be no curtailment in peak load exemption or extension in peak load hour restrictions.
- (vi) NFL further submitted that respondent corporation issued letter vide memo dated 05.02.2010 raising a demand of Rs.4,45,92,364/- towards penalty for violation of peak load hour exemption for the period from 28.06.2009 to 08.10.2009, against which the petitioner kept on writing to the respondent PSPCL. Subsequently, respondent corporation issued bill No.264 dated 02.02.2015 for

Rs.4,45,92,364/- on account of penalty for alleged violation of peak load hour exemption for the aforesaid period. The circular no. 23/2009 dated 27.06.2009 was issued without the approval of the Commission, as such, was ultra vires. In case of circular No.44/2009 dated 27.01.2009, issued by PSEB without the approval of the Commission, the Commission had imposed penalty of Rs.10,000/- on the respondent PSPCL/ PSEB.

- (vii) NFL has stated that it filed a petition before the Forum for Redressal of Grievances of the Consumers impugning the bill dated 02.02.2015 along with mandatory amount of Rs.89,18,473/-, being 20% of the demand raised for filing the petition, which was dismissed by the Forum. The petitioner again deposited mandated, Rs.3,60,90,217 (50% of total demand, i.e. Rs.8918473+Rs.36090217 =Rs.4,50,08,690) along with appeal/ representation before the Ombudsman for Electricity, Mohali, which was disposed of by the Ombudsman vide Order dated 08.03.2016, holding that it is not within his jurisdiction to declare any circular as legal or illegal and is solely within the purview of the Commission.
- (viii) The respondent PSPCL issued further communication dated 21.04.2016, requiring the petitioner company to deposit Rs.4,75,40,084 towards the remaining 50% of the total demand, which included the element of interest. The petitioner NFL has challenged the impugned circular z23/2009, bill/ letter dated 04.11.2015 raising demand of

Rs.9,00,17,381 and also the latest communication dated 21.04.2015, vide which some additional amount has been added towards interest, on the following grounds:-

- a) Respondent Corporation is mandatorily required to take approval from the Commission to impose power cuts, peak load hour restrictions and other power regulatory measures on year to year basis. For the year 2009-10, the respondent Corporation approached the Commission and the Commission vide order dated 27.05.2009 granted approval subject to certain conditions as incorporated in para No.6, sub para-vi of the order. It was clearly held by the Commission that the Board will not withdraw peak load hour exemptions where already granted while imposing power restrictions during peak load hours. The language of the clause (vi) is loud and clear and leaves no scope for any ambiguity. However, despite this, the respondent Corporation issued impugned circular dated 27.06.2009 providing for peak load restrictions, which is in direct contravention to the orders passed by the Commission.
- b) It is an admitted fact that the petitioner company had been availing peak load hour exemptions on both the connections since the year 1992 and the Commission vide communication dated 11.06.2009, issued in continuation of order dated 27.05.2009,

directed the respondent PSPCL that all those consumers who are availing peak load hour exemptions shall continue to avail the same, which was ignored by the respondent PSPCL while issuing the impugned circular dated 27.06.2009 and reduced the peak load hour limit to 50%, 75% etc. between the disputed period i.e. 28.06.2009 to 12.10.2009.

- c) In fact, Section 142 of Electricity Act provides for penal action against respondent Corporation and its officials for issuing commercial circular without approval of the Commission. On the basis of the impugned circular dated 27.06.2009, additional restrictions were imposed upon the petitioner company during peak load hours and impugned bill dated 02.02.2015 for Rs.4,45,92,932 raised, which invites initiation of penal proceedings against the officials of respondent PSPCL, who have ignored the mandate of the Commission.
- d) Urea has been declared as essential commodity under the Essential Commodities Act and any stoppage of plant due to additional peak load restrictions would in turn cause loss to the farmers as well as to the Nation.
- e) The petitioner company is a continuous process industry availing exemptions since 1992 and raising demand of huge amount of Rs.9,25,48,773/- on

account of additional peak load hour restrictions, imposed upon the petitioner company by ignoring the mandate of the Commission is unsustainable in the eyes of law.

- f) The petitioner NFL has been granted the status of continuous process and essential industry by PSEB vide Chief Engineer/S.O&E, PSEB, Patiala memo dated 13.04.1987.
 - g) The Order dated 30.04.2010 and attached annexures clearly provide for categories of consumers, who are entitled to peak load hours exemptions.
 - h) The perusal of the facts and grounds mentioned above would reveal that the levy of the penalty consequent to illegal circular dated 27.06.2009 by the then PSEB is ultra-vires and unsustainable in law, being in violation to the mandate of the Commission and accordingly demand in dispute is not tenable in the eyes of law. Therefore, the petitioner company be held entitled to refund of Rs.4,50,08,690/- along with interest.
- (ix) Petitioner NFL has made prayer, which is summarised as under:-
- a) To set aside PR Circular No.23/2009 dated 27.06.2009 and subsequent communications reducing the peak load exemption, being in violation to the order dated 27.05.2009 passed by the

- Commission in Petition No.7 of 2009 and also Review Petition No.12 of 2009, decided along with petition No.3 of 2010 vide order dated 30.04.2010;
- b) To quash original letter/ bill dated 05.02.2010 vide which payment of Rs.4,56,92,364 has been raised towards penalty for peak load violation along with subsequent letters/ bill dated 02.02.2015, 04.11.2015 and 21.04.2016, vide which demand of Rs.9,00,17,381/- has been raised, which included interest of the intervening period and for refund of Rs.4,50,08,690/- along with interest deposited by the petitioner company under protest;
- c) For taking appropriate penal action against the PSPCL and its officials for raising impugned demand of Rs.9,25,48,775/- along with interest for the intervening period on account of penalty towards peak load violation charges by setting aside the aforesaid illegal demands and for strict implementation of direction given by the Commission vide order dated 27.05.2009 passed in Petition No.7 of 2009, order dated 30.04.2010 passed in petition No.12 of 2009 and petition No.3 of 2010;
- d) To stay the operation of letter dated 21.04.2016 vide which the demand for balance amount of Rs.4,75,40,084/- has been raised by the respondent Corporation, during the pendency of instant petition.

4. In compliance to order dated 12.05.2016, the respondent PSPCL filed its reply vide CEARR&TR Memo No.5998/TR-5/782 dated 10.06.2016, and made submissions, which are summarized as below:-
- a) That during the onset of paddy season in 2009, due to less monsoon, PSPCL had to apply stringent regulatory measures during the period from 27.06.2009 to 08.10.2010 vide PR Circular No.23/2009, which were further got noted from the petitioner NFL. M/s NFL have violated the above said instructions and as such, was advised to deposit the charges levied for violation of the peak load instructions. M/s NFL raised the matter to waive off the penalty before the management, which was not accepted. M/s NFL filed the cases before the CGRF and subsequently with Ombudsman, which were decided against the petitioner;
 - b) That PSPCL has agreed that M/s NFL got the recommendations from Industrial Advisor cum Additional Director of Industries for continuous power supply and M/s NFL is enjoying the same till today;
 - c) That M/s NFL was not granted any special status vide PR Circular No.12/98 dated 3.8.1998;
 - d) That in Order dated 27.05.2009 in petition No.7 of 2009, under Point No.6, it has been stated that “the commission notes that there is a clear mismatch between availability of power from all sources and likely unrestricted demand for power in the State. The Board being deficit in power is

unable to effect uninterrupted supply to its consumers. In the circumstances, it has become necessary for the Board to impose Peak Load Hour Restrictions on industry, restrict supply of power to AP consumers and impose power cuts or regulate energy consumption of other categories of consumers. The Commission accordingly authorizes the Board to impose such restrictions, powers cuts and other regulatory measures to bridge the gap between demand and supply of power. Such measures shall, however, be taken only to the minimum extent to ensure least disturbance, dislocation and inconvenience to consumers and the general public while keeping in view the requirements of Grid stability and security". This observation of the Commission as contained in the order of petition has not been taken into consideration by M/s NFL. M/s NFL is ignoring PR circular no.6/2010 dated 31.05.2010 which was the outcome of petition nos'. 7/2009/, 12/2009 and 3/2010.

- e) That the respondent PSPCL is in agreement that the Commission communicated to PSPCL to continue peak load exemptions to all consumers who have been availing the same in the past vide letter dated 11.06.2009, but the PR Circular No.23/2009 was issued on 27.06.2009 much beyond the said date. The Circular No.6/2010 dated 31.05.2010 is in accordance with the outcome of Review Petition no.12/2009 and Petition no. 3/2010 and in accordance with the same, the Central Sector NFL and

PSU were exempted from all peak load restrictions and the circular is applicable from 31.05.2010;

- f) That there is no point of disregard to the orders of the Commission dated 27.05.2009, as all the regulatory measures were imposed by PSPCL in emergency to save the Grid from failure and PSPCL has been emphasizing to NFL for depositing the disputed amount;
- g) That PSPCL nowhere allowed NFL to operate full load in violation of PR Circular No.23/2009 during disputed period and was never exempted from peak load restrictions after PR Circular No.12/98 dated 3.8.98 till issuance of PR Circular No.6/2010 dated 31.5.2010.
- h) That NFL was given notice for payment of Rs.4,45,92,364/- towards penalty for peak load violations for the period from 28.6.2009 to 8.10.2009 and bill for the said amount was issued on 2.2.2015;
- i) That in petition No.7 of 2009, the Commission has directed the Power Corporation to draft transparent policy of PLH restrictions and Board submitted the policy which basically came out in the form of PR Circular No.6/2010 dated 31.5.2010, which is well beyond the disputed period (6/2009 to 10/2009);
- j) That point No.4(XI) of petition No.3 of 2010 stated that "Referring to powercom proposed policy on PLH exemptions, some objectors have contended that continuous process industries and central PSUs etc. should not be subjected to any further restrictions that

may need to be imposed.” It means these issues on PLH exemption of PSU and continuous process plant came on record through petition No.3 of 2010;

- k) That PSPCL agrees that the petitioner company is availing the peak load exemptions after getting the permission from PSPCL by making payment of peak load charges;
- l) In Petition No.9 of 2010, the Commission has asked from PSPCL to give the reasons for not getting the approval before issuing Circular No.44/2009 and has also agreed that Urea manufactured by NFL has been declared essential commodity under Essential Commodities Act and has a continuous process industry;
- m) NFL availed peak load exemptions vide letters dated 31.10.2002 and 9.7.2003.

PSPCL prayed that NFL should deposit the disputed amount with interest.

- 5. The petitioner submitted rejoinder to the written statement of the respondent PSPCL on 01.07.2016 and made submissions, which, in fact, are reiteration of the averments made in the petition, except following, summarized as below:-

- i) That the respondent corporation made a specific submission which was noticed in para-5 of the order dated 27.05.2009 of the Commission and the same reads as under:-

“it was also clarified that there is no proposal to withdraw peak load exemption in the case of continuous process and other essential industries.”

- ii) That the respondent corporation has only categorized public sector undertaking including petitioner company for the purpose of peak load hour restrictions. Suffice it to submit that the petitioner company has been enjoying peak load exemptions by payment of peak load exemption charges since 1992;
 - iii) That the petitioner company has been availing peak load exemptions on payment of peak load charges, which is fully reflected in the bills issued by the respondent corporation before and after disputed period;
 - iv) That the copy of memorandum prepared by the Chief Engineer/OP (South), Patiala containing clear recommendation for waiving off the penalty imposed on the petitioner NFL for PLH restrictions for the period from 29.06.2009 to 08.10.2009 stands annexed by the petitioner.
6. After hearing the arguments of the Learned Counsel for the petitioner at length and the Officers of the PSPCL, the hearing was closed and the order reserved vide Order dated 18.08.2016.
7. **FINDINGS AND DECISION:**
- a) The Commission has gone through the submissions made by the petitioner, reply submitted by the PSPCL

and rejoinder given by the petitioner. The main issues raised by the petitioner in the petition are as under :-

- (i) Set aside PR Circular No.23/2009 dated 27.06.2009 and subsequent communications/series of telephonic messages being in violation of the Order dated 27.05.2009 passed by the Commission in Petition No.7 of 2009 and also Review Petition No. 12 of 2009 which was decided along with Petition No.3 of 2010 vide order dated 30.04.2010;
 - (ii) To quash original letter / bill dated 05.02.2010 vide which demand of Rs.4,45,92,364/- has been raised towards penalty for peak load violation along with subsequent letters/bills dated 02.02.2015, 04.11.2015 and 21.04.2016 and for refund of Rs.4,50,08,690/- along with interest deposited by the Petitioner Company under protest with the respondent Corporation;
 - (iii) To take appropriate penal action against PSPCL (erstwhile PSEB) and its officials for raising impugned demand of Rs.9,25,48,775/-, along with interest of intervening period on account of penalty towards peak load violation charges.
- b) The Commission in its Order dated 27.05.2009 in Petition No.7 of 2009 under para 6(iv) ordered as under:-
- “The Board will not withdraw peak load exemptions where already granted while imposing power restrictions during peak load hours. It will also review its own policy*

regarding grant of such exemptions and seek the approval of the Commission for the same”.

It is very much clear that erstwhile PSEB (Board) was ordered not to withdraw peak load exemptions where already granted while imposing power restrictions during peak load hours. Further, vide letter no.1622-23 dated 11.06.2009 , the Commission again clarified to Chief Engineer/ARR&TR, with copy to Chief Engineer/ SO&C that peak load exemptions to all consumers who had been availing the same in the past is to be continued.

- c) Para 2 of PR Circular No.23/2009 dated 27.06.2009 issued by the erstwhile Board reads as under :-

“Peak Load Exemption allowed to Category-IV Continuous Process LS consumers and L.S. consumers feeding from category-II and III feeders are hereby reduced to the extent of 50% allowed to them by this office or by SE/DS concerned w.e.f. 28.06.2009”.

The Board withdrew Peak Load Exemption allowed to NFL to the extent of 50% vide the above mentioned PR Circular No.23/2009. This was in clear violation of the order of the Commission dated 27.05.2009 wherein it was ordered that peak load exemptions where already granted while imposing power restrictions during peak load hours will not be withdrawn. Also, no approval of the same was taken by the Board before issuing Circular No.23/2009, and even post facto approval from the Commission was not sought by the erstwhile Board/PSPCL.

- d) PSEB filed Review Petition in case of Order in Petition No.7 of 2009, which was decided along with Petition No. 3 of 2010, vide Commission's Order dated 30.04.2010. Para 3 of Annexure II, of the ibid order reads as under:-

"3. Curtailment of PLH Exemptions:

There will be no curtailment in exemptions or enhancement of peak load restrictions in the case of any of the categories at 1 above. Situations of emergent power shortage will be met by imposition of rotational power cuts on other categories of consumers. Any increase in PLH restrictions will be effected only with the prior approval of the Commission".

The Order dated 30.04.2010 of the Commission is in line with the earlier Order dated 27.05.2009 in Petition No.7 of 2009 and the main idea behind both the Orders on this issue is same i.e. not to withdraw to any extent the peak load exemptions already granted. Further, no stay was granted by the Commission during the pendency of the Review Petition and the erstwhile Board was duty bound to implement the Order of the Commission.

- e) PSPCL in its reply to the Petition submitted that 50% withdrawal of peak load exemption granted to NFL was imposed as per Order of the Commission in Petition No.7 of 2009. Para 6 of the ibid Order has been re-produced by PSPCL as under :-

"The Commission notes that there is a clear mismatch between availability of power from all sources and likely

unrestricted demand for power in the State. The Board being deficit in power is unable to effect uninterrupted supply to its consumers. In the circumstances, it has become necessary for the Board to impose Peak Load Hour Restrictions on industry, restrict supply of power to AP consumers and impose power cuts or regulated energy consumption of other categories of consumers. The Commission accordingly authorizes the Board to impose such restrictions, power cuts and other regulatory measures to bridge the gap between demand and supply of power. Such measures shall, however, be taken only to the minimum extent to ensure least disturbance, dislocation and inconvenience to consumers and the general public while keeping in view the requirements of Grid stability and security”.

PSPCL has only reproduced the beginning lines of para 6 of the Order dated 27.05.2009 in Petition No.7 of 2009 . Para 6 of this Order should be read in toto. The Commission has clearly mentioned in this para that the approval granted in this respect was subject to observations (as contained in the Order dated 27.05.2009). The observation at sub-para (vi) of this para specifies that the Board will not withdraw peak load exemptions where already granted while imposing power restrictions during peak load hours. If it was altogether necessary to impose such power restrictions, then the

erstwhile Board could have taken prior/post facto approval of the Commission, which it did not.

- f) The Commission further observed that NFL is a Central Government Undertaking under the Ministry of Fertilizers & Chemicals, manufacturing Urea, which has been declared essential commodity under the Essential Commodities Act, 1955. The Fertilizer Plant has to run during peak load hour restrictions, upto 100% peak load exemptions granted, so that the country's requirement for fertilizer required for the Nation's food security is not jeopardized.
- g) The Petitioner made a number of representations, wherein NFL high-lighted and explained the reasons for running the plant upto 100% peak load exemption limit granted by the erstwhile Board. It was mentioned in its representations to the erstwhile Board that if 50% withdrawal on peak load exemptions is imposed, then their Urea Plant would have to be shut down, thereby stopping the production of Urea. There would be a loss of Urea production upto 1500 MT per day for the States of Punjab, Haryana and J&K, and that would lead to shortage of Urea and foodgrains in these States. The erstwhile Board did not bother to respond to the representations of the petitioner.
- h) In view of the above, the Commission finds merit in the Petition and hence allows the Petition filed by NFL and decides as under :-

- (i) PR Circular No. 23/2009 dated 27.06.2009 is set aside, to the above extent, along with subsequent communications/series of telephonic messages and circulars. The original letter/bill dated 05.02.2010 vide which demand for Rs.4,45,92,364/- was raised towards penalty for Peak Load Violations along with subsequent letters/bills dated 02.02.2015, 04.11.2015 and 21.04.2016 are also set aside;
- (ii) To refund the total amount deposited by the Petitioner. The interest on this amount is not payable to the Petitioner as the delay is on the part of the Petitioner in approaching the appropriate judicial authority i.e. the Commission, as the Petitioner earlier pleaded its case before judicial bodies/authorities, under whose jurisdiction this matter did not fall. The Petitioner approached the Commission after Ombudsman in its Order dated 08.03.2016 in Appeal No 61/2015 mentioned as under:-

“The declaration of any circular as legal or illegal is not under my jurisdiction, and is in the purview of PSERC, thus in case the Petitioner feels that PR circular no 23/2009 was illegal, he should have challenged its validity before the Appropriate Commission”

Further, the amounts were deposited by the petitioner for filing/approaching the CGRF and

Ombudsman, which were not the appropriate authorities to decide the matter.

- (iii) Further, the Commission finds that no cause of action arises for proceeding against the officers/officials of the erstwhile Board/PSPCL in this case.

The petition is disposed off accordingly.

Sd/-
(S.S. Sarna)
Member

Sd/-
(D.S. Bains)
Chairman

Chandigarh

Dated: 03.11.2016