

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
PLOT NO. 3, MADHYA MARG, SECTOR 18-A, CHANDIGARH

Review Petition No. 02 of 2023
in Petition No.48 of 2022
Date of Hearing: 31.05.2023

Petition for Review as per PSERC Conduct of Business Regulations and under Section 86(1)(c) of the Electricity Act, 2003 read with Section 39 of the Electricity Act, 2003 and Regulations 10, 13, 14, 15, 16, 23, 24, 25 and 45 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011 praying for review and recall of orders dated 10.01.2023, served on 12.01.2023, passed by the Commission and seeking appropriate directions;

AND

In the Matter of : Bhakra Beas Management Board, SLDC Complex, Industrial Area Phase-1, BBMB, Chandigarh, 16000, Through Director/Power Regulation.

.....Petitioner

Vs.

1. Punjab State Power Corporation Limited Through its Chief Engineer/PP&R, D-3 Shakti Vihar, PSPCL, Patiala-147001.
2. Punjab State Power Corporation Limited, Through its Chief Engineer/SLDC, Ablowal, PSTCL-Patiala-147004.

.....Respondents

Present: Sh. Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

BBMB: Sh. Amar Vivek, Advocate

PSPCL: Sh. Ajay Bansal, Dy.CE

PSTCL: Ms. Silky Rani Sr.Xen

ORDER

1. Bhakra Beas Management Board (BBMB) has filed the present Review petition to review the Order dated 10.01.2023 in Petition No. 48 of 2022 seeking waiver of the levy of Open Access (LTA) charges, Wheeling charges & SLDC charges for evacuation of power from proposed 10 MW Ground Mounted Solar Power Project (NRSE project) of BBMB at Talwara on distribution network of PSPCL in the interest of partner States and in public interest at large; or levy of Transmission & Wheeling charges @ 2% of the energy injected into the State Grid being NRSE project as per the provision under Regulations 25 of PSERC (Terms and Conditions for Intra-state Open Access) Regulations 2011 as amended from time to time.

2. The submissions of the review petitioner are as under:

2.1 The projects of BBMB were set up pursuant to the arrangement entered between erstwhile composite State of Punjab and State of Rajasthan. After Re-organization of composite State of Punjab on 01.11.1966, the successor states of Punjab viz. Punjab, Haryana and H.P. alongwith State of Rajasthan are the partner States of BBMB. The expenses for operation and maintenance of the BBMB projects are borne by all partner States in the proportions as per agreement entered into between the partner States who in turn enjoy the receipt/free supply of electricity generated from BBMB projects and the water supply discharge from various Dams of BBMB in the agreed ratio. BBMB is a statutory, autonomous body and is an 'Operation and Maintenance' organisation and does not have its own share capital. It is an interstate body with Punjab, Haryana, Rajasthan and Himachal Pradesh being the partner States. 'No tariff' is being charged from the partner states by the

BBMB, for apportionment of Energy amongst its Partner states. BBMB shares power amongst its partner states in the following proportion:-

Absolute % Share from BBMB Power Houses after Common Pool supplies & IW Consumption w.e.f 1.11.2011			
Beneficiary	Bhakra-Nangal Project	Dehar Power Plant	Pong Power Plant
RVPNL	15.22%	20.00%	58.50%
PSPCL	43.91%	41.44%	21.50%
HVPNL	31.80%	30.01%	15.57%
HPSEBL	06.10%	05.75%	02.98%
Electricity Deptt. UT Chandigarh	02.97%	02.80%	01.45%

2.2 The Ministry of Power, Government of India vide its letter dated 19.07.17 desired that all the offices under their control area should be made environment friendly - '100 % net zero buildings'. The net zero buildings would offset energy consumption and emissions in such buildings by onsite energy generation through renewable resources. As a contribution towards National Solar Mission, the Petitioner BBMB has launched steps by setting up '3375.90 kWp Roof Top Solar Power Plants' at various locations of BBMB. Further, the Petitioner intends to install more Roof-Top Solar Power Plants & Ground/ Floating Solar Power Plants at various Project stations and substations under the control of BBMB. Ministry of New & Renewable Energy, GOI vide reference no. 283/20/2019-GRID SOLAR dated 06.09.2019 has assigned BBMB with Solar Power Project target of 500 MW.

2.3 The Partner States including Punjab can consider solar power generated at various substations and project stations under the control of BBMB for fulfilment of their solar renewable purchase obligation (RPO) as set by their respective State Regulators.

2.4 BBMB, in its 231st & 233rd Board meetings held on 20.02.2019 & 20.12.2019 respectively, duly attended by the representatives of BBMB partner states including Punjab, decided that BBMB shall go ahead with

the tendering process and comprehensive proposal including rates, financial implications, viability and feasibility for setting up of Ground Mounted and Floating Solar Power Plant. Accordingly, BBMB initiated the process of the installation of 15 MW Floating Solar Power Plant at Nangal Pond & 18 MW Ground mounted Solar Power Plants at various locations in Talwara & Nangal. PEDA was assigned to carry out the pre-feasibility study for installation of Ground Mounted Solar Power Plant at Pong Dam, Talwara and Nangal sites. After the feasibility study PEDA submitted that 18 MW Ground Mounted Solar Power Plant is feasible as per details below: -

S. No.	Location	Proposed evacuation of power
1.	2MW Ground Mounted Solar Power Plant at Village Neilla, Bhakra Dam, Distt. Bilaspur, Himachal Pradesh	At 11kV BBMB transmission line, which is approximately 500 mtrs through Solid Tap
2.	2MW Ground Mounted Solar Power Plant near bypass tunnel T1-T2 Pong Dam, Himachal Pradesh.	At 11kV BBMB 66/11kV switchyard which is approximately 2kM away.
3.	4MW Ground Mounted Solar Power Plant at Counter Toe Weight Land, Pong Dam, BBMB, Himachal Pradesh	At 11kV BBMB 66/11kV switchyard which is approx.. 300mtr.
4.	10MW Ground Mounted Solar Power Plant opposite Sector 3 GT Road, Talwara-Mukerian Road & Land adjoining to office of Chief Engineer Beas Dam, Talwara, Punjab	At 66kV PSPCL substation Talwara which is approx. 1.5kM away.

2.5 The evacuation of power on 66kV PSPCL substation, Talwara for 10 MW Ground Mounted Solar Power project is most feasible option. However Respondent PSTCL intimated that the charges for use of transmission & distribution system & SLDC charges shall be applicable, although it has been figured out that the injection point (66 KV PSPCL substation) and drawl point (66 KV Pong Switchyard of BBMB) are connected through Single 66 KV Distribution line of PSPCL (66 KV Talwara-Pong line) which is not a part of STU (PSTCL) network. It does

not fall within the purview of LTA charges etc. of PSTCL, as no Transmission network whatsoever of PSTCL is involved in the process. As such no charges whatsoever are payable to PSTCL.

2.6 Matter regarding waiver off Open Access (LTA) Charges & SLDC Charges has been taken up with PSPCL which intimated that they are bound by the Commission's Regulations and accordingly, PSPCL cannot waive off the said charges unilaterally. The proposed solar power plant shall be installed and maintained by Solar Power Developer (SPD) on Build Own Operate (BOO) basis through tariff derived after competitive bidding (carried out by PEDDA) for 25 years after the approval of BBMB's Board. BBMB Board in its 242nd Meeting held on 15.07.2022 approved to place an order on M/s SJVN Limited (SPD) to setup 10 MW Grid Connected Ground Mounted Solar Power Plant subject to waiver of LTA, Wheeling charges & SLDC charges by PSPCL/PSTCL. SJVNL shall develop the project on BOO basis and delivery point will be the SPD Power Plant substation gantry and power so generated shall be apportioned to the partner states including Punjab in the agreed ratio which is not for any commercial use. All charges beyond delivery point for construction of line and evacuation of power to partner States will be borne by BBMB /partner states. The discovered tariff of SJVNL (Rs. 2.63 /kWh) does not include any Transmission/Wheeling charges /losses for evacuation of power beyond delivery point. Thus, the argument of Respondents that the SPD has any commercial interest in transmission network, is not based upon correct appreciation of actual factual situation.

2.7 BBMB transmission system is not only used for evacuation of power from BBMB projects but additional outside power is also being transmitted through BBMB Transmission system to partner states/beneficiaries for which BBMB is not claiming any additional Transmission charges from them. BBMB is not operating its generating and transmission assets for any commercial use and in any case the SPD (Solar Project developer)

shall not be operating or using the transmission network of Respondents nor shall be paid any amount in lieu of distribution of power, which is beyond his scope of work.

2.8 Presently waiver of Inter-state transmission charges have also been allowed by MOP on the transmission of electricity generated from Solar & Wind Sources of Energy vide Order No. 23/12/2016-R%&R – Part(1)[239444] dated 21.06.2021. The evacuation of small quantum of power from the proposed 10 MW Ground Mounted Solar Power Project (NRSE) through PSPCL distribution network is as such bound to be treated in a similar manner and no Open Access charges ought to be levied.

2.9 BBMB has earlier approached the Commission under Regulation 45, sought removal of difficulties and invoked the powers of the Commission to waive off the levy of LTA and other charges. The Petitioner is aggrieved by the Order dated 10.01.2023 and has filed a Review Petition before the Commission.

2.10 Under Regulation 12 of PSERC Open Access Regulations 2011, there are provisions for special consideration of certain entities. Under section 12(2), the existing generating company may continue to avail Open Access on the terms and conditions of the policy of the State Government or the agreement till the current validity of the policy / agreement. Thus, BBMB by virtue of regulation 12(2) is continuing to avail open access in terms of provisions of Re-organization Act. Once there is an ambit and scope for BBMB to avail open access for its existing hydro Power projects, on parity, the same treatment ought to be meted out to BBMB, in case of renewable sources of energy as well.

2.11 Under Regulation 12(3), there is a special provision directing the BBMB, for supplying electricity to person(s) in the State on behalf of its partner States (such as NFL) etc. as per the directions / instructions of Government of India, which it is continuing to supply on the existing terms

and conditions i.e. the provisions of Bhakra Nangal Agreement 1959 and Re-organization Act, as such NFL is not required to pay any surcharge or additional surcharge to BBMB. Once a clause mandating BBMB to continue to supply electricity on the existing terms and condition to NFL has been enacted similar provision could be enacted or scheme could be carved out for BBMB on parity, in view of the Special constitution of BBMB under the Punjab Re-Organisation Act 1966, granting it exemption from levy of Open access charges in case of generation of power from non-conventional sources of energy.

2.12 Similarly under clause (e) of Section 86, the Commission shall endeavour to promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. Such suitable measures shall include exemption of levy of charges upon BBMB, as the BBMB is already exempt from payment of any kind of charges on conventional sources of energy and it being one of the objects of State commission to promote renewable sources, by providing suitable measures, as such, under this provision the exemption from levy of any charges can be exempted upon BBMB. Under section 86(4), State commission shall, in discharge of its functions, be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3. National tariff policy has already proposed promotion of non-conventional sources of energy. The Commission has wide and sweeping powers under Regulation 45 for removal of difficulties. It is clearly laid in Reg 45 that if any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may by general or special order, direct the State Transmission Utility, State Load Dispatch Centre, licensees and the Open Access customers, to take such action, as may

appear to the Commission to be necessary or expedient for the purpose of removing difficulties. It would be seen that a cumulative effect of discussion as above, would lead to unmistakable conclusion that the Commission has wide and ample powers under Reg 45 to remove such difficulties by general or special order.

2.13 In Para 3 of its orders dated 10-01-2023, the Commission has wrongly noticed the objections of PSPCL, to the following effect, 'PSPCL submitted its reply to the petition stating that the proposed solar power project will be built / owned and operated by a third party and not by BBMB and therefore shall not be governed by Punjab Re- Organization Act, 1966. It is relevant to mention that as per provisions of Section 79 (3) (d) of PRA 1966, the Ministry of Power (MOP) vide letter dated 04.05.2020 has assigned BBMB with the work of setting up of Solar power plants of various types viz. Roof Top /Ground Mounted/Floating SPPs. The Commission may also take note of Para 24 of PSPCL reply to the Petition that the power generated from the said solar power project would also be used by the Partner States towards fulfilment of their Renewable Purchase Obligation and consequentially, benefit the Distribution Companies and the end-consumers of the respective states. It is relevant to note that subject to the provisions of the Electricity Act, 2003, the Commission while specifying the terms and conditions, may in light of the larger public interest take a view which is suitable and in the interest of the consumers, as specified under Section 61.

2.14 The Commission has wrongly noticed in Para 3, that, 'Therefore, the purpose of the said project would be entirely commercial and shall also be governed by the terms of agreement (Power Purchase Agreement) to be entered into with the ultimate procurers. This fact is absolutely incorrect. The 10 MW Grid Connected Ground Mounted Solar Power Plant shall be developed by SJVNL (SPD) and delivery point will be the SPD Power Plant substation gantry and power so generated shall be

apportioned to the partner states including Punjab in the agreed ratio which is not for any commercial use. All charges beyond delivery point for construction of line and evacuation of power to partner States will be borne by BBMB /partner states. The discovered tariff of SJVNL does not include any Transmission/Wheeling charges /losses for evacuation of power beyond delivery point.

2.15 This fact as above stands falsified by further recital in Para 3, that the power generated from the said solar power project would also be used by the partner states towards fulfilment of their renewable purchase obligation and consequently benefits the distribution companies and the end consumers of the respective states and the prayer made by BBMB may be considered in light of the benefits ultimately accruing to the consumers in the state of Punjab. In the final orders and discussions by the Commission, this important concession by PSPCL has not been noticed by the Commission, due to which there is an error apparent on face of record in the orders dated 10.01.2023.

2.16 The observations of the Commission in Para 6 have not correctly appreciated the provisions of Regulation 45 and the view point of APTEL thereon. The observation of the Commission that power to remove difficulty is exercisable only to give effect to the provisions of the Statute and not to make any departure is not correct keeping in view the detailed provisions of the Electricity Act and Regulations 2011. Hence, there is sufficient ground to review and recall the order dated 10.01.2023.

2.17 In Para 8, the Commission has correctly reproduced the cited precedent, but has wrongly denied the applicability thereof to the Petitioner, wherein it is observed, the Appellate Tribunal in the case of NTPC Ltd. Vs. Madhya Pradesh State Electricity Board reported in 2007 ELR (APTEL) 7, held that the power comprised in Regulation 13 of 2004 Tariff Regulations is essentially a 'power to relax'. In case, any Regulation causes hardship to a party or works injustice to him or application thereof

leads to unjust result, the Regulation can be relaxed. The exercise of power under Regulation 13 of 2004 Tariff Regulations is minimized by the requirement to record the reasons in writing by the Commission before any provision of the Regulations is relaxed. The Appellate Tribunal in the reported case clearly held that there is no doubt that the Commission has the power to relax any provision of the Regulations. Such power has to be exercised only in exceptional cases and where non-exercise of the discretion would cause hardship and injustice to a party or lead to unjust result. It would be seen that from a thorough discussion of aforesaid factual matrix, it would be evident beyond any doubt, that the Petitioner has made out a case for the Commission to exercise the power to relax any provision of the Regulations of 2011, in case of BBMB.

2.18 The final observations of the Commission to the effect, 'To do so would result in providing exceptional concessions beyond the law and regulations to one entity and thereby also create an avoidable precedent' deserve to be reviewed and recalled in the light of detailed discussions and various provisions as above. There is every justification to invoke the power of the Commission under Regulation 45 of the PSERC Open Access Regulations 2011, and the prayers of the petitioner deserve to be allowed accordingly.

2.19 In line with the GOI Electricity Policy, to promote the renewable Energy in the State of Punjab PSERC (Terms and Conditions for Intra-state Open Access) Regulations 2011 as amended from time to time provides that in case of wheeling of power generated from New & Renewable Source of Energy (NRSE) projects for consumption within the State, Transmission & wheeling charges shall be levied @ 2% of the energy injected into the State Grid, irrespective of the distance i.e. additional 2 % of the total energy shall be injected at Injection point(s). Further, the proposed 10 MW Solar power project (NRSE) of BBMB will be set up at Talwara in the State of Punjab and power shall be evacuated

through PSPCL line i.e. 66 KV Talwara - Pong line (about 12 Km) having injection point at 66 KV PSPCL Talwara Substation and drawl point at 66 KV Pong Switch yard BBMB. The distribution system from injection point to drawl point is of PSPCL. As such Transmission & wheeling charges be levied @ 2% of the energy injected into the State Grid as per the provision under Regulations 25 of PSERC (Terms and Conditions for Intra-state Open Access) Regulations 2011 as amended from time to time.

2.20 In case BBMB constructs its own transmission line from Talwara to Pong (BBMB Station) for evacuation of power from 10 MW Ground Mounted Solar Power project at Talwara the tentative cost comes out to be Rs 10.37 Crores for a line length of about 12 km. This expenditure on construction of line and recurring expenditure on maintenance of this line shall ultimately be apportioned to the partner states of BBMB in the agreed ratio including Punjab. This will be the suboptimal solution as construction of new transmission line may impact the environment and also return on investment will not be effective. This will ultimately be additional burden on the State of Punjab and its end consumers.

2.21 Presently waiver of Inter-state transmission charges have also been allowed by MOP on the transmission of electricity generated from Solar & Wind Sources of Energy in respect of projects commissioned up to June 2025. The Commission may also consider waiver of these charges for transmission/wheeling of electricity generated from Solar on Intra State network/distribution network of State in the interest of Nation.

2.22 The entire Power generated from proposed 18 MW Ground Mounted Solar Power Project Talwara will be consumed locally within the Punjab through its own distribution network of 66 KV, which may reduce its drawl from the Central Sector Power through the ISTS system, It may result in lesser Transmission charges and losses to Punjab for usage of ISTS system under CERC (Sharing of Inter State Transmission Charges

and Losses) Regulations, 2020. This will result in optimum utilization of the corridor.

2.23 Because, the Petitioner Board works in public interest for its partner states and in its service to the nation being a non-profiteering body, any such excessive levies will result in the entire working being unviable or the Petitioner may have to opt for sub-optimal solutions to evacuate the power from proposed solar power plants which will be recurring loss to the Petitioner's partner states for all times to come as any expenditure on the evacuation of power shall also be apportioned amongst the partner states in the agreed ratio.

2.24 BBMB has prayed to the Commission to exercise its powers under Regulation 45 of the PSERC (Terms and Conditions for Intra-state Open Access) Regulations, 2011 and to:

- (a) Review its orders dated 10.01.2023 in the interest of justice and direct Respondent to waive off the levy of Open Access (LTA) charges, Wheeling charges & SLDC charges for evacuation of power from proposed 10 MW Ground Mounted Solar Power Project (NRSE) of BBMB at Talwara on distribution network of PSPCL in the interest of partner States and in public interest at large;
- (b) And or in the alternative, as the distribution system from injection point to drawl point for evacuation of power from proposed 10 MW Solar Power project of BBMB (NRSE project) is of PSPCL and the drawl point and injection point is connected through Single 66 KV Distribution line of PSPCL. Accordingly, Transmission & Wheeling charges be levied @ 2% of the energy injected into the State Grid as per the provision under Regulations 25 of PSERC (Terms and Conditions for Intra-state Open Access) Regulations 2011 as amended from time to time.

- (c) Pass such further order or orders as the Commission may deem just and proper in the circumstances of the case.

3. The Review Petition was taken up for hearing on admission on 28.04.2023. The Ld. Counsel for the Review Petitioner has addressed arguments at length. After hearing the parties, the Order was reserved vide interim Order dated 07.05.2023.

4. Observations and Decision of the Commission:

The Commission has gone through the submissions made in the review petition and arguments made during the hearing. The Commission observes and decides as under:

4.1 The Commission observes that Regulations 25 of PSERC (Terms and Conditions for Intra-state Open Access) Regulations 2011 specifies that:

“In case of wheeling of power generated from NRSE project for consumption within the State, transmission and wheeling charges shall be levied @ 2% of the energy injected into the State Grid, irrespective of the distance i.e. additional 2% of the total energy shall be injected at injection point(s). 10% of the average revenue realized by distribution licensee from such additional injection shall be passed on to the STU/Transmission licensee for compensating on account of transmission charges. In case of wheeling of power generated from NRSE project outside the state, full transmission and wheeling charges shall be leviable.”

The Commission notes the BBMB submission that the power shall be evacuated through PSPCL line i.e. 66 KV Talwara - Pong line (about 12 Km) having injection point at 66 KV PSPCL Talwara Substation and drawl point at 66 KV Pong Switch yard BBMB. BBMB has further submitted that the entire Power generated from the proposed Ground Mounted Solar Power Project Talwara will be consumed locally within the Punjab through its own distribution network of 66 KV, which may reduce its drawl from the Central Sector Power through the ISTS system. On the other hand, BBMB has also submitted that power generated from 10 MW Grid Connected Ground Mounted Solar Power Plant shall be apportioned to the partner states including Punjab in the agreed ratio which is

contradictory statement. The Commission observes that if BBMB submission is hypothetically accepted that the projects fall within purview of any of the provisions of the PSERC (Terms and Conditions for Intra-state Open Access) Regulations 2011 as amended from time to time, approval of the Commission for grant of open access is not required in such cases.

4.2 BBMB has also referred Regulation 12(2) and Regulation 12(3) for exemption from Open access Charges in the instant matter. However, the Commission observes that the Regulation 12 of PSERC Open Access Regulations has the provisions for consumers and generating companies availing Open access before enactment of the Open Access Regulations and as such, the current proposition of BBMB do not fall under the ambit of Regulation 12 of PSERC Open access Regulations.

4.3 Clause (1) of Regulation 64 of PSERC (Conduct of Business) Regulations, 2005 specifies as under:

*“64. Review of the decisions, directions and orders:-
Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decision/order was passed by the Commission or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision/order of the Commission.”*

Regulation 64(1) specifies the grounds on which review can be sought by a person aggrieved by the decision or the Order of the Commission and the grounds are:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the person or could not be produced by him

at the time when the decision or order was passed by the Commission or

- (ii) Mistake or error apparent on the face of record or
- (iii) For any other sufficient reason.

Thus, the scope of an application for review is restricted and can be exercised only within the limits prescribed above. The grounds mentioned in regulation 64 (1) of Conduct of Business Regulations extracted above are akin to the powers of the Civil Court to review its order/decision under Section 114 CPC read with Order 47 rule 1 of the CPC, In Parsion Devi and Others vs. Sumitri Devi and others [1987 (8) SCC 715], it was held by Hon'ble Supreme Court that

“An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”.

The petitioner has produced no new and important matter which was not within its knowledge or could not be produced at the time when the decision or order was passed by the Commission. The review petitioner has only prayed to re-hear the matter on the same issues which were brought out in petition No. 48 of 2022 and against which the Commission had already passed an order dated 10.01.2023 except an alternative option which is already discussed in para 4.1 above. So the submissions of the petitioner do not fulfil the conditions for review as laid down in the Regulations and by the

Hon'ble Supreme Court in the decision mentioned ibid. In view of the above, the instant Review Petition does not merit admission and is accordingly dismissed.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: **31.05.2023**

