

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**  
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

**Petition No. 03 of 2023**  
**Date of Order: 09.08.2023**

Petition u/s 142 of the Electricity Act 2003 for wilful, deliberate and intentional disobedience of Orders dated 24.04.2017 (P-6) passed by this Hon'ble Commission in Petition No.4 of 2017 which is in continuation of orders dated 03.11.2016 passed by this Hon'ble Commission in petition No.36 of 2016 titled as National Fertilizers Ltd. Nangal Unit, Naya Nangal District Roop Nagar Vs. Punjab State Power Corporation Ltd. through its Chairman.

In the matter of: National Fertilizers Ltd. Nangal Unit, Naya Nangal District Roop Nagar through its Authorized Representative Sh. Johnson Oram, DGM (Electrical).

.....Petitioner

Versus

1. Punjab State Power Corporation Ltd., The Mall, Patiala through its Chairman.
2. Chief Engineer/ARR & TR, Shed No.F-4, Shakti Vihar, Punjab State Power Corporation Ltd., The Mall, Patiala.
3. Deputy. CE/OP. Circle, Punjab State Power Corporation Ltd., Ropar.

.....Respondents

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

NFL: Sh. Vipin Mahajan, Advocate  
Sh. Randeep Singh, Advocate

PSPCL: Ms. Harmohan Kaur, CE/ARR&TR  
Sh. Jiwan Kumar Jindal, Sr.Xen  
Sh. Harinderjit Singh, Addl.SE

**ORDER**

National Fertilizers Ltd. Nangal Unit, Naya Nangal has filed this Petition against PSPCL with a prayer that action be taken against

respondents under Section 142 of the Electricity Act, 2003 for willful, deliberate and intentional disobedience of order dated 24.04.2017 passed by the Commission in Petition No. 04 of 2017 which is in continuation of order dated 03.11.2016 in Petition No. 36 of 2016.

**1.1 The Submissions of National Fertilizers Ltd. are summarized as under:**

- i) PSPCL raised a bill of Rs. 4,45,92,364/- vide bill dated 02.02.2015 on account of Peak Load Penalty for the period 29.06.2009 to 08.10.2009, which was based on P.R. Circular No. 23/2009 dated 27.06.2009 issued by PSPCL without approval of the Commission.
- ii) Vide order dated 03.11.2016, the Commission had set aside P.R. Circular No. 23/2009 dated 27.06.2009 alongwith demand of Rs. 4,45,92,364/- raised by PSPCL towards penalty for Peak Load Violation. Further, the Commission had also directed PSPCL to refund said amount to the Petitioner. However, the interest on the said amount was denied to the Petitioner on the ground that there is a delay on part of the Petitioner in approaching the Commission.
- iii) Despite, issuance of representation dated 12.11.2016 and reminder dated 01.12.2016 to PSPCL for refund of Rs. 4,50,08,690/- to the Petitioner in compliance of order dated 03.11.2016 passed by the Commission, PSPCL did not refund the said amount, due to which the Petitioner served a legal notice dated 19.01.2017 on PSPCL for refund of said amount. In response, PSPCL vide letter dated 13.01.2017, informed the Petitioner that the legal notice dated 19.01.2017 has been sent to Deputy. CE/OP. Circle, PSPCL, Ropar (R-3) for implementation of the said order.
- iv) Thereafter, PSPCL filed Petition No. 04 of 2017 before the Commission under Section 23 of Electricity Act 2003 seeking post - facto approval of the

regulatory measures imposed in emergent Grid Operating conditions vide P.R. Circulation No. 23/2009 dated 27.06.2009 and subsequent communication/circulars issued for reducing peak load exemption during the year 2009-2010. The Commission vide order dated 24.04.2017 held that the petition was not maintainable as the issue had already been decided on merits vide order dated 03.11.2016 in Petition No. 36 of 2016. The Commission vide order dated 24.04.2017 in Petition No. 04 of 2017 further directed PSPCL to refund Rs. 4,50,08,690/- to NFL within 07 working days from the date of order i.e 24.04.2017 failing, which PSPCL shall be liable to pay penal interest to NFL @ 1.25% per month on pro-rata basis for each day delay beyond 07 working days.

v) PSPCL did not comply with the order dated 24.04.2017 passed by the Commission due to which NFL was constrained to file Petition No. 18 of 2017 under Section 142 of the Electricity Act 2003 before the Commission with a prayer that action be taken against PSPCL for contempt of order dated 03.11.2016 and 24.04.2017 passed by the Commission and to direct PSPCL to comply with a directions given by the Commission in these orders. PSPCL filed its reply wherein it informed the Commission that it had filed Appeal No. 215 of 2017 before Hon'ble APTEL. Hon'ble APTEL vide order dated 08.08.2017 stayed the impugned order passed by the Commission directing PSPCL to refund Rs. 4,45,92,364/- to PSPCL and vide order dated 16.10.2017, rejected the prayer of NFL for releasing the said amount in their favour. APTEL directed PSPCL to deposit the said amount with the Commission and further observed that the issue of whether NFL is entitled to the said amount or not would be decided when the appeal is finally heard.

vi) The Commission, as per directions of Hon'ble APTEL, invested the said amount in a short term fixed deposit in a Nationalized Bank. Petition No. 18 of 2017 was disposed of by the Commission vide order dated 30.05.2022 with a

liberty to the Petitioner to file a fresh petition after the decision of Appeal No. 215 of 2017 before APTEL.

vii) Appeal No. 215 of 2017 was dismissed by Hon'ble APTEL vide order dated 01.11.2022 whereby order dated 03.11.2016 passed by the Commission was upheld. Therefore, the petitioner, in terms of liberty given by the Commission in Petition No. 18 of 2017, has filed the present petition under Section 142 of the Electricity Act, 2003.

viii) Petitioner has submitted that since interest @1.25 per month on pro-rata basis for each day delay from 24.04.2017 was allowed to the Petitioner by the Commission, therefore, the Petitioner is also entitled to interest at the prevalent interest rate plus 2% penalty thereon from 03.11.2016 to 24.04.2017.

ix) Despite the lapse of more than 7 years after the explicit direction/order of the Commission, PSPCL has not yet refunded the amount due to the Petitioner. Therefore, the Petitioner is entitled for the refund of the said amount alongwith Penal interest @1.25% per month on pro-rata basis for each days delay beyond 7 working days, failing which PSPCL is liable to be prosecuted under Section 142 read with 146 of the Electricity Act 2003 and to pay penalty upto Rs. 1 lac as provided in the aforesaid sections. Even the appeal filed by PSPCL before Hon'ble APTEL has been decided in favour of the Petitioner.

2. The petition was admitted vide order dated 10.05.2023 and time was granted to the parties to file reply and rejoinder, if any.

3. **The Submissions of PSPCL are summarized as under:**

3.1 PSPCL has submitted that NFL had filed Petition No. 36 of 2016 before the Commission, which was allowed vide order dated 03.11.2016. The

Commission quashed P.R. Circular No. 23/2009 dated 27.06.2009 and bills raised on the basis of the said circular and directed PSPCL to refund the total amount deposited by NFL without interest. The interest on the amount deposited by Petitioner was held to be not payable as the Petitioner was responsible for the delay in approaching the Commission. The Petitioner had filed the petition before the Commission after approaching CGRF and Ombudsman, who had held that the matter was not under their preview. Learned Ombudsman, vide order dated 08.03.2016 in Appeal No. 61 of 2015 had held that “the declaration of any circular as legal or illegal is not under my jurisdiction and is in the preview 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 Commission also held that there was no cause of action for proceeding against the officials/officers of the erstwhile board/PSPCL.

3.2 The Commission, vide its order dated 24.04.2017 in Petition No. 04 of 2017, had directed PSPCL to refund the amount deposited by the Petitioner within 7 working days from the date of the order, failing which they shall be liable to pay penal interest to the Petitioner @ 1.25 per month on pro-rata basis for each day's delay beyond 7 working days.

3.3 Hon'ble APTEL vide interim order dated 08.08.2017 in IA No. 238 of 2017 in Appeal No. 215 of 2017 had directed PSPCL to deposit Rs. 4,45,92,364/- with the Commission, who in turn shall invest the said amount in a Nationalized Bank in a short term fixed deposit. Said fixed deposit shall be renewed and kept alive till the disposal of the appeal and said amount alongwith interest accrued thereon will be subject to the final order pass in the appeal. The impugned order passed by the Commission was stayed by Hon'ble APTEL to the extent that it directed PSPCL to refund Rs. 4,45,92,364/- to NFL. Further, Hon'ble APTEL made it clear that it had

expressed no opinion qua the direction to PSPCL by the Commission vide order dated 24.04.2017 to pay penal interest to NFL @ 1.25 per month on pro-rata basis for each day's delay beyond 7 working days and stated that if NFL (R-2) is entitled to the said interest then it may get the same if the matter is finally decided in its favour.

3.4 PSPCL has not disobeyed Order dated 24.04.2017 passed by the Commission in Petition No. 04 of 2017 because PSPCL had filed an Appeal No. 215 of 2017 on 21.02.2017 against the Order dated 03.11.2016 in Petition No. 36 of 2016, prior to the decision of Petition No. 04 of 2017 and had deposited Rs. 4,45,92,364/- with the Commission in compliance of Order dated 08.08.2017 passed by Hon'ble APTEL. Further, Hon'ble APTEL had also stayed the impugned Order passed by the Commission during the pendency of the Appeal to the extent that it directed the appellant to refund the said amount to NFL.

3.5 NFL has also prayed for grant of interest at the prevalent rate +2% penalty on the said amount from 03.11.2016 to 24.04.2017 but the same is not payable by PSPCL because no such order has been made by any appropriate judicial authority. Further, the Commission in Petition No. 36 of 2016 has held that the interest on the amount to be refunded to NFL is not payable to NFL as the delay is on the part of NFL in approaching the appropriate judicial authority i.e. the Commission. NFL had earlier pleaded its case before other authorities under whose jurisdiction the matter did not fall. Even the Ombudsman, vide its order dated 08.03.2016 in Appeal No. 61 of 2015, has mentioned that the declaration of any circular as legal or illegal is not under its jurisdiction and is in the purview of the Commission. Thus the validity of PR circular No. 23/2009 should have been challenged by NFL before the appropriate Commission.

3.6 The amount of Rs. 4,50,08,690/- has already been deposited by PSPCL with the Commission as per Order dated 08.08.2017 passed by Hon'ble APTEL in IA No. 218 of 2017 in Appeal No. 215 of 2017.

#### 4. **Observations and Decision of the Commission**

The Commission has examined the submissions made by National Fertilizers Ltd. in their petition, reply of PSPCL and information submitted by the parties during the course of hearings and has also heard the respective counsel for parties.

The Commission observes that the Hon'ble Appellate Tribunal for Electricity (APTEL) vide its order dated 01.11.2022 has rejected PSPCL's appeal filed against the Commission's Order dated 03.11.2016 in Petition No.36 of 2016 vide which the Commission had directed PSPCL to refund the total amount deposited by the petitioner.

Further, vide order dated 24.04.2017 in Petition No. 04 of 2017, the Commission had directed PSPCL to ensure implementation of the Commission's Order dated 03.11.2016 in Petition No.36 of 2016 within seven working days failing which PSPCL shall be liable to pay penal interest to the beneficiary at the rate of 1.25% per month on pro-rata basis for each day's delay beyond seven working days after the date of the order dated 24.04.2017.

The Commission notes that PSPCL has deposited a total amount of Rs. 4,50,08,690 (Rs. 4,45,92,364/- in August 2017 + Rs. 4,16,326/- in October 2017) with the Commission as per the Hon'ble APTEL's Order dated 08.08.2017 in IA No. 238 of 2017 and Order dated 16.10.2017 in IA No. 817 of 2017 in Appeal No. 215 of 2017.

In view of the above, the Commission decides as under:-

1. Registry of the Commission is directed to release the total amount of Rs. 4,50,08,690/- (Rs. 4,45,92,364 + Rs.4,16,326/-) deposited with the Commission to NFL along with interest accrued thereon through the deposit in bank FD's in which it was kept by the Commission in compliance of APTEL's order.
2. PSPCL to pay interest @ 1.25% per month on pro-rata basis for each day's delay beyond seven working days from 24.04.2017 till the dates of deposit of money with the Commission in two transfers in August and October 2017 as per the Commission's order dated 24.04.2017 pronounced in Petition No. 04 of 2017 i.e. interest on the full amount due till August 2017 when the first instalment of Rs. 4,45,92,364/- was deposited with PSERC as per APTEL's order and from August 2017 till October 2017 on the balance amount of Rs. 4,16,326/- till the date of its deposit.

**The petition is disposed of in view of the above observations and directions.**

Sd/-  
(Paramjeet Singh)  
Member

Sd/-  
(Viswajeet Khanna)  
Chairperson

Chandigarh  
Dated: **09.08.2023**