

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**

SITE NO. 3, BLOCK B, SECTOR 18-A, MADHYA MARG, CHANDIGARH

**Petition No.13 of 2023**  
**Date of Order: 31.05.2023**

Petition for clarification regarding applicability of PIU and consequential UUE charges to the Petitioner under the definition of electrolytic industry for carrying out the anodizing process as a small part of its total production under regulation 68, 69, 70, 71 and 72 and other relevant provisions of Chapter XIII of the Conduct of Business Regulations 2005 as amended up to date, Regulations 44, 45 and 46 of Supply Code 2014 as amended up to date and other relevant provisions of the Electricity Act, 2003, especially in light of the final order dated 26.06.2019 passed by this Hon'ble Commission in Petition no. 49 of 2017 titled as M/s Singhanian International Ltd., C-25, Ph- 1, Focal Point, Ludhiana versus Punjab State Power Corporation Limited (PSPCL), Patiala and interim order dated 23.08.2022 in Petition no. 62 of 2021 for clarification regarding applicability of PIU tariff to Electroplating Industries and some other type of industries.

AND

In the matter of: M/s Hawkins Cookers Limited having its factory at Phagwara Road, Hoshiarpur, Punjab-146001, through its Authorized Representative Sh. Rajesh Sharma.

Petitioner

Vs.

1. Punjab State Power Corporation Ltd., The Mall, Patiala through its Chairman. & Anr.
2. Deputy Chief Engineer/Distribution Circle, PSPCL, Hoshiarpur, Punjab.

Respondents

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

M/s Hawkins

Cookers: Sh. Aditya Grover, Advocate

PSPCL: Sh. Ajay Bansal, Dy/CE

Sh. J.K Jindal, Sr.Xen

## Order

1. The petitioner, M/s Hawkins Cookers Limited, has filed the present petition seeking clarification regarding applicability of PIU and consequential UUE charges to the Petitioner under the definition of electrolytic industry for carrying out the anodizing process as a small part of its total production under regulation 68, 69, 70, 71 and 72 and other relevant provisions of Chapter XIII of the Conduct of Business Regulations 2005 as amended up to date, Regulations 44, 45 and 46 of Supply Code 2014 as amended up to date and other relevant provisions of the Electricity Act, 2003, especially in light of the final order dated 26.06.2019 passed by the Commission in Petition No. 49 of 2017 titled as M/s Singhania International Ltd. versus PSPCL and interim order dated 23.08.2022 in Petition no. 62 of 2021 for clarification regarding applicability of PIU tariff to Electroplating Industries and some other type of industries.

The submissions of the petitioner are as under

1.1 The factory of the Petitioner at Phagwara Road, Hoshiarpur has been granted a permanent electricity connection vide Account No. 3000855129, having a sanctioned load of 1440 KW under LS General Category by PSPCL. The Petitioner has been duly and legitimately drawing electricity from the said connection since 1976 from PSPCL/PSEB. PSPCL officers visited the petitioner premises on 21.01.2022, at time of seeking increase in the existing Electricity load in May 2021. During inspection, PSPCL did not raise any

objection with regard to any kind of unauthorized use of electricity. However, on 25.01.2022, persons of PSPCL not authorised by the Commission carried out another purported inspection and alleged an unauthorized use of electricity by the Petitioner.

- 1.2 PSPCL requires a Competent Authority to carry out the inspection as prescribed in Annexure – 9 of the PSERC (Electricity Supply Code and Related Matters) Regulations, 2014. Further, the Inspecting person is mandated upon to provide the inspection report at site. However, PSPCL failed to observe the requirements mandated by the Commission. Additionally, the aforesaid inspection report was tempered after obtaining the signature of the representative of the Petitioner.
- 1.3 Immediately, after receiving provisional Assessment Order dated 28.01.2022, on 31.01.2022, vide communication dated 07.02.2022, the petitioner raised an objection to the Assistant Executive Engineer, PSPCL, Sub Division, Hoshiarpur. The Petitioner disputed the levy of UUE charges by way of detailed submissions. Eventually the final assessment order dated 03.03.2022 was passed and delivered to the petitioner on 04.03.2022.
- 1.4 Assessing Authority passed the impugned final Assessment Order dated 03.03.2022 after the stipulated period of 30 days of the Provisional Assessment mandated by the PSERC. Further, the said unlawful Order was passed in a most mechanical manner, without proper application of mind on the submissions and the objections put forth by the Petitioner while wrongly holding that a case of UUE is made out against the Petitioner.
- 1.5 The petitioner filed an appeal before the Appellate Authority, PSTCL, Patiala under Section 127 of the Electricity Act-2003 on

01.04.2022, in pursuance of its legal remedies available to the petitioner as per the applicable laws.

- 1.6 The appeal filed by the Petitioner stood decided vide order dated 13.07.2022, whereby the Ld. Appellate Authority decided that the Assessing officer should reassess the UUE amount considering the 1225 kw load of rectifiers as PIU instead of 1901 kw and revised assessment Order be issued to the appellant within 15 days from the issue of this order. The appellant should deposit the revised assessment.
- 1.7 Vide the revised assessment dated 22.07.2022, the demand stood reduced to Rs. 1,92,09,973/- in compliance of the Order dated 13.07.2022 passed by the Ld. Appellate Authority, whereby the load of rectifiers as PIU was considered as 1225 kw instead of 1901 kw. The amount was paid on 18.08.2022 after adjusting Rs. 1,48,20,000/- paid on 01.04.2022 for filing appeal and submitted A & A form for regularisation of PIU on 22.08.2022. Petitioner was not allowed to submit A & A form earlier on the pretext of outstanding dues.
- 1.8 Another demand of Rs. 85,36,064/- was raised vide Memo No. 2736 dated 30.09.2022 for the period 25.01.2022 to 23.08.2022 on account of UUE. Vide letters dated 13.10.2022 and 21.10.2022, PSPCL went to an extent of threatening the Petitioner to cut off power supply if the alleged demand is not paid. That petitioner paid this additional demand of Rs. 85,36,064/- on 31.10.2022. The Petitioner's A & A form got approved on 21.11.2022 after three months of submission.
- 1.9 In the meantime, the approval for enhancement of load, vide RID 2107947880 dated 13.08.2021 from 1600 KVA to 3200 KVA after two extensions of three months each became infructuous and the

payment of fees to the extent of Rs. 4,00,000/- approximately deposited by the petitioner was wasted without any fault of the petitioner.

1.10 The Petitioner since inception of issue, has inter-alia raised the following grounds:

A. The entire anodizing process of the Petitioner is an in-house operation and is captively used and thus cannot be classified as an Anodizing Process Industry to fall under PIU. The Petitioner does not provide any Anodizing Service to any outsider.

B. That the present matter of the Petitioner does not fall under any category provided under section 126 (6) (b) of the Electricity Act, 2003. Regulation 36.1.7 of the Supply Code, 2014 states that the Provisional Assessment Order shall specify the provision of Act or Regulation under which the case of UUE has been made out. However, in the present case, the Provisional Assessment Order as well as the Final Assessment Order are silent on the issue. As per the settled canons of law once the very initiation of the proceedings are bad, the entire proceedings stand vitiated.

C. That communication dated 03.02.2021, on the basis of which the Provisional Order has been passed, is a Draft Notice. The Petitioner has never received any final/formal notice on the issue. Until a proper notice is issued to the Appellant, the requirement of the provisions to serve one-month prior notice in case of change of tariff condition, has not been fulfilled and the entire proceedings based upon the said draft notice stands vitiated.

- D. A perusal of the above draft notice would classify the Electrolytic Process Industries as Power Intensive Units. The Petitioner does not fall under the category of an Electrolytic Process Industry. The Petitioner is not an Electrolytic Process Industry, rather the Petitioner is running a light mechanical metal fabrication industry making Pressure Cookers and its Components. Anodized Pressure Cookers are a small portion (about 20%) of the entire Pressure Cookers manufacturing process. Even in the case anodizing is presumed to be an electrolytic process, the same does not classify the Petitioner in the category of an Electrolytic Process Industry.
- E. A perusal of the draft notice dated 03.02.2021 goes to show that the industries exclusively carrying out Electrolytic Process shall be covered under the PIU category such as Industries into the business of Electroplating, Galvanizing, Roofing Sheets, extraction of metals from Ore. Apparently, the stipulations contained therein are not meant for Light mechanical industries which use anodizing as a part of their in-house manufacturing process, which can be clarified from the intent of the draft notice itself, as the Commission intended not to include all industries partially using a part of anodizing or electrolysis in the entire product manufacturing process. Had it been so, the language used would have been *“Industries with any electrolytic process”* and not *“Electrolytic Process Industries”*.
- F. Assuming but not admitting that the Petitioner’s use would fall under PIU the proportion of PIU should be calculated on the basis of actual consumption and not on the basis of connected loads of rectifiers.

- G. Clause 36.1.3 of the Supply Code, 2014 framed by the Commission with regard to UUE, enunciates as follows: “.... provided that also that any consumer paying electricity charges for higher tariff for permanent category but found using it for lower permanent tariff category (except for agriculture use) such case shall not be considered as unauthorised use of electricity.”

The Petitioner has already paid higher tariff to PSPCL under the large supply general industry category and once a higher category tariff has been paid by the Petitioner, in no eventuality a case under UUE can be made out against the Petitioner. The Provisional as well as the Final Assessment Orders have been ascertained the Petitioner industry to be of a mixed load in the tariff category of large supply PIU – above 100 and up to 1000 KVA. The balance non- PIU part (1600 minus 960 PIU) has been ascertained to come under tariff category of large supply- general industry- above 100 and up to 1000 KVA. The Petitioner in the present case has paid more than the tariff calculated under the presumed category of mixed load. Once a higher tariff has been paid by the Petitioner, in no eventuality a case under UUE can be made against Petitioner and as such holding the present case of the Petitioner to fall under UUE is totally illegal, unjust and unsustainable in the eyes of law.

- H. The tariff Order for the FY 2021-22 at para Sl.3.6 categorically provides that,

*“.... for industries where the load is of mixed nature, i.e. in addition to General Industrial loads, Arc/ Power Intensive loads are also running, Fixed and Energy Charges shall be determined by computing the Maximum Demand and energy consumption for the billing month on pro-rata basis in proportion to such demands sanctioned by the distribution licensee and applicable tariff (Fixed Charge and Energy*

*Charge) shall be as specified against the corresponding demand slab (without clubbing of Arc/Power Intensive and general load) under the relevant schedule of tariff. Provided that the total charges payable by such Mixed Industry consumer shall not be less than the charges payable in case this total load (General and PIU) is considered as the general load.”*

- I. The application submitted by the Petitioner categorically indicated the use of rectifiers for anodizing in the list of equipment for connected load. Therefore, it is wrong to allege that the electricity was used for the purpose other than for which the usage of electricity was authorised.
- J. The Commission in Petition No 49 of 2017 titled as M/s Singhania International Ltd versus PSPCL, Patiala vide order dated 26.06.2019 has directed PSPCL not to charge any industry as PIU which is not included in the list of declared PIU industries. However, as the technology is changing fast, there may be some new/existing Large Supply Industrial connection applicants/ consumers whose process/technology may be similar to PIU but with a different name than that declared as PIU by the Commission. Licensee may file petition with the Commission to include such processes under PIU category. Such industries shall be charged general tariff with the undertaking from the applicant that it will be charged applicable tariff from the date of release of connection / extension in load as per the decision of the Commission in this regard.
- K. Once the anodizing process is categorically not mentioned in the Categories stipulated in the draft Notice dated 03.02.2021 and it stood directed by the Commission vide ibid Order dated 26.06.2019, in such eventuality, the Licensee may file petition



with the Commission to include such processes under PIU category. Such industries shall be charged general tariff with the undertaking from the applicant that it will be charged applicable tariff from the date of release of connection / extension in load as per the decision of the Commission in this regard.

- L. The Commission in Petition no. 62 of 2021 i.e. Petition for clarification regarding applicability of PIU tariff to Electroplating Industries and some other type of industries, vide interim Order dated 23.08.2022 has inter-alia held:

“PSPCL has filed the present petition for clarification as to whether PIU tariff is applicable to Electroplating Industries, Hardening Furnaces, Tempering Furnaces, Metal Gathering Machines, Welding Machines/Butt Welding Machines and Power Coating Equipment. The Commission vide Order dated 07.01.2022 decided to get a study conducted from an expert body, to decide whether the above-mentioned industries are covered under the PIU category or not, through a transparent bidding process.

The Commission through press notice invited Request for Proposal (RFP) from expert consultants / institutes of National repute for a study to determine the PIU status of the above referred industries. Only 2 bids were received by the due date, even though the RFP date was extended twice. However, no more bids were received except the already received two bids. On appraisal it was found that neither of the two bidders qualified the technical criteria.

Hence, the Commission has decided to drop the RFP enquiry and has directed PSPCL to submit its recommendations

within one month after doing a technical study of the processes of these industries along with the details of the provisions prevailing in the other States for these types of industries.” The next date of hearing has been fixed for 05.04.2023 by which time PSPCL’s report should have been placed on the record for the consideration of the Commission. Public hearing has also been conducted in the matter in terms of order dated 21.10.2022 passed by the Commission and the relief sought for by PSPCL has been objected too. PSPCL cannot pick and choose filing a Petition with regard to seeking clarification for particular categories while leaving aside some of them. Even otherwise, once the issue with regard to whether electroplating is covered under the PIU category or not is still pending adjudication/ consideration before the Commission, the issue of the process of anodizing which consumes less power than electroplating, by no stretch of the imagination could have been considered as PIU load by PSPCL and that also without seeking clarification from the Commission.

M. Entire case of UUE is based on the draft notice dated 03.02.2021 which was received during the COVID - 19 Pandemic and the Hon’ble Apex Court has held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special law in respect of all judicial and quasi-judicial proceedings. Based on this, Central and State Governments had been extending time for compliance of various statutory notices.

1.11 The petitioner has prayed the Commission to:

a) Render clarification as to whether PIU and consequential UUE charges shall be applicable or not to the Petitioner under the definition of electrolytic industry for carrying out the anodizing process as a small part of its total production in light of the following:

- i. Sanction dated 27.03.2014 on the basis of A & A form which shows use of Rectifier and Test report submitted accordingly; OR/AND
- ii. Inspection not conducted as per law and procedure; OR/AND
- iii. Petitioner's case not covered by any of the five definitions given in Section 126(6)(b); OR/AND
- iv. Petitioner's case covered by Clause 36.1.1, 36.1.3 and 36.1.4 of the Supply Code, 2014; OR/AND
- v. Order dated 26.6.2019 passed by the Commission; OR/AND

b) Direct PSPCL to refund wrongly levied amount of Rs. 1,92,09,973/- and Rs. 85,36,064/- to the Petitioner on account of alleged UUE charges. OR/AND

c) For granting any other relief which the Commission deems fit in the facts and circumstances of the present case.

2. The Petition was taken up for hearing on admission on 10.05.2023. After hearing the Ld. Counsel for the Petitioner, the Order was reserved vide interim Order dated 12.05.2023.

### **3. Observations and Decision of the Commission:**

The Commission has examined the submissions made by the petitioner. The Commission observes that the words used while describing the industrial process of the petitioner in the Provisional Assessment Order dated 28.01.2022 are "Electrolytic process" and the

same has been reiterated in the Final Assessment Order dated 03.03.2022. The “Electrolytic process” is already included in the list of Power Intensive Units as per Schedule SI.3.2 of the Schedule of Tariff for LS Industrial Power. On a perusal of the submissions, it is clear that the substantive relief claimed / prayer by the petitioner in the petition is with regard to recovery of charges by the licensee where, the petitioner was proceeded against under Section 126 of the Electricity Act 2003, for using PIU Load vide order dated 03.03.2022. An Appeal filed by the petitioner before the Deputy Chief Engineer cum Appellate Authority against the above order has been decided vide Order dated 13.07.2022. The issues raised in this petition should have been raised by the petitioner in the Appeal under Section 127 before the Appellate Authority and decided accordingly. The Commission has therefore not gone into the merits of the case. If the petitioner is aggrieved of the Order dated 13.07.2022 passed by Deputy Chief Engineer cum Appellate Authority in terms of the relief sought, since that lies in the scope of Appeal under Section 127 against the final order passed under Section 126 it is at liberty to approach the competent authority/court as per law for the redressal of its grievance as the petition does not lie before the Commission. The petition is thus dismissed in light of the above observations.

Sd/-

(Paramjeet Singh)  
Member

Chandigarh  
Date: **31.05.2023**

Sd/-

(Viswajeet Khanna)  
Chairperson