

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

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

Petition No. 16 of 2022
Date of Order: 03.08.2022

Petition for the Determination of Additional Surcharge U/S 42 (4) of the Electricity Act-2003 read with Regulation 27 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access) Regulations, 2011 to be made applicable on to the open access consumers availing power from the sources other than PSPCL for the period 01.04.2022 to 30.09.2022.

AND

In the matter of:

Punjab State Power Corporation Limited,
The Mall, Patiala.

.....Petitioner

Commission:

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

Present:
PSPCL

Sh. Rupinderjit Singh Randhawa, CE/ARR&TR
Sh. Ravi Luthra, SE/TR-2
Sh. Gurvinder Singh, Sr.Xen/TR-5
Sh. Baljinder Pal Singh, AE/TR-5
Sh. G.S. Tiwana, Sr.Xen/ Open Access
Sh. Amrinder Singh, AEE/Open Access

ORDER:

1. Punjab State Power Corporation Limited (PSPCL) has filed the present petition for determination of applicable additional surcharge for the period 01.04.2022 to 30.09.2022, to be levied on the open access consumers receiving supply of electricity from sources other than PSPCL. The submissions made by PSPCL are

summarized as under:

- a) PSPCL has submitted detailed data including hourly-based (Month-wise) data for Total Availability/ Total Scheduled Power/ Total Surrendered Power of the corresponding period of the previous year i.e. 01.04.2021 to 30.09.2021, for the computation of the applicable additional surcharge.
- b) From the detail of the data submitted, it is evident that, PSPCL has adequate generating capacities available to meet the entire power demand of the consumers of PSPCL including the open access consumers during the relevant period. Therefore, in the event of sourcing of power by open access consumers from sources other than PSPCL, part of the available generating capacity is likely to remain stranded during the period from April 2022 to September, 2022.
- c) Provisions regarding additional surcharge are made in Para 8.5 of the Tariff Policy and Regulation 27 of the PSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2011. The Commission has notified the above Regulations in accordance with the provisions of the Electricity Act, 2003 and the Tariff Policy, so as to compensate the distribution licensee for its stranded generation capacity arising out of its universal supply obligations. The additional surcharge is payable under the Regulations notwithstanding that only the inter-state transmission system is being used for availing open access and even when the lines of

transmission/distribution licensee are not used.

- d) The burden of fixed cost is adversely affecting the financial interests of PSPCL, which in turn is affecting the consumers in the State buying power from PSPCL. As such, it is necessary that Additional Surcharge as provided under Section 42(4) of the Electricity Act, 2003 and the PSERC Open Access Regulations be determined and made applicable to open access consumers in the State.
2. The additional surcharge for the period 01.04.2022 to 30.09.2022 was to be made public before 01.04.2022 however, the petition was received only on 06.04.2022. As such the Commission vide Order dated 31.03.2022 in Petition No. 15 of 2022 (Suo-Motu) allowed to continue provisionally, the existing additional surcharge as determined vide Order dated 13.12.2021 in petition No. 55 of 2021 for the period 01.10.2021 to 31.03.2022 till the final Order in the present petition is passed. The petition was admitted vide Order dated 11.05.2022 and PSPCL was directed to issue the public notice inviting objections from general public/stakeholders. The petition was fixed for hearing as well public hearing on 08.06.2022.
3. The public notice was published by PSPCL in 'The Tribune (English)', 'Ajit' (Punjabi), 'Dainik Bhaskar (Hindi) and 'Punjab Kesari' (Punjabi) with the last date for submission of objections as 15 days from the date of publication of the notice.
4. The petition was taken up for hearing as well as public hearing on 08.06.2022. However, nobody appeared from the public during the public hearing except representatives of PSPCL.

During hearing, PSPCL submitted that it had inadvertently made error in the calculation sheet submitted in the petition and submitted the revised information alongwith revised Additional Surcharge.

5. Objections/Comments

5.1 In response to the public notice only IEX vide letter No. 25 dated 27.05.2022 submitted its comments on the petition. PSPCL submitted its reply on the objections vide letter No. 6246 dated 07.06.2022. The issues raised by the objector IEX (Indian Energy Exchange) and PSPCL's reply thereon are summarized as under:

A) Incorrect consideration of per unit Fixed Charges recovered from consumers with greater than 1 MW Load Objection/Comment:

The Petitioner has determined the per unit fixed charge recovered from the consumers with load more than 1 MW at Rs. 0.35/ unit. In accordance with the data provided by the Petitioner, the energy consumed by consumers with load more than 1 MW has increased from a mere 6,218 MU during 01.10.2020 to 31.03.2021 substantially to 16,121 MU during 01.04.2021 to 30.09.2021 which seems highly improbable

Reply of PSPCL:

The data was inadvertently fetched twice due to database issue and corrected data is now submitted to the Commission.

B) Incorrect consideration of Transmission Charges

Objection/Comment:

The Petitioner has computed the fixed cost for available capacity inclusive of the fixed cost towards inter-state transmission charges. In this respect it is submitted that the CERC notified Sharing of Inter-State Transmission Charges and Losses Regulations, 2020 on 4th May 2020, which states that transmission charges paid by any short term embedded open access consumer shall be refunded to the state in which such consumer falls. The Commission may either compute separate additional surcharge for the short term open access consumers by adjusting the ISTS transmission charges paid by them or direct the Petitioner to provide the details of the long term open access as well during the concerned period.

Reply of PSPCL:

Inter-state Transmission charges are fixed charges and thus are included in total Power Purchase for the computation of Additional Surcharge. However, there is only one customer (Northern Railway) purchasing power through Long Term Open Access since 24.11.2019 and there is no Short Term Open Access Customer for the period under consideration. Further, Additional Surcharge for full Open Access customer and partial Open Access Customer is determined separately by the Commission in its order for the relevant period.

C) Computation of Fixed Cost of Available Capacity

Objection/Comment:

a) Inclusion of Other charges-

The Petitioner has not described the 'Other Charges' included in the computation of fixed cost. It was observed in Annexure-H of the current petition that the 'Other Charges' is mostly on account of Water Usage Charges, RLDC/ WRLDC charges, Water Cess, Change in Law, ED, Excise duty, GST, compensation for Gas, RLNG etc. These charges do not form part of the fixed cost and thus ought to be excluded.

b) Considering fixed cost of Anta, Auraiya and Dadri-

Even though the Commission vide Order dated 5th August 2021 permitted the Petitioner to relinquish its allocated share of power from Anta, Auraiya and Dadri power stations, the Petitioner has still considered the fixed cost towards above mentioned power stations.

Reply of PSPCL:

a) Total Fixed cost (in Annexure-H) is calculated by adding Fixed Cost/Capacity Charges and other charges. However, only the fixed part of Other Charges is included and the variable part of other charges is excluded from Total Fixed Cost.

i.e. Total Fixed Cost = Fixed Cost + Other Charges (Fixed Part) - Other Charges(Variable Part)

Water usage charges, RLDC/WRLDC Charges and GST are the fixed part of Other charges and are included in Total Fixed Cost. However, ED, Excise Duty, Compensation for Gas and RLNG charges are variable

part of the Other charges and are excluded.

b) Considering fixed cost of Anta, Auraiya and Dadri-

MoP, GoI vide order dated 22.3.2021 enabled DISCOMs to either continue or exit from the PPA which have completed 25 years of their useful life with a six months advance notice. PSPCL, with the approval of the Commission accorded vide order dated 05.08.2021, served six months notice to NTPC on 12.08.2021 for relinquishment of power from Anta, Auriaya and Dadri GPss. This notice period was completed on 11.02.2022 for Anta & Auraiya GPS and on 31.03.2022 for Dadri's GPS pursuant to MoP, GOI guidelines dated 22.03.2021. PSPCL was liable to pay all the eligible payments including fixed charges till the completion of six months notice period.

D) Consideration of Total fixed cost of the distribution

Objection/Comment:

The Petitioner while adding approved fixed cost component has considered the total intra-state transmission charges which is part of power purchase cost and shall not be covered under the approved cost

Reply of PSPCL:

Intra State Transmission Charges are fixed cost component and are considered in Total Fixed Cost of the Distribution

5.2 The Commission notes that PSPCL has adequately addressed all the issues raised by the objector IEX (Indian Energy Exchange)

6. PSPCL's submission on Green Energy Rules:

6.1 During the hearing dated on 08.06.2022, the Commission observed that Ministry of Power, Gol, has notified the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022. PSPCL was directed to peruse the said notification and submit the implication of the same on the present petition within one week.

6.2 In compliance to the Commission's direction given vide Order dated 20.06.2022 PSPCL vide Memo No. 6411 dated 30.06.2022 submitted its comments that the Green Energy Rules have been notified on 06/06/2022 by the Ministry of Power, Government of India, purportedly in exercise of the powers under Section 176(1) and 176(2)(z) of the Electricity Act, 2003 providing as under:

- (a) Open access to be granted for Green energy projects with minimum contract demand of the consumer being only 100 KW, which is also not applicable for captive consumers;
- (b) Uniform Renewable Purchase Obligation for all obligated entities in the area of a distribution licensee; (Rule 4)
- (c) Liberty to the Appropriate Commission to amend their respective regulations to provide for open access as per the Green Energy Rules; (Rule 5)
- (d) Single window clearance for green energy open access, to be operated by a Central Nodal Agency as notified by the Central Government; (Rule 6)

- (e) Procedure for green energy open access to be prepared by the Central Nodal Agency, in consultation with the Forum of Regulators; (Rule 7)
- (f) Banking of electricity to be provided, subject to the condition that the banked energy shall not be permitted to be carried over to subsequent months; (Rule 8)
- (g) Charges for open access to be levied, being only transmission charges, wheeling charges, cross subsidy surcharge, and standby charges. It is further provided that no other charges except for the above shall be levied. It is also specifically provided that additional surcharge shall not be applicable for green energy open access consumers, if fixed charges are being paid by such a consumer; (Rule 9)
- (h) Model regulation to be prepared on the methodology for calculation of open access charges by the Forum of regulators; (Rule 12)

6.3 The validity of the above rules may need to be considered in separate proceedings, the implication of the above rules for the purposes of the present proceedings need to be considered only in relation to Rule 9 of the Green Energy Rules.

6.4 By way of Rule 9(1) and also the 2nd and 3rd proviso to Rule 9(2), and exemptions have been granted in relation to the applicability of additional surcharge on green energy open access consumers.

6.5 The provisions of the Green Energy Rules, particularly in relation to granting exemption from payment of additional

surcharge is:

- (a) not within the legislative competence of the Government of India to be provided by way of a delegated legislation under Section 176 of the Electricity Act, 2003; and
- (b) is inconsistent with the provisions of the Electricity Act, 2003, on the applicability of additional surcharge and the powers granted by the Electricity Act, 2003 on the Commission in relation to open access and the levy of additional surcharge.

6.6 Section 42(4), grants the sole and exclusive power only on the State Commission. The said provision itself applies only when the Commission has permitted a consumer or class of consumers to receive electricity by way of open access. Further, when any consumer has been permitted to receive electricity by way of open access, such consumer is liable to pay an additional surcharge, which again is as specified by the Commission. The purpose of the additional surcharge is also provided, namely to meet the fixed cost of the distribution licensee arising out of his obligation to supply.

6.7 There being no power or jurisdiction of the Central Government as a delegatee under the Electricity Act, 2003, to deal with the aspects of open access, fixed cost of the distribution licensee or the determination and levy of additional surcharge, the provisions of the Green Energy Rules, at least to this extent are both contrary to the Electricity Act, 2003, and also beyond the legislative competence of the Central Government.

6.8 The power and jurisdiction being exclusively of the Commission has also been interpreted as settled by the Hon'ble Supreme Court in the case of M/s Sesa Sterlite Ltd. Vs. Orissa Electricity Regulatory Commission & Ors. (2014) 8 SCC 444. The Hon'ble Supreme Court has examined the very concept of additional surcharge, the purpose of such levy, the authority of the Commission to determine such additional surcharge while permitting open access et cetera. In fact, the Hon'ble Supreme Court has held that through the provision of open access, the law (which is the Electricity Act) balances the right of consumers to procure power while also protecting the interests of the distribution licensees.

6.9 The Green Energy Rules, at least to the extent of the provisions regarding exemption from payment of additional surcharge, is required to be ignored and not applied to the state of Punjab. The law is well settled on this position. Even though the Green Energy Rules by themselves are not subject matter of challenge before the Commission, the Commission is both empowered to and also required to ignore its applicability, when it is found that Rules are contrary to the Electricity Act, 2003, and also beyond the legislative competence of the government of India. In support of the above PSPCL quoted judgments in the matter of Bharathidasan University v. All India Council for Technical Education, (2001) 8 SCC 676, and Decision dated 23/11/2007 in Appeal Nos. 271, 272, 273, 275 of 2006 & 8 of 2007 titled as Damodar Valley Corporation Vs. Central Electricity Regulatory Commission and Ors and Batch

6.10 In any event, the procedures under the Green Energy Rules and also the model regulations to be framed have also not been done as yet. Therefore, the question of applicability of the Green Energy Rules at this stage does not arise. The Commission may therefore proceed to determine the additional surcharge in accordance with the Electricity Act, 2003, without there being any implications of the Green Energy Rules.

After hearing the representative appearing on behalf of PSPCL, Order was reserved vide Order dated 14.07.2021.

7. Findings and Decision of the Commission

The Commission has examined the averments made in the petition and after hearing the representative of PSPCL decides as follows.

7.1 The Electricity Act-2003, Tariff Policy- 2016 and PSERC Open Access Regulations provide for payment of Additional Surcharge by open access consumers receiving supply of electricity from a person other than the distribution licensee of his area of supply, to meet the fixed cost of such distribution licensee arising out of his obligation to supply. The various regulatory provisions related to additional surcharge are as under:

Section 42(4) of the Electricity Act, 2003

“4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may

be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.”

Clause 8.5.4 of Tariff Policy

“The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.”

Regulation 27 of the PSERC (Terms & Conditions for Intra-state Open Access) Regulations, 2011

“27. Additional Surcharge

1) An open access consumer, receiving supply of electricity from a person other than the distribution licensee of his area of supply, shall pay to the distribution licensee an additional surcharge on the charges of wheeling, in addition to wheeling charges and cross-subsidy surcharge, to meet out the fixed cost of such distribution licensee arising out of his obligation to supply as provided under sub-section (4) of section 42 of the Act.

2) This additional surcharge shall become applicable only if the obligation of the licensee in terms of power purchase commitments has been and continues to be stranded or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The distribution licensee shall indicate the quantum of such stranded costs and the period over which they would be stranded. The Commission shall scrutinize the statement of calculation of fixed cost submitted by the distribution licensee and obtain objections, if any, and determine the amount of additional surcharge:

Provided that such additional surcharges shall not be levied in case distribution access is provided to a person who has established a captive generation plant for carrying the electricity to the destination of his own use.

3) The additional surcharge shall be determined by the Commission.

4) The consumers availing Open Access exclusively on interstate transmission system shall also pay the additional surcharge as determined under this Regulation.

5) The consumers availing Open Access through dedicated lines even without involving licensee's transmission and / or distribution system shall be liable to pay same additional surcharge as determined under this Regulation.”

7.2 The Commission has carefully gone through the data submitted by PSPCL. The Commission observes that, in order to meet its obligation to supply PSPCL has installed/contracted adequate generation capacities from various sources and there is an unavoidable obligation and incidence to bear fixed costs consequent to such contracts. Also, from the data submitted by PSPCL it has been conclusively demonstrated that the obligation of the licensee, in terms of existing power purchase commitments, has been and continues to be stranded.

7.3 The fixed costs obligations for the distribution licensee consist of the following:

- The fixed costs payable to the generating companies (including own) for the capacity booked by the distribution licensee to meet its obligation to supply.
- The fixed costs for availing long term access i.e cost payable to the Transmission licensees (Inter-State and

Intra-State) for conveyance of energy from the generating stations to the input point of the distribution licensee, and

- The fixed costs of distribution business (wheeling and retail infrastructure) from the input point or receipt of electricity from transmission licensee to place of consumption of electricity at consumer place.

7.4 Since the additional surcharge is payable on the energy consumption measured at consumer end, the Commission decides to consider the per unit fixed cost liability of power at the consumer end.

7.5 The Commission observes that partial open access consumers availing open access upto their sanctioned contract demand are also paying fixed charges for the said demand, as per the tariff schedule, to the licensee. However, full open access consumers and partial open access consumers availing open access over and above their contract demand do not pay any fixed charges. It is prudent to work different rates of additional surcharge for different consumers depending upon whether or not they are paying the fixed charges to the distribution licensee. In the revised calculation sheet for determination of additional surcharge submitted alongwith the reply No. 6246 dated 07.06.2022, PSPCL has worked out the additional surcharge @Rs. 0.70/kWh for open access within the contract demand maintained with PSPCL and Rs. 1.10/kWh for full open access without any contract demand and partial open access in excess of the contract demand maintained with PSPCL.

7.6 The Commission observes that revised Cost of Generation considered by PSPCL is based on the actual data of H1 of FY 2021-22 as submitted in ARR Petition of FY 2022-23. Hence the Commission is inclined to accept the fixed cost from central generating stations as submitted by PSPCL in the current petition, while working out the fixed cost of generation. With regard to fixed cost of own generation including BBMB and distribution, the Commission finds it prudent to consider the fixed cost as approved in the Tariff Order of FY 2022-23 as submitted by PSPCL.

7.7 With regard to implementation of the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 notified by the MOP, GOI, the Commission has noted the response of PSPCL. Further, rule 12 of the Rules specifies as under:

“12. Model regulation on methodology:- (1) In order to have a common methodology for calculation of all the open access charges, the forum of regulators shall prepare a model regulations on methodology for calculation of open access charges, as well as banking charges within a period of four months from the date of commencement of these rules.”

7.8 As per the above, rules model regulations on methodology for calculation of open access charges are to be framed by FOR within a period of four months and the implications of the same can be worked out only when such regulations are framed and duly notified as per the provisions of the Act. As such the Commission agrees with PSPCL to the extent that

the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 have as yet no bearing on the current petition. Since at present this category of green energy OA consumers does not exist in the State of Punjab, the Commission directs PSPCL to approach the Commission for relevant changes in the current Regulations, including the charges to be made applicable on such consumers through a separate petition when the need arises.

7.9 Accordingly, the Commission determines Additional Surcharge applicable for the period 01.04.2022 to 30.09.2022 as under:

Sr. No.	Particulars	Unit	Submitted by PSPCL in the Petition	Worked out by the Commission
A	Total Installed/Contracted Capacity	MW	13846	
B	Average Available Capacity	MW	8981*	
C	Average Scheduled Capacity	MW	6923*	
D	Average Stranded Capacity	MW	2058*	
E	Average Open Access Availed	MW	23.67	
F	Capacity stranded due to Open Access	MW	23.67	
G	Fixed Cost for the available power capacity	Rs. Cr.	4370.82	
H	Fixed Cost per MW available at consumer end considering availability (B) at consumer end (G/B)	Rs./MW	0.49	
I	Fixed Cost of Stranded Capacity on account of Open Access (FxH)	Rs. Cr.	11.52	
J	Open Access Energy Scheduled	MU	105	
K	Additional Surcharge payable by Full open access consumers and partial open access consumers for availing open access beyond the contract demand maintained with the distribution licensee (I/J)	Rs/kWh	1.10	
L	Adjustment of Fixed Charges paid to the distribution licensee by partial open access consumers as consumers of the licensee			
i)	Energy consumed	MUs	6510.09	
ii)	Fixed Charges recovered	Rs. Cr.	542.29	
iii)	Fixed Charges per unit (ii/i)	Rs/kWh	0.83	
iv)	Total Fixed Costs =1/2 of Yearly Distribution fixed cost(Table 138, Chapter-4 of TO FY 2022-23) + G	Rs. Cr.	9142.98	
v)	Proportion of 'Fixed Cost for power	%	47.81%	

Sr. No.	Particulars	Unit	Submitted by PSPCL in the Petition	Worked out by the Commission
	purchase' to the 'Total Fixed Costs of the Distribution Licensee' (G/iv)			
	vi) Part of the Fixed Charges paid by consumers with load contributing towards fixed cost of power (iii*v)	Rs/kWh	0.40	
M	Additional Surcharge payable by partial open access consumers for availing open access upto the contract demand maintained with the distribution licensee (K-L(vi))	Rs/kWh	0.70	

**The availability at the consumer end is calculated by deducting inter-state losses @ 3.30% & intra-state losses @ 2.21% from average available capacity*

7.10 This Additional Surcharge shall be leviable on the consumers situated within the area of supply of PSPCL on the actual open access power brought by them from sources other than PSPCL, subject to the condition that the contracted capacity of PSPCL continues to remain stranded during the period. Further, this Order shall have an overriding effect on the Commission's earlier Order on Additional Surcharge dated 31.03.2022.

The petition is disposed of accordingly.

Sd/-

**(Paramjeet Singh)
Member**

Sd/-

**(Viswajeet Khanna)
Chairperson**

Chandigarh

Dated: **03.08.2022**