

# **PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**

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

**Petition No. 14 of 2021**

**Date of Order: 22.03.2022**

Petition under Section 86(1)(c) of the Electricity Act, 2003 read with Section 39 of the Electricity Act, 2003 and Regulations 15, 21, 27, 27A and 45 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011 and Regulation 10 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for issuance of appropriate directions to the Respondents as regards (1) liability of Indian Railways to pay Demand Surcharge for overdrawl of power when power under Standby Agreement not scheduled (2) liability of Indian Railways to pay Additional Surcharge on the power being sourced through Open Access (3) Addition of new Traction Substation in the existing Long Term Access and (4) issuance of 'No-Objection Certificate' for Short Term Access to Indian Railways.

AND

In the matter of: Indian Railways Through Sr. DEE/TRD, Northern Railways, DRM Office, Ambala Cantt, Haryana – 133001.

...Petitioner

Versus

1. Punjab State Power Corporation Limited, Through Chief Engineer PSEB Head Office, The Mall, Patiala-147001.
2. Punjab State Transmission Corporation Limited, Through Chief Engineer PSEB Head Office, the Mall Patiala-147001.

...Respondents

Present: Sh. Viswajeet Khanna, Chairperson  
Ms. Anjuli Chandra, Member  
Sh. Paramjeet Singh, Member

## Order

**1.0** Indian Railways has filed the present petition for issuance of appropriate directions to the respondents with regard to liability of Indian Railways to pay Demand Surcharge for overdrawl of power when power under its Standby Agreement is not scheduled, liability of Indian Railways to pay Additional Surcharge on the power being sourced through Open Access, Addition of new Traction Substation in the existing Long Term Access and issuance of 'No-Objection Certificate' for Short Term Open Access to Indian Railways.

**2.0** Punjab State Transmission Corporation Limited (PSTCL) has filed a reply to the petition vide memo no. 745 dated 25.03.2021 and the petitioner has filed a rejoinder thereto vide letter dated Elect/TRD/UMB/Open Access/1122 dated 12.04.2021. Punjab State Power Corporation Limited (PSPCL) also filed its reply to the petition vide memo No. 6224 dated 25.05.2021 and the petitioner filed a rejoinder thereto vide letter No. Elect/TRD/UMB/Open Access/1122 dated 14.06.2021. PSTCL submitted the details in reference to the Order dated 30.06.2021 vide memo No. 1570 dated 20.07.2021 and PSPCL submitted the details vide memo No. 6881 dated 03.08.2021. The petitioner submitted the details vide letter No. 230-Elect/TRD/UMB/Open Access/1122 dated 25.08.2021. PSTCL vide memo No. 1937 dated 17.09.2021 submitted its reply to the submissions made by the petitioner in reference to Order dated 30.06.2021 and PSPCL vide memo No. 7362 dated 01.10.2021 filed its reply to the submission made by the petitioner in reference to Order dated 30.06.2021. Vide Order dated 12.10.2021, the Commission had also queried as to what action has SLDC taken to restrict overdrawls by

Open Access Consumers in their schedule in Order to maintain grid discipline and its stability.

### **Submissions of the Indian Railways**

- 2.1 The petitioner has submitted that Indian Railways, as a deemed licensee, is seeking to avail power through Long Term Open Access, for its energy requirements in the State of Punjab. Indian Railways acting through Northern Railways has been issued a No-Objection Certificate dated 01.07.2019 by PSTCL for sourcing 35MW of power for a period of 25 years at 11 Traction Substations (drawl points) situated in the State of Punjab and a Bulk Power Transmission Agreement (BPTA) dated 01.07.2019 was executed between Indian Railways acting through Northern Railways and PSTCL with regard to transfer of 35MW power from Nabinagar Thermal Power Plant (**NTPP**) of M/s. Bhartiya Rail Bijlee Company Limited (**BRBCL**) into the State of Punjab.
- 2.2 That in terms of Regulation 27A of the Open Access Regulations 2011, a Standby Agreement dated 26.08.2019 was executed with PSPCL to avail standby power up to 5 MVA on "As and when required and available" basis to ensure that Railways can manage their load requirement. The Standby Agreement was executed by Railways for availing /scheduling the power under Standby Agreement in the event of the failure of power from NTPP (generating source for Northern Railway) or partial reduction in declared capacity on account of unit tripping/transmission constraint etc.
- Pursuant to the above agreements, NR is availing 35 MW power under Long Term Access (LTA) from NTPP of BRBCL as deemed licensee under inter-state open access at the traction substations situated in the state of Punjab, since 24.11.2019.



- 2.3 That PSPCL had raised its invoices for the period commencing from 24.11.2019 till 30.06.2020 claiming an alleged amount towards Demand Surcharge for availing standby power by the Petitioner, though the invoices mention units consumed under standby power as 'NIL'. The petitioner objected to the above invoices raised by PSPCL and paid the said invoices under protest, pending resolution of the grievances against the demand raised by PSPCL towards Demand Surcharge.
- 2.4 That on 05.03.2020, a Tripartite Power Sale Agreement was executed between Indian Railways, M/s. Railway Energy Management Company Limited and PTC India Limited for supply of a maximum 35 MW power by PTC India Limited to the Indian Railways at its traction substation situated in the State of Punjab through power exchange to have an adequate standby arrangement in case of any of its generators tripping or there being any shortfall considering its requirement.
- 2.5 That, since the power through exchange can be made available through Collective Short Term Open Access transaction, Indian Railways sought for Short Term Open Access. The Respondents allowed short term open access to the Indian Railways for the periods from 20.06.2020 to 19.07.2020, 20.07.2020 to 18.08.2020 and 19.08.2020 to 17.09.2020 (total 89 days). Since the Short Term Open Access made available to the Indian Railways was coming to an end on 17.09.2020, Indian Railways vide its application dated 09.09.2020 applied for 'No-Objection Certificate' for short term open access for one month w.e.f. 17.09.2020. The said application was rejected by PSTCL. Vide PSPCL's letter dated 17.09.2020 on the ground that since Indian Railways had already availed Short Term Open Access for a period of 89 days, their application for further Short Term Open Access cannot be allowed as it

would fall within the definition of Medium Term Open Access being for a period beyond 3 months.

- 2.6 That on 30.09.2020, pursuant to the Order dated 26.08.2020 in petition NO. 06 of 2020 passed by this Commission, PSPCL issued a Commercial Circular No. 40/2020 stating that all the consumers situated within the area of its supply shall be liable to pay additional surcharge as determined by the Commission. On 06.10.2020, PSPCL issued invoices towards demand surcharge, energy charge, fixed charge and additional surcharge for the period 01.06.2020 to 31.08.2020. PSPCL also raised an invoice revising its earlier invoices raised for the months of April' 2020 and May' 2020.
- 2.7 That on 27.10.2020, the Petitioner again represented to PSPCL stating that the invoices raised by it towards Demand Surcharge for the period from 24.11.2019 to 31.08.2020 and invoices towards Additional Surcharge, energy charge and fixed charge for the period from 01.04.2020 to 31.08.2020 in addition to Demand Surcharge are illegal and requested to withdraw its demand. PSPCL, vide email dated 27.10.2020, declined the request and reiterated its stand that the demand raised is in accordance with the Open Access Regulations.
- 2.8 That on 11.11.2020, the Petitioner filed an application with PSTCL for incorporation of additional Traction Substation of the Petitioner in the existing Long Term Access. PSTCL vide its email dated 28.11.2020, while forwarding the letter dated 27.11.2020 of PSPCL, rejected the application for incorporation of the Petitioner on the ground that since there are outstanding dues of PSPCL, the application of the Petitioner cannot be acted upon.

2.9 That a perusal of the provisions of Open Access Regulations 2011 and terms and conditions of the Standby Agreement would show that the NR being an open access customer is liable to pay the following charges:

- a. Commitment charges calculated @ Rs.35 per KVA per month on the capacity contracted as Standby demand. The said charge is to be paid by the open access customer every month during the tenure of the Standby Agreement irrespective of the fact Open Access Customer, avails standby power or not
- b. Energy charges for the actual energy drawn under standby agreement.
- c. Fixed charges and/Demand surcharge for the actual energy drawn/over drawn.

The Commitment charges are to be paid by an open access customer whether there is actual drawl of power under standby agreement or not. However, energy charges and/or fixed charges including demand surcharge is liable to be paid only when the standby power is availed by the Open Access Customer or when the Open Access Customer is over drawing the power than the contracted standby power when it is availing standby power. The Indian Railways in terms of the above have already paid commitment charges amounting to Rs. 23,57,250/-.

2.10 That in terms of Clause of the Standby Agreement, the power shall commence under standby agreement only when there is intimation and a schedule in this regard by the Open Access Customer. If there is no intimation and no schedule of power, the power being over drawn by Indian Railways cannot be considered to be power being drawn under standby agreement. Indian Railways have never intimated or given any schedule to draw power under the Standby Agreement and as such, the power being over drawn by the Indian Railways cannot be considered to



be power drawn under Standby Agreement. More so, Indian Railways is being levied with and is paying DSM charges regularly for overdraw/underdrawl of power due to mismatch between schedule and actual drawl as per extant Regulation of this Commission. Even otherwise, Indian Railways to meet the eventuality of outage of its generator on account of tripping or Annual Over Haul (AOH) has entered into an agreement with PTC India Limited to supply power to the extent of 35 MW through Power Exchange.

- 2.11 That PSPCL cannot raise any claim pertaining to the Demand Surcharge for the over drawl till such time there is an actual drawl of power / over drawl of power by the Petitioner under Standby Agreement. Admittedly, Indian Railways have never scheduled any power under the Standby Agreement. The Petitioner for the purposes of over drawl is being subjected to DSM Bills as well as Standby Charges under the Standby Agreement. The Petitioner cannot be levied with both DSM Charges as well as Standby Charges for the same over drawl units causing double jeopardy to the Petitioner.
- 2.12 That there is discrepancy in the invoices raised by PSPCL. The invoices towards demand surcharge for the month of April, 2020 and May'2020 issued on 01.06.2020 and 18.06.2020, respectively the total cumulative standby power drawn has been shown as 'Nil'. However, in the invoices issued on 06.10.2020, '729746' units have been shown as drawn as standby power, even though no schedule for the same was ever placed by the Petitioner.
- 2.13 That the claim of PSPCL towards additional surcharge in terms of Order dated 26.08.2020 is illegal and wholly misconceived. The order dated 26.08.2020 passed by the State Commission was under Section 42(4) of the Electricity Act, 2003. In terms of Section 42 (4) of the Act, additional

surcharge is applicable on the wheeling charges being paid by a consumer of distribution licensee being connected to its distribution system and is availing power through open access. In the present case, the Petitioner is directly connected to transmission system of PSTCL at all its drawl points and is not using the distribution network of PSPCL for availing power under Open Access. Petitioner is procuring power through open access in its status as a Deemed Licensee after ceasing to be a consumer of the distribution licensee. Further, since the Petitioner is connected to the transmission system of the PSTCL and as such is paying only transmission charges and no wheeling charges are being paid by the Petitioner. Thus, the Petitioner, not being a consumer of PSPCL, is not liable to pay any additional surcharge as claimed by PSPCL and the demand raised is invalid, unjustified and untenable.

2.14 That the Indian Railways have complied with all the conditions as required for the purposes of incorporation of additional Traction Substation in the exiting Long Term Access. However, PSPCL has wrongfully withheld its consent for the same on the basis of illegal demand raised by it towards Demand Surcharge, Fixed Charge, Energy Charge and Additional Surcharge. As a result, PSTCL has been unable to process the application of the Petitioner. Indian Railways is an essential part of the transport infrastructure in India and is the backbone of Indian economy. It is essential for the Indian Railways to get reasonably priced power, which would be beneficial for the general public. Any delay in inclusion of new traction substation would seriously hamper the charging of traction substation by the Petitioner to run the train services on electric traction. Petitioner has invested huge amounts in setting up the traction substation. Non-charging of traction substation



will result un-utilizing of expenditure made by Railways for setting up the traction substation and also will affect train operation on electric traction.

2.15 That the Respondents have wrongly denied the short term open access to the Petitioner for the period subsequent to 17.09.2020. The contention of the Respondents that since Indian Railways have already availed Short Term Open Access for a period of 89 days, any further open access would fall under Medium Term Open Access is wholly misconceived. For the purposes of ascertaining whether the open access being applied for is “Short Term Open Access” or “Medium Term Open Access” one has to see the application being made at a time. Thus, if by way of an application seeking open access, the applicant at one go is seeking open access for a period equal to 3 months or exceeding three months but not exceeding 5 years, then the said open access would have to be termed as “Medium Term Open Access”. However, if the open access being sought for a period of one month only then the same has to be considered as a ‘Short Term Open Access’. The period of back to back short term open access cannot be added up to claim that the overall period of open access will be considered as Medium Term Open Access. The period of open access under one application, either Short Term Open Access or Medium Term Access”, is one independent period under one independent transaction.

2.16 That there is no bar in the Open Access Regulations framed by this Commission or under the Regulations framed by the Central Electricity Regulatory Commission as regards number of times an applicant can seek Short Term Open Access in continuation. It is the obligation of the transmission utility to provide open access to the applicant subject to the compliance of terms and conditions. Denial of short term open access to the Petitioner is violative of the provisions of the Electricity Act, 2003 and

the provisions of the Open Access Regulations 2011 framed by the Commission. Under Section 39 of the Electricity Act, 2003 it is the duty of the State Transmission Utility, to provide non-discriminatory open access to its transmission system.

2.17 That PSPCL is not entitled to retain the amounts (amounting to Rs.12,07,17,428/-) paid by the Petitioner towards the payment of the invoices and as such, PSPCL is liable to refund the amounts paid by the Petitioner along with applicable interest from the date of payment till the date of actual payment of the same to the Petitioner.

2.18 The petitioner has prayed to:

1. direct PSPCL to withdraw its invoices raised on the Petitioner by PSPCL towards demand Surcharge for the period from 24.11.2019 to 31.08.2020 and Levy of Additional Surcharge, energy charge and fixed charge for the period from 01.04.2020 to 31.08.2020 in addition to Demand Surcharge;
2. direct PSPCL to refund an amount of Rs.12,07,17,428/- along with interest calculated @ 18% per annum to the Petitioner from the date of payment by the Petitioner till the date of payment to the Petitioner;
3. direct PSPCL to give consent for incorporation of additional Traction Substation to existing Long Term Access of the Petitioner;
4. direct PSTCL to process the application of Petitioner for addition of Traction Substation in the existing Long Term Access;
5. direct PSPCL to issue 'No-Objection Certificate' for grant of short term open access to the Petitioner for availing power from power exchange;
6. direct PSTCL to grant 'Short Term Open Access' to the Petitioner for availing power from power exchange; and

7. pass such further order or orders as the Commission may deem just and proper in the circumstances of the case.

After considering the averments made in the petition, the petition was admitted vide Order dated 26.02.2021.

### **Submissions of PSPCL**

- 3.1 PSPCL has submitted in reply to the petition that the open access for use of intra-State transmission system (In STS) and/or distribution system of the licensees in the State, including when such system is used in conjunction with the inter-State transmission system (ISTS), is governed under the provisions of the PSERC (Terms and Conditions for Intra State Open Access) Regulations (Open Access Regulations 2011) notified by this Commission. As per Regulation 2 of the Regulations a consumer/person whose premises are situated within the area of supply of a distribution licensee, seeking to receive supply from a person other than the distribution licensee of his area of supply, is required to apply for open access under the said Regulations. When an open access is availed for a period upto one month at a time, the same qualifies as access for short-term or STOA and when open access is availed for a period exceeding three months but not exceeding five years, the same qualifies as access for medium-term or MTOA. While availing such open access, if the distribution system and associated facilities of the distribution licensee are used, the same is considered as 'wheeling' and for which charges are payable as prescribed under the Regulations.
- 3.2 That an open access customer is required to obtain connectivity in the manner laid down in the 2011 Open Access Regulations and in accordance with the State Grid Code. The State Transmission Utility (STU), after conducting consultations and system studies, grants (or rejects) the connectivity; however, such grant does not entitle the



grantee to interchange any power with the grid unless it obtains open access in accordance with the provisions of the Regulation. For grant of STOA, a detailed procedure is prescribed in Regulations 18 and further, a provision is made in Regulations 19 for consent of the area distribution licensee to ensure the existence of infrastructure necessary for time-block-wise energy metering and accounting in accordance with the provisions of the State Grid Code and availability of capacity in the transmission/distribution network. As per Regulation 10 (4) a person who has been declared insolvent or bankrupt or having outstanding dues against him for more than two months billing of distribution/transmission licensee at the time of application, is not eligible for grant of open access. The charges for open access which are leviable on an open access customer are laid down in Chapter-5 of the Regulations which include,

- (i) transmission charges (for use of the transmission system- Regulation 23);
- (ii) scheduling and system operation charges (Regulation 24);
- (iii) wheeling charges (for utilizing the distribution network for wheeling of electricity-Regulation 25);
- (iv) cross-subsidy surcharge (leviable on the subsidizing consumer of a distribution licensee-Regulation 26); and
- (v) additional surcharge (leviable on an open access consumer receiving supply of electricity from a person other than the distribution licensee in his area of supply-Regulation 27).

3.3 With reference to the levy of additional surcharge, Regulation 27 provides that the consumers availing open access exclusively on the ISTS are also required to pay the additional surcharge as determined

under the Regulations. Vide Order dated 26.8.2020 passed in Petition No.6/2020, this Commission has determined the additional surcharge under Section 42 of the 2003 Act read with Regulations 27 of the 2011 Open Access Regulations to be made applicable on the open access consumers availing power from sources other than PSPCL for the period 1.4.2020 to 30.9.2020.

- 3.4 That, the Commission has notified the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access) (8<sup>th</sup> Amendment) Regulations, 2019. Under the said amendment, the following definitions have been inserted:

*“(ww) “Standby contract demand” means the maximum demand in kVA contracted by the open access customer under Standby power agreement with the distribution licensee of his area of supply;*

*(www) “Standby power” means power required in case of outage(s) of the generator from which the open access customer is drawing power;*

Further, Regulation 27A and 27B have also been inserted in the principal Regulations to provide for supply of standby power on payment of levy of standby charges which are to be computed in line with the Standby Agreement to be entered into between the open access customers and the distribution licensee. As per the above provisions whenever there is an outage of the generator from whom an open access customer is drawing power, it can avail power from the distribution licensee in its area of supply (known as standby power) under an agreement entered into with the distribution licensee in that

behalf (known as Standby Agreement); the quantum for which the standby power is contracted, becomes the 'standby contract demand'. The amended Regulations permit the admissibility of standby power for a maximum period of 42 days in a financial year and the maximum demand that can be contracted under standby power is not to exceed the capacity allowed under open access. The provision in Regulation 27A with regard to payment of standby charges where Standby Agreement has been entered into, requires the open access customer to pay the following charges to the distribution licensee:

- (i) a charge equal to Rs.35/kVA per month or part thereof as may be decided by the Commission from time to time towards commitment charges on the capacity (in kVA) contracted as standby demand from the distribution licensee. The said commitment charges are to apply uniformly every month commencing from the date of the agreement irrespective of the fact whether the open access customer avails standby power or not;
- (ii) charges for actual drawal of power (including demand surcharge whenever applicable) as specified in the Schedule of Tariff of Temporary Supply of relevant category corresponding to the demand slab of total of standby contract demand and sanctioned contract demand, if any.

3.5 That for an open access customer who is not a consumer of the distribution licensee, fixed charges and/or demand charges are levied on daily basis upto 42 day in a financial year on the maximum demand recorded upto the limit of standby contract demand and energy charges are levied on the total energy consumed during the period of availing standby power. In case standby power is drawn for more than 42 days in



a financial year or if the recorded drawal exceeds the standby contract demand, demand surcharge is chargeable on the same. The amended Regulations make a provision in Regulation 27B for levy of charges on all open access customers including regulatory charges, congestion charges and any other charge imposed by the Central Commission and/or approved by this Commission from time to time.

- 3.6 That in furtherance of the aforesaid insertions made in the Open Access Regulations 2011, the Petitioner entered into an Agreement dated 26.8.2019 with PSPCL for availing standby power supply for a quantum upto 5 MVA from the date of commencement of actual flow under its long-term access to 31.12.2020. Such standby power is to be supplied by PSPCL from out of its pool of various generating sources within its license area and is to be admissible for the maximum period of 42 days in a financial year. In lieu of the above standby supply of power, the Petitioner has agreed to pay the standby charges to PSPCL.
- 3.7 That the Open Access Regulations 2011 also provide for payment of imbalance charges by an open access customer. An open access customer is required to pay imbalance charges for over drawal/under drawal of power while undertaking open access transactions under the Regulations. The said imbalance charges are separate and distinct from the standby charges which are payable by the open access customer in accordance with the provisions of the amended Regulations as incorporated in the Standby Agreement.
- 3.8 That the Commission has also notified the Punjab State Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2020 providing for the commercial arrangements

with regard to levy of deviation charges, additional charge of deviation and penal actions so as to maintain grid discipline and grid security by controlling drawal and injection of electricity by the users of the grid as per schedules. The said Regulations define the 'Deviation Settlement Mechanism' to mean and include the framework for energy accounting, deviation accounting, rules for pricing of deviations payable and receivable by the State entities and other design parameters as specified in the Regulations. The DSM Regulations are applicable to sellers and buyers involved in the transactions facilitated to LTA/MTOA/STOA using the In STS and/or the distribution system of electricity. As per the 2<sup>nd</sup> proviso to Regulation 4(B), in case of full open access consumers connected to the ISTS and availing standby power under the Open Access Regulations 2011, the overdrawal during the period of standby power is to be dealt with as per the Open Access Regulations 2011. The Petitioner is paying DSM charges to PSTCL based on monthly deviation settlement account issued by PSTCL in line with the 2011 Open Access Regulations. Notwithstanding such payment, the Petitioner continues to be liable to pay standby charges in accordance with the agreed terms under the Standby Agreement. The Petitioner is inter-mixing the standby charges with the DSM/imbalance charges so as to wrongly contend that both charges are not payable simultaneously. While standby charges are payable with respect to the standby power contracted under the Standby Agreement, the DSM/imbalance charges are payable with respect to the mismatch in scheduled entitlement and actual drawal. Both charges being mutually exclusive, the same become payable in the manner laid down in the Agreement/Regulations.

- 3.9 That the Petitioner has 11 traction sub-stations in the State and it applies from time to time for grant of open access for drawal of power at

the said sub-stations. An Appeal bearing Appeal No.276/2015: West Bengal State Electricity Distribution Co. Ltd. Vs. Central Electricity Regulatory Commission & Ors. challenging the deemed licensee status of the Petitioner is presently pending adjudication before the Hon'ble Appellate Tribunal for Electricity in which the application for stay of the Order of the Central Commission has been dismissed vide Order dated 16.12.2015. As such, for the present purposes, the status of the Petitioner as an open access customer under the Open Access Regulations 2011, is being considered as that of a deemed licensee.

3.10 That PSPCL had filed Petition No.03/2017 before the Commission seeking imposition of necessary conditions on the Petitioner to be followed by it while granting open access in the State of Punjab. Vide Order dated 2.8.2018 passed in the above Petition, this Commission observed as under:

- (i) the exigencies/overdrawals by open access customers were to be dealt with under 'Imbalance Charges' under the Open Access Regulations 2011;
- (ii) the provisions for standby charges as proposed by PSPCL did not exist in the existing Regulations and PSPCL was at a liberty to file a separate Petition for consideration of amendment to the Regulations. Petition was filed and the 8<sup>th</sup> Amendment to the Open Access Regulations 2011 was notified by this Commission);
- (iii) under the existing Open Access Regulations 2011, the provision for payment of fixed charges on total demand of open access customers as proposed by PSPCL did not exist. However, PSPCL was at a liberty to file a separate Petition containing proposal for charging fixed charges for actual demand recorded by open



access customers for consideration of amendment to the Regulations;and

- (iv) PSTCL was to process the application of the Petitioner for issuance of no-objection certificate for availing MTOA and STOA as per the provisions contained in the CERC/PSERC Regulations in a time bound manner.

3.11 That being aggrieved by the non-grant of standby charges and fixed charges under the above Order of this Commission, PSTCL filed an Appeal [being Appeal No.320/2016]. During the pendency of the said Appeal, the 8<sup>th</sup> Amendment to the 2011 Open Access Regulations was notified by this Commission pursuant to which the Standby Agreement dated 26.8.2019 was entered into between the Petitioner and PSPCL. Hence, the only controversy surviving in the above Appeal remained with respect to the entitlement of PSPCL to receive fixed charges from the Petitioner towards readiness of its infrastructure for providing standby power to the Petitioner. Thus, the issue as regards payment of fixed charges by the Petitioner for the power drawn under the Standby Agreement is presently pending adjudication.

3.12 That , the issue as regards payment of cross-subsidy surcharge and additional surcharge upon Railways as a deemed distribution licensee is also pending adjudication before the Hon'ble Appellate Tribunal in Appeal No.170/2020: Indian Railways (represented by West Central Railways) Vs. Jaipur Vidyut Vitaran Nigam Ltd. & Ors. and connected Appeals. PSPCL filed an Application for impleadment in the said Appeal in which the proceedings before this Commission as regards payment of standby charges and fixed charges by the Petitioner as also the pending Appeal No.320/2018 have been placed on record. Pending decision in

the above proceedings, additional surcharge and cross subsidy surcharge on power purchased through open access is being levied on the Petitioner as per Various Commercial Circulars issued after the orders of the commission for determining the rates of additional surcharge "as per CC 29/2019, 58/2019, 32/2020, 40/2020 & 29/2015.

3.13 That the case of the petitioner is completely misplaced as,

- (i) The Petitioner is an open access customer under the Open Access Regulations 2011 and has also been a consumer of PSPCL. Being an open access customer, the Open Access Regulations 2011 and the Tariff Orders passed by this Commission from time to time are applicable to it;
- (ii) the billing for the power transactions of the Petitioner is carried out in accordance with the provisions of the Open Access Regulations 2011 and the applicable Tariff Orders, read with the conditions for open access imposed while granting no-objection certificate by the PSPCL for short-term power purchase;
- (iii) demand surcharge is levied on the Petitioner as per the Order dated 01.06.2015 passed by this Commission in Petition No.16/2013 pursuant to which the Open Access Regulations 2011 have been amended to include a new Regulation 28(3) which prescribes as under:

*“28(3) The quantum of drawal of electricity by an Open Access Consumer from the distribution licensee during any time block of a day shall not exceed the admissible drawal of electricity by the Open Access Consumer from the distribution licensee in such*

*time block wherein, the schedule of Open Access drawal is the maximum.”*

- (iv) the Petitioner is not exempted from levy of wheeling charges, but wheeling charges for the Petitioner are zero due to supply on higher voltage i.e. 132KV or 220KV. In case the Petitioner is to receive supply on 66KV, then wheeling charges are to become applicable for the same. The Petitioner is wrongly claiming/interpreting zero wheeling charges (due to high voltage supply) as wheeling charges not applicable (Exempted) and has tried to mislead the Commission;
- (v) Provisions regarding additional surcharge are made in Para 8.5 of the Tariff Policy and Regulation 27 of the PSERC Open Access Regulations, 2011. The Commission has notified the above Regulations in accordance with the provisions of the Electricity Act 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.
- (vi) 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 is



determined and made applicable to open access consumers in the State.

- (vii) additional surcharge is the protection provided to the distribution licensee for power purchase commitments that continue to be stranded and PSPCL is bearing fixed cost on the same. The Petitioner has been the consumer of PSPCL from the time of signing of the long-term Power Purchase Agreements for which PSPCL is paying the fixed cost. As such, PSPCL is within its rights to charge additional surcharge to the Petitioner for power purchased through open access;
- (viii) the Petitioner has signed an Agreement with PSPCL for 5 MW standby power. The energy charges on overdrawn units have been charged to the Petitioner from 1.4.2020 as per the conditions imposed by PSPCL while granting a no-objection certificate to the Petitioner for short-term power purchase under which overdrawal of open access power over and above the scheduled open access power is to be treated as standby power and is to be billed in terms of the said Agreement. As such, fixed charges have also been charged for 42 days as per the Standby Agreement between the Petitioner and PSPCL and for those 42 days, demand surcharge has been charged by reducing 5 MW from over drawal.
- (ix) That since the Petitioner has started drawing power under open access, the scheduled power of the Petitioner is 15% (out of 35 MW) less for half the time and during 70% of time, the Petitioner draws 20% (more than Scheduled) more power. On 19.3.2020, the scheduled power has been 3.386 MW against 35 MW under the Agreement whereas the Petitioner has drawn 36.352MW.

Which means that Power generation of the plant with which Railways has signed PPA for 35 MW power may have been reduced by 90% on 19.03.2020 (scheduled power 3.386 MW against 35 MW contracted under PPA) and on the same date they have drawn 1173.724% (36.352 MW against the schedule of 3.386 MW) more power than the scheduled. It may be the case of reduced generation or generator outage and standby power drawn in terms of the clause 20 "Scheduling and Dispatch" of the Standby Agreement. Also, on 30.6.2020, power scheduled has been zero MW whereas power drawn has been 34.485 MW, which again appears to be the case of generator outage. There are many such like instances when the petitioner has actually drawn the power more than the schedule given by it & the same has been considered as Standby Power by PSPCL in terms of the Standby Agreement and Open Access Regulations, 2011 as amended from time to time.

Further, this Commission has notified the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access) (8<sup>th</sup> Amendment) Regulations, 2019, wherein the Standby Power has been defined as under:-

*“Standby power” means power required in case of outage(s) of the generator from which the open access customer is drawing power;*

The Petitioner being a Central Government organization, it has failed in its duty to inform pspcl regarding outage of generator or reduced generation & drawl of Standby Power whereas it actually utilized Standby Power.

The contentions of the Petitioner as regards incorrect billing by PSPCL are misplaced and question of any refund as sought by the Petitioner does not arise.

### **Submissions of PSTCL**

- 4.1 PSTCL has submitted in its reply to the petition that Regulation 10 of the Open Access Regulations, lays down certain eligibility conditions for grant of Open Access. e.g. for having demand of 1 MW and above (except generating plants), connected at 11 KV or above, on all feeders except urban pattern supply feeders, AP feeders and category - I feeders serving mixed loads of urban / industrial consumers. As per Regulation 10(4) of these regulations a person having been declared insolvent or bankrupt or having outstanding dues against him for more than two months billing of distribution/transmission licensee at the time of application is not eligible for open access.
- The aforementioned eligibility conditions need to be checked/ verified by field offices before grant of Open Access. The outstanding dues, if any, towards the distribution licensee can only be verified/ confirmed by the distribution licensee while granting consent for Open Access.
- 4.2 That as per Section 4.1, 4.3 (iii) and 4.3 (iv) of LTA/ MTOA Procedures approved by PSERC, the consent of distribution licensee is required before processing of open access (LTA/ MTOA) application. Similarly as per Section 4.1 and 4.3 (ii) of STOA Procedures approved by PSERC the consent of distribution licensee is required before processing of open access (STOA) application. Northern Railways, a part of Indian Railways has been availing Long Term Access (LTA) w.e.f. 24.11.2019 for purchase of upto 35 MW power from BRBCL Nabinagar Thermal Generating Station (4x250 MW), Bihar for drawl at its 11 no. Traction



Sub-Stations (TSSs) in the State of Punjab connected with PSTCL at voltage level of 220/132 KV.

4.3 With reference to Long Term Access (LTA) application of Northern Railway for addition of new Traction Substation (TSS) in the existing I.T.A it has been submitted that the petitioner vide its fresh LTA application received on 12.11.2020, applied for revision of existing LTA granted to Northern Railway by addition of one no. additional TSS at Gehri Bhagi. The application along with requisite documents was forwarded by PSTCL vide Dy.CE/Open Access, PSTCL, memo no. 2428 dated 12.11.2020 to the office of Chief Engineer/ PP&R, PSPCL for consent in line with the LTA/ MTOA Procedures approved by the PSERC.

- I. PSPCL vide Dy.CE/ Power regulation, PSPCL memo no. 1737 dated 27.11.2020 returned the application to PSTCL mentioning that due to non-clearing of outstanding dues by Northern Railway w.r.t. 4 no. bills raised by PSPCL, the revision in LTA cannot be granted. Accordingly, Northern Railway was informed by PSTCL vide Dy.CE/ Open Access, PSTCL e-mail dated 27.11.2020 to take necessary action for clearing the outstanding dues.
- II. Subsequently, the matter was taken up by the petitioner with Govt. of Punjab, vide Member (Traction & Rolling Stock) Railway Board & Ex-Officio Secretary, Govt. of India, Ministry of Railway D.O. No. 2018/Elect(G)/ 70/2(PB) dated 10.12.2020, further endorsed by Govt. of Punjab to CMD/ PSPCL and CMD/ PSTCL, copy of which was also forwarded by PSTCL to PSPCL vide CE/ P&M, PSTCL, memo no. 52/53 dated 04.01.2021.
- III. In reference to discussions and direct correspondences between Petitioner and PSPCL, PSPCL vide CE/ PP&R, PSPCL, memo no.

10/17 dated 13.01.21 asked the petitioner to either pay the outstanding amount of bills to PSPCL or file a petition before the appropriate commission to resolve the dispute regarding pending bills and submit an undertaking in respect of the same before consent for inclusion of Gehri Bhagi TSS in existing LTA.

IV. The Petitioner vide its letter dated 28.01.2021 submitted an undertaking to PSTCL as sought by PSPCL, which was forwarded by PSTCL to PSPCL vide Dy.CE/ Open Access, PSTCL memo no. 451 dated 01.02.2021.

V. That PSPCL vide Dy.CE/ PR, PSPCL, memo no. 35/39 dated 12.02.2021 intimated PSTCL that as per the information received from field offices of PSPCL, various bills are pending against Northern Railway and Divisional Manager (Electric), DRM office Bikaner, Rajasthan has been requested to deposit outstanding amount of Rs. 74,25,860/- and the pending dues should be cleared before processing of LTA application. The same was intimated to the Petitioner by PSTCL vide Dy.CE/ Open Access, PSTCL, memo no. 610 dated 12.02.2021.

4.5 With reference to the issuance of No Objection Certification for Short Term Open Access (STOA) to Northern Railways it has been submitted that the petitioner vide its application received on dated 12.03.2020 applied for grant of Short Term Open Access (STOA) for purchase of upto 35 MW power through Collective Transaction (Power Exchange) for drawl at 11 no. TSS within the State of Punjab, connected with PSTCL at 220/132 kV voltage level, mentioning that the units of BRBCL Nabinagar plant are going for shutdown for approx 3 months from 01.04.2020 to 29.06.2020 and Railway is planning to meet the shortfall in LTA through STOA procurement from power exchange. The

application was forwarded by PSTCL to PSPCL vide Dy.CE/Open Access memo no. 1477 dated 12.03.2020.

- I. PSPCL vide Sr.Xen/ Open Access, PSPCL, e-mail dated 31.03.2020 addressed to PSTCL intimated that Northern Railway has entered into Bulk Power Transmission Agreement (BPTA)/ LTA agreement with PSTCL for availing 35 MW power through Long Term Access (LTA) and Standby Power Supply Agreement for 5 MVA with PSPCL and there is no provision in BPTA that Northern Railway can avail full quantum of power through STOA in case of shutdown and also that the STOA sought by Northern Railway for a period of 3 months is not in line with the provisions of PSERC (Terms & Conditions for Intra-State Open Access) Regulations, 2011. Accordingly, the petitioner was informed by PSTCL vide Dy.CE/ Open Access e-mail dated 31.03.2020.
- II. That in line with the observations of PSPCL, the petitioner submitted the revised STOA application for purchase of upto 20 MW power for the period of 01.05.2020 to 31.05.2020, which was forwarded by PSTCL to PSPCL vide Dy.CE/ Open Access e-mail dated 06.04.2020.
- III. That PSPCL vide Sr.Xen/ Open Access, PSPCL e-mail dated 15.04.2020 issued STOA consent to Northern Railway for purchase of upto 20 MW power w.e.f. 01.05.2020 upto 31.05.2020 subject to certain terms & conditions e.g. considering over-drawal of Open Access power as Standby power, payment of Cross-Subsidy Surcharge and Additional Surcharge by Northern Railway on energy drawn under LTA & STOA subject to decision of APTEL in Appeal No. 170 of 2019 etc. Accordingly, STOA approval was issued by PSTCL to the petitioner vide Dy.CE/ Open Access,



PSTCL memo no. 1613 dated 16.04.2020. However no energy was actually transacted/ purchased by Northern Railway under STOA during May-2020.

- IV. That the STOA applications for subsequent months/ period were received from the petitioner on dated 11.06.2020, 09.07.2020 and 05.08.2020, which were forwarded by PSTCL to PSPCL vide Dy. CE/ Open Access, PSTCL memo no. 1887 dated 11.06.2020, 1957 dated 09.07.2020 and 2047 dated 05.08.2020 respectively.
- V. That PSPCL vide Dy.CE/ PR, PSPCL memo no. 931 dated 19.06.2020, 945 dated 17.07.2020 and 1639 dated 17.08.2020, issued STOA consent to Northern Railway for purchase of upto 20 MW power from 20.06.2020 to 19.07.2020 and 35 MW from 20.07.2020 to 18.08.2020 and 35 MW from 19.08.2020 to 16.09.2020 subject to similar terms & conditions as earlier. Accordingly, STOA approval was issued by PSTCL to the petitioner vide Dy.CE/ Open Access, PSTCL memo no. 1891 dated 19.06.2020, 2003 dated 17.07.2020 and 2123 dated 18.08.2020 respectively.
- VI. That PSPCL vide Dy.CE/ PR, PSPCL memo no. 1644 dated 20.08.2020 addressed to PSTCL, further intimated that as the Open Access for a period equal to or exceeding 3 months but not exceeding 5 years falls under Medium term Open Access (MTOA), further NOC for STOA shall not be granted by PSPCL to Northern Railway and Northern railway may fulfill its power requirement through LTA or in case of forced outage of its generating source, through standby power from PSPCL. The same was intimated by PSTCL to the petitioner vide Dy.CE/ Open Access, PSTCL e-mail dated 20.08.2020.

- VII. That the petitioner submitted the STOA application to PSTCL for subsequent month along with reply to the aforesaid observation of PSPCL vide its letter dated 09.09.2020 mentioning that as per the provisions of PSERC (Terms & Conditions for Intra-State Open Access) (8<sup>th</sup> amendment) Regulations, 2019, it has the right to arrange standby power from any other source and standby power from PSPCL shall only be scheduled in case of unprecedented shutdown of generating source, which was forwarded by PSTCL to PSPCL vide Dy.CE/ Open Access, PSTCL, memo no. 2187 dated 14.09.2020.
- VIII. That PSPCL vide Sr.Xen/ Open Access, PSPCL, memo no. 113/14 dated 17.09.2020 addressed to PSTCL, returned the STOA application of petitioner mentioning that Railways is more inclined towards purchase of power through Power Exchanges rather than scheduling power under LTA or scheduling standby power from PSPCL and as STOA has been allowed continuously for a period of 89 days (20.06.2020 to 17.09.2020), any further Open Access would fall under MTOA as per the PSERC (Terms & Conditions for Intra-State Open Access) (8<sup>th</sup> amendment) Regulations, 2019, according to which MTOA means open access for a period equal to or exceeding 3 months but not exceeding 5 years. The same was intimated by PSTCL to the petitioner vide e-mail dated 18.09.2020.
- IX. That in reference to intervention by the petitioner through Govt. of Punjab discussions and direct correspondences between Petitioner and PSPCL, PSPCL vide CE/ PP&R, PSPCL, memo no. 10/17 dated 13.01.21 allowed the petitioner to apply afresh for

grant of Short Term Open Access (STOA) with some gap in between after the lapse of continuous STOA period of 89 days.

- X. That the petitioner vide its application received on dated 22.02.2021 applied for STOA for purchase of upto 35 MW power through Collective Transaction (Power Exchange), which was forwarded by PSTCL to PSPCL vide Dy.CE/ Open Access, PSTCL memo no. 693 dated 22.02.2021.
- XI. PSPCL vide Sr.Xen/ Open Access, PSPCL memo no. 66 dated 04.03.2021 returned the STOA application of petitioner mentioning that as per the information received from field offices of PSPCL, 4 no. bills amounting to Rs. 74,25,860/- for the period 25.07.2020 to 13.01.2021 are pending against Northern Railway and the pending dues should be cleared before processing of STOA application. The same was intimated to the Petitioner by PSTCL vide Dy.CE/ Open Access, PSTCL, email dated 05.03.2021.
- 4.6 That the request of petitioner for addition of one traction substation in the existing Long Term Access could not be processed by PSTCL due to denial of consent by PSPCL. It is the obligation/duty of the State Transmission Utility to provide non-discriminatory open access to its transmission system, however the open access cannot be granted by PSTCL until & unless consent for same is granted by PSPCL in line with the provisions of LTA/ MTOA Procedures and STOA Procedures approved by PSERC.

**Rejoinder filed by the petitioner to the reply filed by PSPCL & PSTCL.**



5. The Petitioner filed rejoinder to the reply filed by PSPCL and PSTCL reiterating its earlier submissions. It has been further submitted that

- i. The documents filed by the Respondents would show that the PSPCL vide its letter dated 13.01.2021 had informed that in so far as inclusion of additional Traction Substation in the existing LTA is concerned, the consent of the same shall be provided subject to the condition that Northern Railway shall either pay the outstanding amount of bills to PSPCL or file a petition before the appropriate commission to resolve the dispute regarding pending bills payable to PSPCL. The petitioner vide its letter dated 28.02.2021 while seeking inclusion of additional traction substation had intimated PSTCL about the filing of the present petition and had also submitted an undertaking as sought by PSPCL.
- ii. That while granting no-objection certificate to the Petitioner for availing Short Term Open Access a condition was stipulated that any over drawal of Open Access Power shall be treated as standby power. The above condition was wholly contrary and in violation of the express terms of the Regulations and the Standby Agreement and as such cannot be relied upon by PSPCL. PSPCL cannot be permitted to impose a condition which is contrary to the Regulations and the Standby Agreement which has also been approved by this Commission. Even otherwise, assuming but not admitting that the over drawn power is to be automatically treated as standby power, the PSPCL for the same over drawn power is charging under DSM Mechanism and also under the Standby Arrangement in terms of Regulations 27A. PSPCL cannot seek to

levy both the charges simultaneously causing double jeopardy to the Petitioner.

- iii. The petitioner filed a common rejoinder to the replies filed by the respondents and submitted that PSPCL cannot be permitted to deny the Petitioner a licensee to avail short term open access on account of dues of DRM (Elect), Bikaner, Northern Western Railways in respect of Gehri Bhagi TSS, which is a consumer of the PSPCL. Northern Railways as a licensee is a separate entity from DRM (Elect), Bikaner, Northern Western Railways as a consumer of PSPCL and dues, if any, from one entity cannot be made subject to other entity.
- iv. That PSTCL is trying to take advantage of its own wrongs. As per Regulation 5 of the Open Access Regulations 2011, PSTCL was to seek approval of the procedure for connectivity within 30 days of notification of Open Access Regulations which it failed to do so. It is PSTCL who is in default for not following the procedure for connectivity for approval before this Commission. Further, PSTCL itself pursuant to the order dated 28.02.2018 in Petition No. 3 of 2017 had processed the application for connectivity of 11 TSSs of the Petitioner to the transmission system as a licensee. Thus, there is no reason or justification for PSTCL for not granting connectivity to Gehri Bhagi TSSs to its transmission system for being included in the existing LTA.
- v. The Respondents cannot be permitted to contend that the Petitioner is over drawing when STOA for procuring power through exchange is being denied on one pretext or the other. In

fact, the Petitioner is entitled to compensation from the Respondents because it is due to the acts and omissions on the part of the Respondents, that the Petitioner has been made to pay huge amounts towards the DSM Bills and other charges.

- vi. With regard to applicability of CSS , the petitioner has submitted that PSPCL has been impleaded in Appeal No.170 of 2019 as a party and is bound by the interim order dated 13.05.2019 passed by the Hon'ble Appellate Tribunal wherein the order dated 23.04.2019 passed by the Rajasthan Electricity Regulatory Commission holding that Railways is liable to pay CSS has been stayed.

**Submissions of the parties in reference to the Order dated 30.06.2021**

- 6.1 The Commission vide Order dated 30.6.2021, directed PSPCL, PSTCL and the Railways to submit the information as under:
1. *"PSPCL and PSTCL to submit the detailed calculations of amount charged (head wise), amount deposited by Railways and the pending dues. PSPCL and PSTCL should also submit the basis of charging the various amounts to Railways.*
  2. *PSTCL to submit the details regarding scheduling of power by the Railways.*
  3. *Railways has standby arrangements of 5MW with PSPCL against LTA of 35 MW whereas in some instances, it has drawn power much more than by it scheduled. Railways to submit the information regarding standby arrangements made by it to meet the demand in case of outage/constraints on long term power generator.*



4. *Railways to submit the details of outages/constraints of the generating plant with which it has arrangements to draw standby and long term power.*

5. *Reasons why Railways had not submitted any standby schedule to PSPCL when its tied up generating station was having outages/constraints.*

*“PSPCL and PSTCL to submit the detailed calculations of amount charged (head wise), amount deposited by Railways and the pending dues. PSPCL and PSTCL should also submit the basis of charging the various amounts to Railways.”*

**6.2** The petitioner has filed the details of outages, details of days/time blocks when the schedule for railways has been mentioned as zero by the SLDC and the details of the schedule punched in by Railways with SLDC. The petitioner reiterating its earlier submissions has submitted that the Petitioner is procuring 35 MW power through Long Term Access as a Deemed Licensee from the Nabinagar Thermal Power Plant. The said power plant is a 4\*250 MW thermal power plant with 90% of the power reserved for Railways. The 35 MW power allocated from the 4\*250 MW plant (at present 3\*250MW) of BRBCL is not linked to a particular unit and as such as and when one unit faces any failure/outage, the power is made available from the other units in the proportionate manner and incidents having complete outage of the BRBCL power plant are very rare. However, there have been some incidents when there has been complete outage which were either planned or unplanned. With regard to the non-scheduling of power from PSPCL under the standby agreement, it has been submitted that from the details submitted by PSPCL there have been only limited days/time blocks when the schedule for Railways has been mentioned as '0' by the

SLDC. The Railways had been continuously placing its schedule on the SLDC for the days/time blocks, except for 2 time blocks on 02.07.2020, however, SLDC on its own accord had been placing the schedule for Railways as '0' with the NRLDC. Most of the said time blocks pertain to the period when the unit(s) of the generator tripped/failed on account of unplanned / unforeseen circumstances including on account of transmission constraint at regional level. SLDC never, except for 30.06.2020, informed the Railways that it shall not be permitted to have the entire punched schedule available to it for the purposes of its power requirement. In absence of any information, as regards non-availability of the quantum punched in by Railways it was not possible for the Railways to schedule power under the Standby Agreement either from PSPCL or PTC through Power Exchange. SLDC had informed only with respect to the incident of 30.06.2020 and thereafter, the Railways took remedial action by sourcing power through STOA under the agreement dated 05.03.2020. The power procurement from M/s. PTC Indian Limited over STOA came to an end as the Respondents refused to grant NOC for further period, resulting into filing of the present petition.

6.3 PSPCL has submitted that it has raised the monthly invoices upon the Petitioner as per Regulation 28(3) of Open Access Regulations, 2011 for availing open access and standby power as per Standby Agreement. In the said invoices, the charges have been raised under separate heads as under:

- (i) demand surcharge on overdrawal than scheduled (imbalance charge due to overdrawal/underdrawal);
- (ii) interest @ 1.5% per month on gross unpaid amount 15 days after due date;

- (iii) monthly demand surcharge on over drawl than scheduled;
- (iv) cross subsidy surcharge @ Rs.0.83/-;
- (v) additional surcharge @ Rs.1.145/-(for the period 01.04.20 to 30.09.20), @ Rs. 1.23/- (for the period 01.10.20 to 31.03.21) and @ Rs. 1.16/- (for the period 01.04.21 to 30.09.21)
- (vi) surcharge amount @2% and 5%

The aforesaid monthly invoices contain the heads reflecting units of standby power availed by the Petitioner on monthly basis. When the standby power is availed in a particular month, PSPCL raises energy charges and fixed charges whereas when the standby power is not availed, there are no fixed charges or energy charges levied. PSPCL has also levied demand surcharge for overdrawal of power while undertaking open access transactions as per the provision of "imbalance charges" prescribed under the 8<sup>th</sup> Amendment to Open Access Regulations, 2011 which is distinct from standby charges, payable by the open access customer as incorporated under the Standby Agreement. Since the Petitioner has started drawing power under open access, the scheduled power of the Petitioner is 15% (out of 35 MW) less for half the time and during 70% of time, the Petitioner draws 20% (more than scheduled) more power. On 19.3.2020, the scheduled power has been 3.386 MW against 35 MW under the Agreement whereas the Petitioner has drawn 36.352MW. Which means that power generation of the plant with which Railways has signed PPA for 35 MW power may have been reduced by 90% on 19.3.2020 (scheduled power 3.386 MW against 35 MW contracted under PPA) and on the same date they have drawn 1173.724% (36.352 MW against the schedule of 3.386 MW) more power than the scheduled. It may be the case of reduced generation or



generator outage and standby power drawn in terms of the clause 20 "Scheduling and Dispatch" of the Standby Agreement. Also, on 30.6.2020, power scheduled has been zero MW whereas power drawn has been 34.485 MW, which again appears to be the case of generator outage. There are many such like instances when the Petitioner has actually drawn the power more than the schedule given by it and the same has been considered as standby power by PSPCL in terms of the Standby Agreement and Open Access Regulations, 2011 as amended from time to time.

The aforesaid charges are liable to be paid by the Petitioner on or before the due date. In case of failure in payment by the Petitioner towards the invoice, PSPCL in the next monthly bill imposes surcharge amount @ 2% when the payment is made within one week from the due date. When the payment is not made beyond one week from the due date, surcharge is levied @ 5% on the total amount. However, when the payment towards the invoice is still not made within 15 days from due date, an interest of 1.5% is levied upon the Petitioner on the total amount.

Out of the above total amount under the invoices raised till 31.05.2021, the Petitioner has paid a sum of Rs.12,07,17,428. The balance amount of Rs.105,95,14,116 is pending up to 14.07.2021 and is liable to be paid by the Petitioner along with interest. Therefore, all the aforesaid invoices raised upon the Petitioner towards standby power and the charges towards open access are in consonance with the Act and Open Access Regulations, 2011. In the present case, since the status of the Petitioner as deemed distribution licensee is under challenge in Appeal No.276/2015 before Hon'ble Appellate Tribunal, the Petitioner for the purpose of adjudication of present case, is liable to be

considered as open access customer in accordance with Open Access Regulations, 2011 and is liable to pay all the above said open access charges.

- 6.4 PSTCL has filed the calculation details of time block wise Deviation Charges worked out as per CERC Regulations and day-wise imbalance charges w.e.f 24.11.2019 upto 31.05.2019 and has submitted the month wise abstract of these imbalance/deviation charges paid/received by the petitioner w.e.f 24.11.2019 to 31.05.2021. It has been further submitted that the UI/Imbalance/Deviation Settlement Accounts of petitioner with complete day-wise details are regularly uploaded on SLDC website on monthly basis and the 15-minute data/details are also e-mailed to the petitioner every month. The petitioner has been paying deviation/ imbalance charges regularly to SLDC and the outstanding amount of these charges towards the petitioner as on date is NIL.
- 7.0 Vide Order dated 12.10.2021, it was observed by the Commission as to what action SLDC has taken to restrict overdraws by Open Access Consumers from their schedule to maintain the grid discipline and its stability.

**Submissions of PSTCL in reference to the ibid Order.**

- 7.1 That with regard to the query raised by the Commission, it has been submitted that whereas the excessive over-draws by partial Open Access Consumers (who are consumers of distribution licensee) are restricted by the distribution licensee by imposing demand surcharge (for draws increasing the admissible drawl/ sanctioned Contract Demand), the over-draws by full Open Access consumers (e.g. Northern Railway) are monitored by SLDC through the real time data received in SCADA system at SLDC Control Room. However, as the

data of Northern Railway is fetched from 14 no. ABT meters/ feeders at 11 no. locations (Traction Sub-Stations), the reliability of data is sometimes compromised due to suspected data/ connection problems at one or more locations. Such matter are regularly taken up by SLDC/ PSTCL with Northern Railway for rectification of suspected data.

- 7.2 That the heavy over-drawls by Northern Railway during the month of July-2021 were observed while processing its monthly ABT meter data for preparation of Deviation Settlement Account. Accordingly, a warning letter/ notice was issued by SLDC/ PSTCL to Northern Railway on dated 03.09.2021. Subsequent heavy over-drawls by Northern Railway were also observed during the month of August-2021 & September-2021. After processing the monthly ABT meter data for preparation of Deviation Settlement Account, warning letters/ notices were also issued by SLDC/ PSTCL to Northern Railway on dated 29.09.2021 & 25.10.2021.
- 7.3 That as per Section 6.4.3 (i) and (vii) of the Punjab State Grid Code, it is the prime responsibility of Northern Railway to restrict the drawal of its control area. SLDC may also direct the user to curtail drawal and monitor the action taken by it to ensure reduction of drawal from the grid as directed as RLDC.
- 7.4 That mostly the heavy over-drawls by full Open Access consumers (e.g. Northern Railway) are a small proportion/percentage of total over-drawal/ deviation of the State and are primarily taken care of/ penalized by imposition of Additional Deviation Charges & Sustained Deviation Charges as per CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014, as amended from time to time read along with Regulation 31 (1) of PSERC (Terms & Conditions for Intra-State Open Access) Regulations, 2011, as amended from time to time. The



Deviation charges (including Additional Deviation Charges) incurred by Northern Railway due to heavy over-drawls during the months of July-2021, August-2021 & September-2021 are reproduced as under:-

Period	Net Deviation Quantum (kWh) {Over-Draw al (+)/ Under-Draw al (-)}	Base Deviation Charges (Rs.) Receivable (-)/ Payable(+) by Railw ay	Additional Deviation Charges Payable by Railw ay (Rs.)	No. of Sustained Deviations / Sign Change Violations	Sustained Deviation Charges Payable by Railw ay (Rs.)	Net Deviation amount Receivable(-) / Payable(+) by Railw ay (Rs.)
Jul-21	12816356	36998929	30320649	84	4156259	71475837
Aug-21	13171305	65616301	55636448	122	16241945	137494694
Sep-21	16543495	64798051	57716167	214	26371037	148885255

7.5 That despite above, in case of continuous violations and non-compliance of SLDC's directions and Regulations issued by the Commission, SLDC may also approach the Commission for imposition of additional penalty on such Open Access consumers under Section 33(5), 142 & 146 of Indian Electricity Act, 2003 read along with Section 2.8.2 of Punjab State Grid Code.

7.6 The petitioner further submitted, vide letter No. 230-Elect/TRD/UMB/Open Access/1122 dated 02.11.2021, common rejoinder to the replies filed by PSPCL and PSTCL. PSTCL filed its reply vide memo No. 2200 dated 02.11.2021 in reference to Order dated 12.10.2021 and also filed its submissions to the rejoinder filed by the petitioner. After hearing the parties on 10.11.2021, Order was reserved.

## Observations and Decision of the Commission.

8. The Commission has examined the submissions made by Railways in the petition, reply of PSPCL, PSTCL/SLDC on the same, subsequent rejoinders and reply of the same and information submitted by the parties during the course of hearings and has heard the respective counsels.

Railways has 11 traction sub stations in the state and has been granted long term open access to avail power upto 35 MW from BRBCL Nabi Nagar Thermal Generating station (4 x 250 MW) Bihar and has been availing LTA from 24.11.2019. Railways also applied for STOA for purchase of 35 MW power from Power exchange on 12.03.2020 mentioning that units of BRBCL were going for shutdown from 01.04.2020 to 29.06.2020. A Tripartite sale power agreement was signed between Railways, Railway energy Management company Limited and PTC India Limited for supply of maximum of 35MW power by PTC India Limited to Indian railways at its traction substation in Punjab through Power exchange on 05.03.2020. Railways has consistently overdrawn/underdrawn from the grid. Railways has been charged deviation charges by PSTCL and stand by charges by PSPCL. Railways has prayed for relief as indicated in Para 2.18.

In view of the same, the issue wise analysis and decision of the Commission is as under:

**Issue No. 1      Liability of Indian Railways to pay Energy Charge, Fixed Charge and Demand Surcharge for the power over drawn by it beyond the power under Open Access when power under Standby Agreement was neither procured nor scheduled.**

- a) With regards to applicability of Standby Charges, Regulation 27 A of the OA Regulations provides as under:

*“27A Standby charges*

*1) Standby power shall be provided on request to the Open Access Customer, by the distribution licensee of his area of supply, subject to load shedding as is applicable to the embedded consumers of the licensee.*

*Provided that the Open Access Customer enters into an agreement with the distribution licensee for such demand. The distribution licensee shall prepare a model agreement within one (1) month of notification of these regulations and shall take the Commission’s approval for the same. Existing Open Access Customers requiring Standby power shall be required to execute the supplementary agreement within one (1) month of the approval of the model agreement by the Commission. Provided further that Open Access Customers would have the option to arrange Standby power from any other source subject to the condition that such power shall be drawn through the same system for which open access has been granted.*

*2) Standby power shall be made available at 11 kV or higher voltage as specified in the ‘Supply Code 2014’, as amended from time to time and applicable voltage surcharge/ rebate shall be levied /allowed. Provided that the Open Access Customer, who is not a consumer of the licensee, shall have to establish, operate and maintain the required interconnecting infrastructure at his cost.*

*3) Standby power shall be admissible for the maximum period of 42 days in a financial year. The drawal of Standby power during any time block(s) of a day shall be counted as one day. Provided that*



*the maximum demand that can be contracted under Standby power shall not exceed the capacity allowed under the Open Access.*

- 4) *Wherever an agreement for Standby power exists between the Open Access Customer and the distribution licensee of his area of supply, he shall be required to pay to the distribution licensee a charge equal to **Rs. 35 per kVA per month or part thereof or as may be decided by the Commission from time to time, towards commitment charges on the capacity (in kVA) contracted as Standby demand** from the distribution licensee. The commitment charges shall apply uniformly every month commencing from the date of applicability of the agreement, irrespective of whether the Open Access Customer avails Standby power or not.*
- 5) *For actual drawal of Standby power, in addition to the commitment charges, the Open Access Customer shall also be required to bear charges (including demand surcharge, whenever chargeable) as specified in the Schedule of Tariff for Temporary Supply of relevant category corresponding to the demand slab of total of Standby contract demand and Sanctioned CD (if any). Provided that in case where Temporary Supply schedule of relevant category is not available, the Standby power shall be provided by the distribution licensee on payment of charges as per Schedule of Tariff for Temporary Supply applicable to LS (General) category. Provided further that for billing during the period of availing Standby power, the demand for Standby power shall be calculated on daily basis considering the highest quantum of power scheduled in any particular time block of the day.*

6) *The charges for drawal of power during the period of availing Standby power shall be computed as under:*

(a) *Open Access Customer who is a consumer of the distribution licensee i) For the demand availed upto the admissible demand (i.e. sanctioned CD or the admissible drawal whenever applicable as per Regulation 28(3)), billing shall be as a regular consumer of the licensee. ii) For the Standby power availed (i.e. demand recorded in excess of the admissible demand), the charges shall be computed as under:*

- *Energy charges Energy charges shall be levied on the energy consumption calculated in proportion of the Standby power availed to the total demand recorded.*
- *Fixed charges and/or Demand surcharge Upto 42 days in a financial year, fixed charges on daily basis shall be levied on the Standby power availed upto the limit of Standby contract demand. In case, Standby power is drawn for more than 42 days in a financial year or if the Standby power availed exceeds the Standby contract demand, demand surcharge shall be chargeable on the same.*

(b) *Open Access Customer who is not a consumer of the distribution licensee*

- *Energy charges shall be levied on the total energy consumed during the period of availing Standby power.*
- *Fixed charges and/or Demand surcharge Upto 42 days in a financial year, fixed charges on daily basis shall be levied on the maximum demand recorded upto the limit of Standby contract demand. In case, Standby power is*

*drawn for more than 42 days in a financial year or if the recorded drawal exceeds the Standby contract demand, demand surcharge shall be chargeable on the same.”*

- a) The Commission notes that the PSERC Open Access Regulations, 2011 provides that standby tariff is applicable only in case the standby power is scheduled by the Open Access customer. From the submissions made by Railways and even admitted by PSPCL in its submission that Railways has not scheduled any standby power. With regards to NOC given by PSPCL to Railways for the period 20.06.2020 to 19.07.2020, 20.07.2020 to 18.08.2020 and 19.08.2020 to 17.09.2020 (Total 89 days) wherein it has mentioned that any overdrawal shall be considered as standby power it is felt that this is against the provisions of OA Regulations.
- b) Railways has consistently overdrawn/underdrawn from the grid on several occasions which is inappropriate and is not allowed by the Indian Grid Code as well as Punjab State Grid Code. Indian Railways has been charged for the same under Deviation Settlement Mechanism.

**The Commission feels that the objective of UI mechanism is to maintain grid discipline by the generators and beneficiaries and limit the swing of frequency variation within the specified frequency band and UI mechanism cannot be used as a source of power. The provision of standby power in the Open Access Regulations has been made to enable open access customers to get power in case of constraints of availability of power from tied up resources. Indian Railways was at liberty to source**



**standby power either from PSPCL or through a separate arrangement with any other generator or entity.**

The Commission notes that Railways in its submission dated 25.08.2021 has stated that it had placed its schedule with SLDC for 7 days (19.03.2020, 29.06.2020, 30.06.2020, 01.07.2020, 02.07.2020, 08.07.2020 and 09.01.2021) except for two time blocks on 02.07.2021 but SLDC on its own accord had placed the schedule for Railways as '0' with NRLDC for 86 time blocks. SLDC has never (except for 30.06.2020) informed the Railways that it shall not be permitted to have the entire punched schedule available to it for the purposes of its power requirement. In absence of any information, as regards non-availability of the quantum punched in by Railways it was not possible for the Railways to schedule power under the Standby Agreement either from PSPCL or PTC through Power Exchange. SLDC had informed only with respect to the incident of 30.06.2020 and thereafter, the Railways took remedial action by sourcing power through STOA. Railways on enquiry has also submitted that these time blocks pertain to the period when the unit(s) of the generator tripped/failed on account of unplanned / unforeseen circumstances including on account of transmission constraint at regional level.

The Commission also takes note of the submission of SLDC that the changes/ revision in DC/ entitlement from the generator are available on NRLDC website in public domain. The intimation is only given by SLDC in case of curtailment of power by SLDC due to intra-state transmission constraints. The Revision in schedule is submitted by the beneficiary after checking its entitlement from NRLDC website.

**The Commission hold that though Railways was completely aware that its entitlement had been revised to zero by NRLDC on account of**

**change in declared capacity of the generator yet it did not take any measures for revising its schedule or sourcing power under STOA/schedule standby power of PSPCL but resorted to over-drawing power from the grid at deviation charges.**

In the submissions of PSPCL, it has indicated that Railways was granted consent of STOA for purchase of 20 MW power from 01.05.2020 to 31.05.2020 & from 20.06.2020 to 19.07.2020 and 35 MW from 20.07.2020 to 18.08.2020 and from 19.08.2020 to 16.09.2020. Even after being granted STOA for the periods mentioned above. It did not schedule any power under STOA up to 30.06.2020 and thereafter scheduled some power in some blocks of the day under STOA.

During the hearings as well as vide Interim Order dated 30.06.2021, Commission asked Northern Railways to submit the reasons for not scheduling standby power/source power under STOA and continuously overdrawing from the grid. However, Railways has not submitted any justification for the same. **The failure of Railways to submit any justification indicates that it has intentionally made consistent overdrawals and has not scheduled standby power/power under STOA during times when its generator tripped/failed/went into maintenance.**

Railways further submitted that it was over drawing from 17.09.2020 when STOA for procuring power through exchange was being denied by PSPCL and PSTCL. **However, there is no denying the fact that if Railways had wanted to play fair during the times of unavailability of STOA it could have scheduled the standby power in accordance with its agreement with PSPCL. However, it has never scheduled standby power of PSPCL and deliberately overdrew from the Grid. The Commission also notes that Railways has not renewed the standby agreement with**

**PSPCL which expired on 31.12.2020 inspite of the fact that it did not have STOA for sourcing standby power further reinforcing that Railways had no desire to avail standby power but to continue overdrawing from the grid.**

**After examining the submissions made by Railways and PSTCL/SLDC with regards to drawal of power on 7 days (19.03.2020, 29.06.2020, 30.06.2020, 01.07.2020, 02.07.2020, 08.07.2020 and 09.01.2021 - 86 time blocks) when there was zero schedule for Railways, it is held that Railways ought to have been aware that its schedule had been revised to zero in these time blocks on account of reduction in its entitlement from the generator as the information was available in public domain. Since, Railways has failed to make alternate arrangements of power by scheduling power under STOA/Scheduling power under Standby power, it is held that the power drawn should be treated as standby power and hence for these 86 time blocks charges as specified in Regulation 27(A) shall be applicable. For the rest of the period wherein Railways has overdrawn/underdrawn, Railways has already paid deviation charges and cannot be charged under the standby mode. Accordingly, PSPCL/PSTCL are directed to revise and adjust Invoices/bills raised on Northern Railways alongwith interest/Late payment surcharge in accordance with open access Regulation.**

- d) SLDC has averred that the state account is settled at the regional level by PSPCL itself i.e. energy being consumed in the State of Punjab is accounted / settled by PSPCL with NRLDC.

**It has been observed that Railways have been paying UI charges to SLDC, while PSPCL, as State Discom has settled/paid for the**



deviations at State level with NRLDC including for the deviations made by Railways as Railways is an embedded customer in the State of Punjab. Hence, the principle of natural justice demands that PSPCL be compensated for the same. Thus, the Commission directs SLDC to transfer the amount collected from Northern Railways in lieu of UI/DSM charges to PSPCL.

**Issue No. 2      Liability to pay Additional Surcharge on the power being sourced through Open Access by Indian Railways in its status as a Deemed Distribution Licensee**

With regards to Additional Surcharge Regulation 27 of the PSERC Open Access Regulations, 2011 provides as under:

*“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.”*

Railways has contended that additional surcharge is leviable only on the charges of wheeling as per Section 42(4) of EA Act, 2003 and since it is connected to the Intrastate Transmission System, additional surcharge is not leviable and that he was been exempted from paying additional surcharge vide the Commission's Order dated 28.02.2018 in Petition no. 03 of 2017.

The PSERC OA Regulations provides that 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 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. The only exception to this is a person who has established a captive

generation plant for carrying the electricity to the destination of his own use which is not the present case. **Further, as per Regulation 4 and 5 above, the additional surcharge is leviable even if open access is being availed only on interstate transmission system or through dedicated lines. Therefore, it is clear that even without using licensee's transmission and/or distribution system additional surcharge is applicable. In view of the above it can be concluded that additional surcharge is leviable even when the consumer is not using the distribution network.**

**Further, Railways was a consumer of PSPCL for its 11 traction substations and was drawing power from PSPCL before it availed open access for these locations from 24.11.2019. PSPCL had tied up long term power and had incurred associated fixed costs to supply to Railways. When Railways started sourcing power through open access, these commitments were stranded. Accordingly, it is held that Railways is liable to pay additional surcharge to PSPCL.**

The contention of Railways that the Commission vide Order dated 28.02.2018 in Petition no. 03 of 2017 has disallowed PSPCL's claim towards additional surcharge and fixed cost is factually incorrect. The Commission in the aforesaid Order has clarified that provision for payment of Fixed Charges on total demand of open access customers as proposed by PSPCL does not exist in the OA Regulations, 2011 and that petitioner is at liberty to file a separate petition containing proposal for charging Fixed Charges for actual demand recorded by open access customers, if any from PSPCL, for consideration of amendment to the Regulations by the Commission. The Commission also notes that Railways has appealed to APTEL vide Appeal No. 320/2018 against the Commission's Order in Petition No. 03/2017. **The**



**Commission observes that nowhere in this Order has Railways been exempted from paying additional surcharge.**

PSPCL submitted that it has filed impleadment application in APTEL against Appeal No. 170/2019 filed by Railways against RERC Order dated 23.04.2019 (Indian Railways vs. Jaipur Vidyut Vitran Nigam limited) in which Rajasthan Electricity Regulatory Commission (RERC) allowed levy of Cross Subsidy Surcharge (CSS) and Additional Surcharge. APTEL has allowed PSPCL's impleadment application in the said case on 20.09.2021. Railways vide reply dated 06.11.2021 submitted that as PSPCL has been impleaded in Appeal No.170 of 2019 so PSPCL is also bound by the interim order dated 13.05.2019 passed by APTEL wherein the order dated 23.04.2019 passed by the RERC holding that Railways is liable to pay CSS has been stayed. The Commission notes that since the referred interim Order dated 23.04.2019 was issued well before PSPCL was party to **the petition, it cannot be held to be bound by it, specially since the interim order only stays a RERC order to which PSPCL is not a party in the original petition before RERC.**

### **Issue No. 3      Addition of new Traction Substation in the existing Long Term Access of Indian Railways**

With regards to inclusion of Gehri Baghi TSS in the existing LTA, the Commission observes that Railways in its initial submission in the petition has submitted that they have complied with all the conditions as required for the purposes of incorporation of additional Traction Substation in the existing Long Term Access. However, PSPCL has wrongfully withheld its consent for the same on the basis of illegal demand raised by it towards Demand Surcharge, Fixed Charge, Energy Charge and Additional Surcharge. As a result, PSTCL has been unable to process the application of Railways. Further

in its rejoinder dated 02.11.2021 Railways submitted that PSPCL has been purposely delaying the inclusion of the same in the existing LTA on one pretext or the other. Initially the stand taken was outstanding dues. Once the payment was made and connectivity was sought from PSTCL as licensee, it was communicated by PSTCL that since the procedure for grant of connectivity is not in place, therefore the application for connectivity by Railways cannot be processed. In reply to Railways' rejoinder PSTCL in its reply dated 10.11.2021 submitted that as intimated by the petitioner, there will be 9 no. upcoming TSS (including Gehri Bhagi) and 9 No. proposed TSS (besides existing 11 no. TSS, for which LTA has been availed) and in case of these 9 no. upcoming TSS, Railways had already applied to PSPCL for grant of connectivity by executing A&A forms and by depositing charges for erection & commissioning work between 2017 to 2019 without directly approaching PSTCL for grant of connectivity. Had it approached PSTCL at that time, the connectivity procedure may have been drafted earlier. For these 9 no. upcoming TSS, the Railways has been asked to honor the agreement already executed by it with PSPCL by first taking connectivity as consumer (as done by it in case of Gehri Bhagi TSS and 11 no. existing TSS) and subsequently apply for open access, after clearing outstanding dues in compliance of Open Access Regulations and thereafter getting its consumer connection disconnected after operationalization of open access.

The Commission notes Railways' rejoinder dated 02.11.2021 that for the said TSS, the connection was released by PSPCL on 20.11.2020, thus it is admitted by all the parties that currently Gehri Baghi is getting power supply as consumer of PSPCL and accordingly all dues in respect of the same are to be paid up by Railways to PSPCL before inclusion of the same in LTA system of Northern Railways.

The contention of Railways that DRM (Elect), Bikaner Northern Western Railways as consumer of PSPCL is a separate entity from Northern Railways as a licensee is not acceptable since, the Commission in its Order dated 28.02.2018 in Petition No. 03 of 2017 has observed that for scheduling purposes Railways will be considered as a single customer, however the metering/billing will be done at the individual points where Railways draws power, for which Railways will declare the maximum demand at each point before being granted open access. The Railways would also have to comply with all conditions of connectivity at individual points where it draws power, as set out in the Commission/CERC and relevant Regulations/Grid Code, in order to ensure safety and stability of the grid at these points.

With regards to the PSTCL's submission regarding approval of Procedure for connectivity it is observed that the same is not part of the current petition and shall be dealt with separately.

**Accordingly, PSTCL is directed to provide connectivity to Gehri Baghi TSS in the existing LTA, provided that Railways clears all pending dues of PSPCL.**

**Issue No.4 Issuance of 'No-Objection Certificate' for Short Term Access to Indian Railways to enable it to procure power through Open Access from Power Exchange**

With regards to No-objection certificate for short term open access to Indian Railways it is noted that Railways has been seeking short term open access back to back {20.06.2020 to 19.07.2020, 20.07.2020 to 18.08.2020 and 19.08.2020 to 17.09.2020 (Total 89 days)}. The open access Regulations specify the duration for short term open access as 1 month and for medium term the duration is period equal to or exceeding 3 months but not exceeding 5 years. Similarly for long term open access the duration is any period



exceeding 7 years. Which means that for any duration beyond 3 months, OA consumers has to enter into a medium term / long term open access agreement. If all the open access consumers start misusing the Regulation by seeking short term open access repeatedly as a means of avoiding medium term/long term open access, the purpose of the Regulations would be nullified. As such, the Commission strongly feels that no entity should be allowed to misuse the Regulations and shall operate in accordance with the provisions of the Regulations in letter and spirit.

The Commission holds that if the requirement of Railways is exceeding the time duration of 3 months, Railways need to plan its power procurement in an more efficient and optimum manner and not try to manipulate short term open access to their advantage.

**Accordingly, the Commission directs Railways to rework its power purchase plan based on its current as well as future requirements in line with the provisions of the OA Regulations, 2011. Further, considering the service nature of Railways, Railways ought to make adequate standby arrangements either with PSPCL or with any other generator/trader as commercially viable to it. If standby arrangement is made with a generator/trader other than PSPCL, it has to apply for open access for this power as per Regulations. PSPCL and PSTCL are directed to provide NOC for open access in line with the provisions of the Open Access Regulations provided that Railways clear all dues of PSPCL.**

**5. The Commission further proceeds to analyze the issue of consistent underdrawal/overdrawals by Railways. As observed in the earlier paragraphs also, it is held that for its own benefit Railways has been unfairly overdrawing/underdrawing power from the grid and such**

acts leading to grid indiscipline cannot be justified in any manner. Regulation 6.4.3 (i) of State Grid Code specifies that:

*“SLDC/distribution licensee/users and EHV consumers connected to STS shall initiate action to restrict the drawal of its control area, from the grid, within the net drawal schedule.”*

It has been observed that on the contrary Railways has been consistently overdrawing/underdrawing from the grid and has been using UI mechanism as a real time market. It has taken the UI mechanism as a licensee to overdraw power from the grid at the expense of other players, thus, jeopardizing security of the interconnected grid. Payment of deviation charges under DSM Mechanism does not absolve the responsibility of Indian Railways from following the Grid Code or from maintaining Grid discipline. In the view of Commission, priority of Grid security is the highest in the operation of the Grid and all the beneficiaries have to follow the necessary discipline as per State Grid Code. Indian Railway being a participant in the State pool has to ensure that its actions are not detrimental to the Grid or to other Distribution Licensee and their consumers. In spite of gross non compliances by Railways, the Commission is not inclined to initiate action against Indian Railways under Section 142 of the EA Act at this stage. The Commission may initiate proceedings if such events continue in the future.

In the ordinary course in pursuance of Section 33 of the EA 2003 and Regulation 2.3 of the Punjab State Grid Code, SLDC would have been expected to direct Railways to curtail its load to match the reduced availability of its contracted generator. However, for reasons best known to it, SLDC has not done so. The argument of SLDC about small

**quantities of overdrawal/underdrawal not resulting in Grid security issues is not tenable. In fact all participants in the State pool including SLDC are duly bound to follow the relevant provisions in totality.**

**SLDC is responsible for carrying out real time operations for Grid control and dispatch of electricity within the state through secure and economic operation of the Grid in accordance with Grid standards and State Grid Code. The Commission expresses serious concern with the fact that SLDC has failed to exercise the powers conferred on it and discharge its duties. Accordingly, the Commission directs SLDC to ensure Grid discipline and exercise the inherent powers vested with it under the Grid Code failing which the Commission may have to proceed against SLDC under Section 142 of the Act.**

6. Further, the Commission takes serious note of non compliance of Northern Railways with regards to payment annual fee payable for a Deemed Licensee in accordance to the PSERC (Fee) Regulations, 2005. The Commission vide Interim Order dated 07.09.2021 directed Railways to ensure that the as per Sr. No. 02-A of Part-A of schedule of fee to the PSERC (Fee) Regulations, 2005 be submitted. Northern Railways vide its letter no.230-Elect./TRD/UMB/Open Access/1122 dated 05.10.2021 submitted that Northern Railways being deemed distribution licensee is distributing electricity only for the purposes of operation and maintenance of Railways and not distributing electricity to the consumers at large. Thus, the provision as per Sr. No. 02-A of Part-A of schedule of fee to the PSERC (Fee) Regulations, 2005 may not be applicable on the Northern Railways as there is no revenue receipts for such distribution of electricity. Railways further requested the Commission to advise a lump sum amount per annum as licensee fee to be paid by the Northern Railways.



Further vide Interim Order dated 12.10.2021 the Commission has observed as under:

*“Vide Order dated 07.09.2021, the Northern Railways was directed to ensure that the annual fee payable for a deemed licensee is deposited before the next date of hearing. Northern Railways has submitted vide letter No. 230-Elec/TRD/UMB/Open Access 1122 Dated 05.10.2021 that the Commission may advise a lump sum amount per annum as license fee to be paid by Northern Railways as deemed licensee or in the alternative the Commission may determine the amount payable by the Northern Railways as annual license fee and also submitted the details of energy consumed as a deemed distribution licensee. During hearing the learned counsel for the railways submitted that the matter of payment of fees is under consideration by the Railways”*

The counsel of Northern Railways had sought time to seek instructions from the authorities in this regard. However, no compliance has been done by the Railways on this issue.

The Commission vide Punjab State Electricity Regulatory Commission (Fee) Regulations (4th Amendment) Regulations, 2021 amended the Annual Fee Payable by a Deemed Licensee other than PSPCL as Rs. 2 Crore (lump sum). The same was intimated to Northern Railways vide letter dated 5767 dated 03.12.2021, however, no response from Northern Railways have been received in this regards,

The Railways have made claims regarding the exemptions granted to it as ‘deemed licensee’ however, the annual license fees payable as per the PSERC Fees Regulation by the deemed licensee is yet to be paid by the Northern Railways.

In view of the above Northern Railways is directed to comply with the Commission’s directions and pay annual license fees along with interest

within one month failing which the Commission shall take action against Northern Railways under Section 142 of the Electricity Act, 2003

The petition is disposed of accordingly.

Sd/-

(Paramjeet Singh)  
Member

Sd/-

(Anjali Chandra)  
Member

Sd/-

(Viswajeet Khanna)  
Chairperson

Chandigarh  
Dated: 22.03.2022

