

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI  
APPELLATE JURISDICTION  
APPEAL NO.237 of 2012

IN THE MATTER OF:

Open Access Users Associations

....Appellant

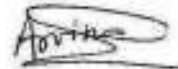
Versus

Punjab State Electricity Regulatory Commission & Anr

...Respondents

INDEX

S. NO.	PARTICULARS	PAGE NO.
1.	Reply on behalf of the Respondent No. 2 - Punjab State Power Corporation Limited along with affidavit in support	1-9
2.	Annexure A - A Copy of the Amendment in Open Access Regulations, 2011 Notified by the State Commission on 4.5.2012	10



(ANAND K GANESAN)  
COUNSEL FOR THE RESPONDENT NO. 2  
RAMACHANDRAN & ASSOCIATES  
C-31, FRIENDS COLONY EAST  
NEW DELHI - 110065  
PH: 26831065

PLACE: NEW DELHI  
DATE: 26<sup>TH</sup> DECEMBER 2012

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI  
APPELLATE JURISDICTION  
APPEAL NO. 237 OF 2012

IN THE MATTER OF:

Open Access Users Association

....Appellant

VERSUS

Punjab State Electricity Regulatory Commission & Anr

....Respondent

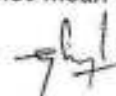
REPLY ON BEHALF OF THE RESPONDENT NUMBER 2, PUNJAB STATE POWER CORPORATION LIMITED

MOST RESPECTFULLY SHOWETH:

1. The present appeal has been filed by the Appellant against the Order dated 16.7.2012 passed by the Punjab State Electricity Regulatory Commission (hereinafter called the 'State Commission') approving the annual revenue requirements in determining the tariff for the answering Respondent, Punjab State Power Corporation Limited for the tariff year 2012-13.
2. The Appellant in the present appeal has challenged the impugned order, primarily on the following grounds:
  - (a) The State Commission has not correctly determined the wheeling charges as applicable for the open access consumers and has determined uniform wheeling charges to be paid by all open access consumers connected at 11 KV, 33 KV, 66 KV, 132 KV and 220 KV.
  - (b) The State Commission has incorrectly increased the wheeling charges and determined the same at 124 paise per unit.
  - (c) The State Commission has incorrectly increased the cross subsidy surcharge and determined the same at 88 paise per unit.
  - (d) The State Commission has given retrospective effect to the wheeling charges contrary to the Regulations of the Central Commission.
  - (e) The State Commission has failed to implement the directions issued by the Hon'ble Tribunal.

5/7/12

3. It is stated that there is no merit whatsoever in the present appeal filed by the Appellant and the same is liable to be dismissed. The Appellant's grievances are misplaced and would tantamount to seeking cross-subsidy as against the charges payable by the other consumers in the State of Punjab considering the total wheeling and transmission charges payable. Further, the Appellants are seeking to indirectly challenge the Regulations of the Hon'ble Commission, which is impermissible.
4. It is stated that there is no merit in the contention raised by the Appellant that the open access consumers are not liable to pay the wheeling charges at the uniform rate of 124 paise per unit which is applicable in the State of Punjab or that the said charges are applicable only for consumers taking electricity below 66 KV. It is stated that the tariff is determined in the State of Punjab considering the average transmission and distribution losses and so far voltage wise tariff determination has not been undertaken in the State of Punjab.
5. The tariff determined by the State Commission and to be applicable to the consumers in the State includes the total transmission and wheeling charges and there is no distinction based on the voltage level of supply. In the circumstances, the retail supply consumers of the answering Respondent getting supply at voltage level of 33 KV, 66 KV, 132 KV or 220 KV are paying the total transmission and wheeling charges as applicable and the same principle ought to apply to the open access consumers also. The open access consumers cannot be permitted to gain out of the supply of electricity being taken for 3rd parties.
6. In other words, independent of the power purchase cost of the answering Respondent, the total transmission and wheeling charges representing the line costs and expenses needs to be apportioned equitably and equally to the consumers taking supply from the answering Respondent and through to open access. The wheeling charges represents only the part of the line cost, which has to be applied equally to all consumers.
7. It is further stated that the contention regarding the increase in the transmission and wheeling cost being extraordinary and impermissible is also misplaced. The wheeling charges has to be considered based on the cost of expenditure incurred by the answering Respondent and the transmission license and has to be trusted on the basis of the impugned order. Merely because of an increase in the cost from the previous year does not mean that the charges are wrong or otherwise are not payable.



8. It is stated that the open access charges payable by the open access consumers includes the transmission charges and the wheeling charges irrespective of the voltage level at which the supply is being taken by the consumers. The above was specifically provided by the State Commission by amending the Open Access Regulations, 2011 on 4.5.2012, inter alia, providing as under:

*"25 (5) Long term, Medium term and Short term Open Access customers availing supply at 220 KV, 132 KV, 66 KV, 33 KV or 11 KV, in addition to transmission charges, shall be liable to pay wheeling charges determined by the Commission as per the Tariff Order applicable for the year."*

A copy of the above amendment is attached hereto and marked as Annexure A.

9. The above has been provided by the amendment of the statutory regulations. Once the Regulations have been framed, the same are binding and needs to be followed. The present appeal in fact seeks to indirectly challenge the above provisions of the Regulations, which is impermissible.

10. In the impugned order, the State Commission has clearly relied on the above provisions of the Regulations and, inter alia, held as under:

**"6.10 Open Access Charges**

*6.10.1 As per the Open Access Regulations notified by the Commission, the wheeling charges for FY 2012-13 are Rs. 452540/MW/Month.*

*6.10.2 The energy requirement at the distribution periphery as per Table 4.5 of this Tariff Order for FY 2012-13 is 41515 MUs. On this basis, the wheeling charges for use of the distribution network are determined as 124 paise per unit.*

*As per clause 25(5) of PSERC (Open Access) Regulations, 2011 (amended on 4th May, 2012), short-term Open Access customers availing supply at 220 kV, 132 kV, 66 kV, 33 kV or 11 kV, in addition to transmission charges determined separately in Tariff Order for PSTCL for FY 2012-13, shall also be liable to pay wheeling charges (i.e. of 124 paise / unit) determined by the Commission as per Tariff Order applicable for the year. As per Order of the Commission dated July 11, 2012, the revised wheeling charges to short-term Open Access customers will be applicable with effect from May 07, 2012.*

*Wheeling charges for wheeling of NRSE power shall be governed as per provisions made in the PSERC (Open Access) Regulations, 2011.*

*For Long-term and Medium-term OA customers availing supply at 220 kV, 132 kV, 66 kV, 33 kV or 11 kV these charges shall be Rs.452540/MW/Month of the contracted capacity.*

Order

4  
6.10.3 Wheeling charges payable by Open Access customers shall be as under:

Period	Voltage Level	Wheeling charges (paise/unit)
From 1.4.2012 to 6.5.2012	220 kV & 132 kV	0.0
	66 kV & 33 kV	18.6
	11 kV	37.2
From 7.5.2012 to 31.3.2013	220 kV & 132 kV	124.0
	66 kV & 33 kV	
	11 kV	

6.10.4 As per clause 30(2) of PSERC (Open Access) Regulations, 2011, the Open Access customers shall bear Transmission & Distribution losses as under:

- (i) OA customers at 132/220 kV 2.5%
- (ii) OA customers at 66/33 kV 15% of distribution losses (15.90%), which works out to 2.39%, in addition to Transmission Loss of 2.5%.
- (iii) OA customers at 11 kV 40% of distribution losses (15.90%), which works out to 6.36%, in addition to Transmission Loss of 2.5%.

6.10.5 As per clause 26(2) of PSERC (Open Access) Regulations, 2011, the cross subsidy surcharge (paise / unit) for various categories of consumers, for FY 2012-13, shall be as under:

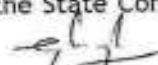
Large supply	-	88
Domestic supply	-	85
Non-Residential supply	-	107
Bulk supply	-	63
Railway traction	-	107

6.10.6 In addition, other charges such as additional surcharge, operation charges, UI charges, reactive energy charges, shall be levied as per the Open Access Regulations / Tariff Regulations notified by the Commission.

11. In the circumstances mentioned above, the decision of the State Commission on the applicability of wheeling charges to be paid by all open access consumers irrespective of the voltage level of supply is correct and strictly in terms of the Regulations and the challenge by the Appellant to the same is misplaced and liable to be rejected.
12. The contention of the Appellant that the consumers connected at 132 KV and 220 KV and availing power through open access cannot be made to pay the

wheeling charges is also incorrect. The total wheeling charges are apportioned and recovered from the all the consumers irrespective of the voltage level at which the supply is being taken by the consumers. The retail supply consumers of the answering Respondent who are taking supply of electricity at 132 KV or 220 KV also pay for the entire transmission and wheeling charges. In the above circumstances, when the above principles are applied to the consumers taking electricity from the answering Respondent, the same manner for apportionment and recovery of wheeling charges needs to be made from the open access consumers. The open access consumers cannot be allowed the transmission and wheeling charges at subsidized rate at the cost of the other consumers in the state of Punjab.

13. It is submitted that in case the above provision is not applied, the answering Respondent would pay the entire transmission and wheeling charges and recover the same from its consumers through the retail supply tariff and the open access consumers would only pay a part of the said charges. The above is independent of the power purchase cost incurred by the answering Respondent. Thus, the open access consumers would be benefited to the extent of the wheeling charges which are paid by the answering Respondent and the other consumers and to get subsidised at the cost of the public at large, which is impermissible. The open access consumers cannot claim any further additional benefit that is not available to the other consumers in the state.
14. It is also incorrect to state that the wheeling charges levied includes a part of the non-wire business of the answering Respondent. The wheeling charges do not include the power purchase cost or the other costs and expenses incurred by the answering Respondent for supply of electricity, but is related to the wires laid down and maintenance of the said wires. The determination of the wheeling charges as per unit charge does not mean that the same is not related to the use of wires of the answering Respondent.
15. In the circumstances, there is no merit in the contention of the Appellant on the levy of transmission and wheeling charges on the open access consumers in the State of Punjab.
16. It is also wrong and denied that the wheeling charges have been made applicable by the State Commission with retrospective effect. The tariff petition was filed with the answering Respondent on 30.11.2011 and relating to the tariff year 2012-13, i.e., 1.4.2012 to 31.3.2013. The entire proceedings were held by the State Commission in relation to the said tariff year 2012-13. Merely because the tariff order is passed by the State Commission for the year



2012-13 on 16.7.2012 does not mean that the tariff order cannot be made applicable for the year 2012-13.

17. The State Commission has given effect to the impugned order for the year 2012-13, with effect from 1.4.2012 and has directed the same to remain operative till 31.3.2013. The tariff order passed by the State Commission has to necessarily relate back to the petition filed by the answering Respondent and the tariff proceedings held and merely because an order is passed subsequently does not make the application of the order retrospective. This Hon'ble Tribunal has decided this precise issue in the Judgment dated 8.2.2011 in Appeal No. 164 of 2010 - Chhattisgarh Power Distribution Company Ltd v Chhattisgarh Biomass Energy Developers Association as under-

*"22. The question of retrospectively came up for consideration before The Supreme Court in the Kannodia Chemicals & Anr. V/s State of UP & Ors. Reported in (1992) 2 SCC 124. While upholding the retrospectively of tariff order, the Hon'ble Court observed as follows;*

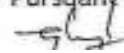
*"A retrospective effect to the revision also seems to be clearly envisaged by the section. One can easily conceive a weighty reason for saying so. If the section were interpreted as conferring a power of revision only prospectively, a consumer affected can easily frustrate the effect of the provision by initiating proceedings seeking an injunction restraining the Board and State from revising the rates, on one ground or other, and thus getting the revision deferred indefinitely. Or, again, the revision of rates, even if effected promptly by the Board and State, may prove infructuous for one reason or another. Indeed, even in the present case, the Board and State were fairly prompt in taking steps. Even in January 1984, they warned the appellant that they were proposing to revise the rates and they did this too as early as in 1985. For reasons for which they cannot be blamed this proved ineffective. They revised the rates again in March 1988 and August 1991 and, till today, the validity of their action is under challenge. In this State of affairs, it would be a very impractical interpretation of the section to say that the revision of rates can only be prospective".*

23. This Tribunal in a batch of appeals namely SEIL India, New Delhi V/s PSERC reported in 2007 (APTEL) 931 considered the question of retrospectively and maintained it. In this decision also the tariff order though made some time after commencement of the financial year was made effective from 1.4.2005 and this Tribunal upheld the order of the Commission. It observed: the cost prudently incurred is to be recovered, therefore, in the event of a tariff order being delayed, it can be made effective from the date tariff order commences or by annualisation of the tariff so that deficit is made good for the remaining part of the year or it can be recovered after truing up exercise by loading it in the tariff of the next year. Thus law empowers the Commission to specify the date from which the tariff is to commence or the date when it will expire.

24. *It is neither Section 62 nor Section 64 that constitutes bar to retrospectively of a tariff order."*

The answering Respondent also craves leave to refer to the judgments of the Hon'ble Courts in M/s GD Ferro Alloys (P) Ltd v Delhi Electricity Supply Undertaking AIR 1997 Delhi 17 and Delhi Cloth Mills Limited v Rajasthan State Electricity Board AIR 1984 Rajasthan 131

18. The annual revenue requirements of the answering Respondent is for the entire year 2012-13 and has been approved by the State Commission after following the due procedure and hearing the parties for the entire year 2012-13. Merely because the order is passed in July, 2012 for the entire year 2012-13 does not make the operation of the said order retrospective. In the circumstances, the contention of the Appellant that the impugned order has given retrospective effect to tariff is misplaced and is liable to be rejected.
19. The contention raised by the Appellant on the calculation of the cross subsidy surcharge is also wrong and misplaced. The State Commission has calculated the cross subsidy surcharge strictly in terms of the Regulations framed and following the formula specified in the said Statutory Regulations. Merely because there is an increase in costs and expenses on by the application of the formula described in the Regulations and the cross subsidy surcharge increases is not a ground for challenge to the cross subsidy surcharge as determined by the State Commission. So long the State Commission has determined the cross-subsidy surcharge strictly in terms of the applicable statutory regulations, the impugned order of the State Commission does not call for any interference and the challenge by the Appellant liable to be rejected.
20. The allegations by the Appellant on the decrease in the open access quantum etc are misplaced and also irrelevant to the matter in issue. Merely because it is not convenient to take power through open access is not a ground for reducing the charges which are legitimately payable to the answering Respondent in terms of the tariff determination principles in the Statutory Regulations of the State Commission.
21. The allegations regarding the alleged non-compliance of the directions of the Hon'ble Tribunal by the answering Respondent in the State Commission are also incorrect, wrong and are denied. The answering Respondent had initiated the process of cost of supply studies and had appointed The Energy and Resources Institute (TERI) as consultants for conducting the study and report on the methodology to arrive at the cost of service. In this regard, a presentation was also made to the State Commission in May, 2012. Pursuant to the above, the






8

State Commission had directed the full study to be completed and provide the voltage wise data also. The answering Respondent had also made a subsequent presentation to the State Commission in August, 2012. The cost of supply study report has since been submitted to Hon'ble PSERC

22. In the facts and circumstances mentioned above, it is stated that there is no merit in the appeal filed by the Appellant on the same is liable to be dismissed with costs.



RESPONDENT NO 2

PUNJAB STATE POWER CORPORATION LIMITED

DATED:

PLACE:

Chief Engineer/A.R.R.&T.H  
S.P.C.L. PATIALA

9

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI**  
**APPELLATE JURISDICTION**

**Appeal No. 237 of 2012**



**IN THE MATTER OF :**

Open Access Users Association

..... **Appellant**

Versus

Punjab State Electricity Regulatory Commission & Anr

..... **Respondents**

**AFFIDAVIT**

I, Er Gurwinder Singh, Son of Sh. Harbans Singh aged about 55 years, resident of Patiala, do hereby solemnly affirm and state as under:

1. I say that I am Chief Engineer/ ARR & TR in the Punjab State Power Corporation Limited, Respondent No. II and am competent to swear the present affidavit.
2. I say that the contents of the accompanying reply appeal filed by the Respondent No. II are based on the information available with the Respondent No. II in the normal course of business and believed by me to be true.
3. I say that the Annexures to the reply are the true and correct copies of their original.

The Contents of this Affidavit  
document herewith enclosed over to  
the deponent, who has accepted  
it true & Correct


  
Chief Engineer  
DEPONENT  
P.S.P.C.L. PATIALA

**VERIFICATION :**

I, the deponent above-named, do hereby verify the contents of the above affidavit to be true to the best of my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at Patiala on this ... day of December, 2012.

**ATTESTED**

  
NOTARY PUBLIC  
PATIALA (Pb.) INDIA

  
Chief Engineer/A.R.R. & T.R.  
DEPONENT  
P.S.P.C.L. PATIALA

24 DEC 2012

ANNEXURE-A

10

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

NOTIFICATION

The 4th May, 2012

No. PSERC/Secy/Reg/67. In exercise of the powers conferred under Section 42 read with Section 181 of the Electricity Act, 2003 (36 of 2003) and all powers enabling the Commission in this behalf, the Punjab State Electricity Regulatory Commission hereby amends the Punjab State Electricity Regulatory Commission (Terms & Conditions for Intra-State Open Access) Regulations, 2011.

1. Short Title and Commencement:

(1) These Regulations shall be called the Punjab State Electricity Regulatory Commission (Terms & Conditions for Intra-State Open Access) (1st Amendment) Regulations, 2012.

(2) These Regulations shall come into force from the date of their publication in the official Gazette of the State.

2. For Regulation 25 (5) of the Punjab State Electricity Regulatory Commission (Terms & Conditions for Intra-State Open Access) Regulations, 2011, the following shall be substituted namely:

25 (5) Long term, Medium term and Short term Open Access customers availing supply at 220 KV, 132 KV, 66 KV, 33 KV or 11 KV, in addition to transmission charges, shall be liable to pay wheeling charges determined by the Commission as per the Tariff Order applicable for the year.

Sd/-

(P.S. Jindal)  
Secretary