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THROUGH

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G.N. AGRAWAL/ANIRBAN MONDAL
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PETITIONER

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NEW DELHI

DATE: 1/8/2015

SYNOPSIS

The present petition has been preferred by Open Access Users Association against the Commercial Circular No. 29 of 2015 (hereby referred to as "CC 29") issued by Punjab State Power Corporation Limited (hereby referred to as the "Respondent No. 1") dated 22.07.2015.

The Petitioner is a registered Society formed under the Societies Registration Act, 1860. The Petitioner was registered as society on 04.08.2012. The main objective of the Petitioner is to safeguard the interests of the open access consumers all over India. The Petitioner aims to create a responsible forum to highlight consumer awareness on various types of Open Access charges levied by different States and their implications. The Petitioner also aims at adhering to safety, security and commercial issues to all Open Access consumers in the Power Market.

The Petitioner has filed the present petition to challenge the findings of Commercial Circular No 29 of 2015 issued by Punjab State Power Corporation Limited dated 22.07.2015.

LIST OF DATES

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DATE	EVENT
04.08.2012	The Open Access Users Association (the Petitioner) was registered as a society on 04.08.2012.
01.07.2011	The Hon'ble Punjab State Electricity Regulatory Commission (hereby referred to as "Hon'ble Commission") notified Intra-State Open Access Regulation vide PSERC/Secy./Reg./57
15.03.2013	The petition filed by Respondent No. 1 was admitted and directed to submit the existing and proposed amended clause of Open Access Regulations by 18.04.2013.
23.04.2013	Hearing of the petition was fixed.
25.04.2013	The Respondent No. 1 failed to submit the required information and was directed to submit it by 21.05.2013
23.05.2013	Respondent No. 1 submitted its information before this Hon'ble Commission
29.05.2013	The Hon'ble Commission directed Respondent No. 1 to collect and submit the action taken by other states to cope up with load variation due to power purchase by Open Access consumers.
29.07.2013	The Respondent No. 1 failed to submit the required information.
05.08.2013	This Hon'ble Commission directed the Respondent No. 1 to file it by 30.08.2013

29.08.2013	Respondent No. 1 prayed for extension of time as it again fails to submit the required data/information.
05.09.2013	Next Date of hearing was fixed on 05.11.2013
01.11.2013	Respondent No. 1 filed the required data/information
05.11.2013	The next date of hearing was fixed on 03.12.2013
03.12.2013	The Respondent No. 1 was directed by this Hon'ble Commission to file proposed amendments and comments/justification by 14.01.2014. Next hearing was fixed on 21.01.2014.
13.01.2014	Respondent No. 1 filed the proposed amendments
21.01.2014	Next date of hearing was fixed on 25.02.2014
25.02.2014	Respondent No. 1 submitted before this Hon'ble Commission to modify the amendments proposed.
26.02.2014	Respondent No. 1 was directed to file the same by 03.03.2014 and next date of hearing was fixed on 04.03.2014
04.03.2014	PSPCL failed to file the modified submissions by 14.03.2014
13.03.2014	PSPCL filed the modified submissions and proposed a new clause under Regulation 28 (3) of Intra-State Open Access Regulation, 2011
19.03.2014	PSPCL filed additional submissions before this Hon'ble Commission
	A staff paper was prepared and issued a public notice for inviting objections or suggestions from the public and other stakeholders.

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22.04.2014	Last date for filing objections/suggestions/comments and hearing was fixed on 07.05.2014.
	Objections were received from various stakeholders in which the Petitioner was also a party to it.
04.09.2014	The Hon'ble Commission decided to consider the matter in the middle of November, 2014.
10.11.2014	PSPCL was asked to submit data regarding the introduction of ToD tariff for Large Supply and Medium Supply Industries.
18.11.2014	PSPCL submitted the ToD tariff be introduced w.e.f 01.10.2014
22.12.2014	PSPCL was directed by this Hon'ble Commission to submit to it, the effect of ToD tariff on Large and Medium Supply Industries.
08.01.2015	PSPCL submitted the quantitative impact of ToD Tariff.
18.05.2015	PSPCL again brought out some problems being faced by open access consumers.
20.05.2015	This Hon'ble Commission directed PSPCL to submit its comments.
28.05.2015	PSPCL submitted its comments.
01.06.2015	This Hon'ble Commission approved the proposed amendment or submissions and Incorporated the provisions in PSERC (Terms and Conditions for Intra-state Open Access) regulation, 2015.
22.07.2015	PSPCL issued a Commercial Circular No 29 of 2015

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**BEFORE THE HON'BLE PUNJAB STATE ELECTRICITY
REGULATORY COMMISSION, AT CHANDIGARH**

PETITION NO OF 2015

IN THE MATTER OF:

Petition under Regulation 45 of Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access) Regulation, 2011 and Para 15 of Procedure for Intra State Short Term Open Access of SLDC/PSTCL for directing the Transmission Licensee/SLDC to exempt penalty on the power drawn above the admissible drawl and up to contract demand for curtailment of bilateral schedules under Force Majeure condition and removal of other difficulties in open access arising in consequence to Amendment No5 Of PSERC Open Access Regulations 2011 and PSPCL's Commercial Circular No 29 of 2015.

AND

IN THE MATTER OF:

Open Access Users Association
2nd Floor, D21 Corporate Park,
Sector 21, Dwarka,
New Delhi – 110 075

... **PETITIONER**

VERSUS

MEMO OF PARTIES

1. Punjab State Power Corporation Limited,
The Mall Patiala through its CMD,
Sector-34 - A,
Patiala - 147 001

2. Punjab State Transmission Corporation Limited
The Mall, Patiala through its CMD,
Regd. Office, PSEB Head Office,
The Mall, Patiala

... **RESPONDENTS**

THROUGH

G.N. AGRAWAL/ANIRBAN MONDAL

F
Abhinandan Das
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PETITIONER

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NEW DELHI

DATE: *4/8/2014*

**BEFORE THE HON'BLE PUNJAB STATE ELECTRICITY
REGULATORY COMMISSION, CHANDIGARH**

PETITION NO _____ OF 2015

IN THE MATTER OF

Petition under Regulation 45 of Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access) Regulation, 2011 and Para 15 of Procedure for Intra State Short Term Open Access of SLDC/PSTCL for directing the Transmission Licensee/SLDC to exempt penalty on the power drawn above the admissible drawl and up to contract demand for curtailment of bilateral schedules under Force Majeure condition and removal of other difficulties in open access arising in consequence to Amendment No5 Of PSERC Open Access Regulations 2011 and PSPCL's Commercial Circular No 29 of 2015.

AND

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2nd Floor, D21 Corporate Park,
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1. Punjab State Power Corporation Limited,
The Mall Patiala through its CMD,
Sector-34 - A,
Patiala - 147 001
2. Punjab State Transmission Corporation Limited
The Mall, Patiala through its CMD,
Regd. Office, PSEB Head Office,
The Mall, Patiala

... **RESPONDENTS**

MOST RESPECTFULLY SHOWETH**FACTS OF THE CASE**

1. The present petition has been filed by Open Access Users Association challenging the Commercial Circular No 29 of 2015 (hereby referred to as the "CC 29") issued by Respondent No 1 on 22.07.2015.
A copy of the CC 29 issued by Respondent No 1 on 22.07.2015 has been annexed hereto as **ANNEXURE A-1**.
2. That the Petitioner is a registered Society formed under Societies Registration Act XXI of 1860 on 4th August 2012. The main objective of the Petitioner is to safeguard the interest of the open access consumers all over India. The Petitioner aims to create a responsible forum to highlight consumer awareness on various types of Open Access charges levied by different States and their implications. The Petitioner also aims at adhering to safety, security & commercial issues to all Open Access consumers in the Power Market.
3. That the Respondent No.1 is a power distribution company who has been entrusted with the responsibility of distribution and supply of power to the licensees or consumers.
4. That the Respondent No. 2 is a power transmission company who has been entrusted with the transmission business of the state and also controlling the State Load Despatch Centre which is the Nodal Agency for short term open access in the state of Punjab.
5. That on 01.07.2011, this Hon'ble Punjab State Electricity Regulatory Commission (hereby referred to as the "Hon'ble Commission") notified Open Access regulations vide PSERC/Secy./Reg./57 dated 01.07.2011 (hereby referred to as the "Open Access Regulations 2011") and also

approved the Short term open access procedure framed by SLDC Punjab. Open Access transactions are thereafter being carried out under these regulations and procedure.

6. That on 15.03.2013, a petition submitted by Respondent No. 1 to the Hon'ble Commission was admitted vide which the Respondent No. 1 had submitted that in order to efficiently manage the impact of varying schedule, open access consumers need to procure power uniformly throughout the day and such provision needs to be incorporated in the Open Access Regulations, 2011.
7. That hearing on the petition was held on various dates and PSPCL was asked by this Hon'ble Commission to submit the position in other states, feedback from other states and finally on 03.12.2013 the Respondent No. 1 was directed to file comments on the similar Petitions disposed of by HERC and suggestions for amendment in PSERC (Terms and Conditions for intra-state open access) Regulations, 2011 by 14.01.2014.
8. That the Respondent No. 1 filed its suggestions/objections and vide letter dated 13.03.2014 the Respondent No. 1 filed additional submissions proposing amendment in Open Access Regulation and proposed to add a new clause 28 (3) as under:

"The quantum of drawl of electricity by an Open Access consumer from the distribution licensee during any time block of a day shall not exceed the drawl of electricity by the Open Access consumer from the distribution licensee in such time block wherein the schedule for Open Access drawl is the maximum."

9. That the Hon'ble Commission in its order dated 19.03.2014 observed that the Respondent No. 1 had filed additional submissions and after processing the suggestions prepared a Staff Paper and issued a public notice for inviting comments/objections from public and other stakeholders for the proposed amendment in PSERC (Terms and Conditions for intra-state Open Access) Regulation, 2011.
10. That on 19.05.2014 the Respondent No. 1 had submitted its comments on some of the objections raised by objectors in which the Petitioner was one of the parties.
11. That the Hon'ble Commission in its order dated 04.09.2014 observed that in the Tariff Order for FY 2014-15, Hon'ble Commission has approved various measures to encourage consumption of more power, such as introduction of ToD Tariff for Large Supply and Medium Supply industrial consumers and rebate for consuming power more than the threshold limit. The Hon'ble Commission accordingly decided that the matter regarding amendment in Open Access Regulation will be considered in the middle of November, 2014. The Respondent No. 1 vide its letter dated 10.11.2014 was asked to submit data regarding introduction of ToD tariff for Large Supply and Medium Supply industrial consumers and rebate for consuming power more than the threshold limit.
12. That the Hon'ble Commission vide its letter dated 22.12.2014 directed the Respondent No. 1 to intimate the effect of ToD Tariff for Large Supply and Medium Supply industrial consumers on the quantum of power purchased through Open Access. However, the Respondent No. 1 vide its letter dated 08.01.2015 submitted that the quantitative impact of introduction of ToD Tariff falls within the purview of Commercial wing

of the Respondent No. 1 and can be assessed only after the system remains applicable for a long period of time.

13. That the Respondent No. 1 vide its letter dated 18.05.2015 submitted the problems being faced by it due to varying quantum of power purchase by open access consumers during different time slots of the day. However, it has also submitted that irregular availability of open access power results in abrupt changes in the availability in the schedule of Respondent No. 1 for which immediate corrective action is just not possible due to limitation of response time of the system resulting into unnecessary and undesirable load shedding.

14. That in view of the difficulties faced by the Respondent No. 1, it prayed that the procedure for Open Access consumers needs to be rationalized in the larger interest of Grid stabilization and all consumers of Respondent No. 1 in such a way that the load sought by such open access consumers should be availed by them for a certain fixed quantum and for a certain minimum period of time.

15. That the Hon'ble Commission in its letter dated 20.05.2015 observed that the proposed amendment made by the Respondent No. 1 does not match with the prayer sought. Therefore, the Commission further directed the Respondent No. 1 to submit its comments in respect of the letter submitted on 18.05.2015.

16. That the Respondent No. 1 vide its letter dated 28.05.2015 submitted that a part of the sentence namely "in such a way that the load sought by open access consumers....." be deleted and prayed to the Hon'ble Commission for allowing the proposed amendment in Petition No. 16/2015 to be incorporated in the PSERC (Terms and Condition for Intra-state Open Access) Regulation, 2011.

17. That the Hon'ble Commission in its order dated 01.06.2015 accordingly decided to incorporate the amendment proposed by the Respondent No. 1 in PSERC (Terms and Conditions for intra-state Open Access) Regulation, 2011.

A copy of the order dated 01.06.2015 in Petition No 16/2013 has been annexed hereto as **ANNEXURE A-2**.

18. That some consumers approached this Hon'ble Commission and Respondent No 1 for (a) clarifying the penalty for violation of admissible drawl, (b) value of Power factor for conversion of Open Access schedule in MW to MVA for working out the admissible drawl and (c) consequences of revision in already approved open access schedules by Nodal Regional Load Dispatch Centre due to system constraints in Inter State Transmission System/sudden revision in ATC/TTC etc.

19. That for the implementation of the above said Amendment No 5 of OA Regulations, Respondent No 1 has issued CC 29 of 2015 on 22.7.2015 clarifying points (a) and (b) above. The Petitioner feels that except for levy of demand surcharge for violation of Admissible drawl, the other instructions in the said circular are not as per the Regulations and as per the provisions of the Act. While deciding this, the PSPCL has either knowingly or deliberately, not applied its mind to address the problem. The matter having huge financial implications has been decided without issuing mandatory public notice, inviting comments and holding public hearing of the stake holders. Further, for implementation of the said amendment, Open Access Procedures should have been amended with the approval of PSERC. It can be inferred that this has been done just to kill the open access completely to force the consumers to purchase power from PSPCL only even at rates more than those prevailing under

short term open access market which is against the spirit of the Electricity Act 2003 and policies framed there under.

20. That the Petitioner being aggrieved by the impugned CC 29 has filed the present petition u/s 45 of Open Access Regulation, 2011 before this Hon'ble Commission challenging the wrongful findings of the CC 29 and removal of difficulties of the open access consumers of the state of Punjab.

21. That the Petitioner believes that This Hon'ble Commission has the exclusive jurisdiction to adjudicate this matter under Regulation 45 of Open Access Regulation, 2011 and and Para 15 of Procedure for Intra State Short Term Open Access of SLDC/PSTCL .

Hence the present petition.

GROUNDS OF THE PETITION

A. Variation in Admissible drawl due to curtailment in Approved Schedule by Nodal RLDC under force majeure condition in the Bilateral interstate open access transactions.

1. That in case of Inter-state/inter regional bilateral schedules, heavy congestion is being observed on inter-state transmission corridors particularly of the links of Northern Region with Western and Eastern regions. Even after such open access bilateral transactions are approved by nodal RLDC on 3/2/1 month advance reservation basis or otherwise and put on the web site, forced outages of interstate transmission links/lines do happen and National Load Dispatch Centre, on every occurrence of such outage revises the Total/Available Transmission Capacity resulting in curtailment of approved bilateral schedules. As per Regulation 15 of CERC Open Access Regulations

2008, such curtailments of bilateral short term open access transactions are permitted. The Regulation further provide that STOA will be curtailed first amongst STOA, MTA and LTA and Bilateral Transactions will be curtailed first followed by collective transactions. Further, these curtailments may be uniform or uneven for the 96 time blocks or duration of anticipated congestion, depending on the margin.

2. PSERC Open Access Regulations 2011 provide in Para 6.4(1) that interstate short term open access transactions shall be governed by CERC open Access Regulations. Accordingly, the bilateral schedule of open access consumers of Respondent No 1 for interstate open access also gets curtailed. Now if -

- i) The curtailment is uniform for the day, Amendment No 5 of Open Access Regulations is implementable.
- ii) The curtailment is not uniform, then the consumer will not be able to stick to the admissible drawl as per Amendment No 5 as he will have to change the drawl from PSPCL after every 15 minute time block depending on curtailment which is next to impossible.

3. Perusal of the order in Petition No 16 of 2013 reveals that the Respondent No 1 has made submissions before this Hon'ble Commission that the proposed Amendment (No 5) will not affect the bilateral transactions. In this regard para 22 (iv) and (x) are reproduced as under:-

"22 (iv). The impact of proposed amendment will be only to the consumers who will be drawing power through Exchanges. The consumer drawing power through bilateral agreements will have no impact.

22 (x). Open Access Consumers can anticipate the drawl from PSPCL by properly planning their bid in the Exchange and the problems raised in the objections will not exist if the Open Access consumers make bilateral agreements for their requirement."

4. Thus as per the final order of the Petition and Amendment No 5 issued in consequence, in case of situation under para (b) above, the consumer having arranged the bilateral power as per Open Access Regulation in advance will be penalized due to the Force Majeure conditions which are beyond his control.

5. Therefore, justice demands that the case of curtailment due to forced reduction of approved bilateral schedule by Nodal Regional Load Dispatch Centre due to congestion of transmission corridor or outage of inter-state/regional links/lines also has to be covered in the PSERC Open Access Regulations appropriately providing that Open Access consumers shall be allowed to draw full power up to the Contract Demand from Respondent No. 1.

B. Admissible Drawl is applicable for the day i.e. all the 96 time blocks.

1. That Regulation 28 (3) of PSERC Intra-State Open Access Regulation, 2015 now introduced provides for the quantum of drawl of electricity by an Open Access consumer from the distribution licensee in any time block of a day shall be limited to the admissible drawl (in KVA) in such time block wherein the schedule for drawl from open access is maximum. Regulation 28(3) of PSERC Intra-State Open Access Regulation, 2015 reads as under:-

*"28 (3).The quantum of drawl of electricity by an Open Access Consumer from the distribution licensee **during any time block of a day** shall not exceed the admissible drawl of electricity by the Open Access Consumer from the distribution licensee in such time block wherein the schedule for Open Access drawl is the maximum."*

2. Thus as per this provision, the admissible drawl is for the day i.e. for 96 time blocks. Then, this admissible drawl will be applicable for Peak Load Hours also instead of Load permitted during PLH.

C. Surcharge/Penalty for violation during Peak/Non peak Hours and under TOD Regime.

1. It is also submitted that both the paras 3(i) and 3(ii) of the CC 29 dated 27.07.2015 are defective and PSPCL is assuming powers to levy penalties on its own without authority. As per present regulations and PSERC directions, demand violations and peak load violations are assessed and penalties of demand Surcharge and Penalty for Peak Load violations are imposed independently but the circular says these are concurrent and will be levied simultaneously. In fact, as brought out in Para (B) above, in view of the now inserted Regulation 28(3) as per Amendment No 5, the admissible drawl will be applicable for all the 96 time blocks including Peak period.

2. Further, those who opt for TOD in TOD tariff regime have been permitted to quit Peak Load Restrictions regime by this Hon'ble Commission and allowed to avail load up to CD. Thus such consumers are not covered under PLEC and there is no provision in regulations to levy penalty for peak load violations on those who opt for TOD. Asuxh

consumers will be violating CD in case they exceed their load beyond CD permitted in TOD. Thus in addition to Rs 3/- per unit on actual drawl in KVAH during TOD charge period, such consumers should be required to pay Demand Surcharge only for violation of Contract Demand on 24 hours basis.

Therefore, it is submitted before this Hon'ble Commission that CC No. 29 need to be amended accordingly.

D. Usage of Different power factors for different purposes-need to adopt uniform PF

1. That the Respondent No. 1 has specified
 - i) To apply Power factor of 0.9 for working out permitted quantum (in MW) on the Contract Demand in KVA for the purpose of granting NOC/Standing clearance/permission for Open Access.
 - ii) Usage of actual power factor attained by the industry during the month for working out the energy scheduled by Power Exchange in kWh to kVAh for working out the power consumption from Respondent No. 1 for the purpose of raising monthly bills, as per PSERC order dated 20.05.2013 in Petition No. 3 of 2015.
 - iii) To adopt Power factor of 0.9 for allowing maximum load (in KW) to be used during Peak Load Hour restrictions on the sanctioned Contract Demand as per policy of Peak Load Restrictions approved by this Hon'ble Commission.
 - iv) Power Factor of 0.98 is being used for Power Intensive Industries and 0.95 for general industries for working out the tariff in KVAH as per the study report of Respondent No 1 for KVAH tariff accepted by the Commission. These power factors

are also being used for fixing open access charges (e.g. Cross subsidy Surcharge) in Tariff orders.

2. Thus this Hon'ble commission and the Respondent has acknowledged that the normative parameter for LS industry has improved to 0.95/0.98 from earlier 0.90 which was based on the mechanical TVM meters and was being adopted for the last about 10 years. It may also be mentioned here that prior to these 10 years, this grid normative Power factor was 0.88.

3. It is also submitted that with the introduction of electronic Energy meters, monitoring of Demand in KVA instead of KW, power factor based rebate/surcharge etc. consumers have improved the power factor of the system by installing Capacitor banks after incurring huge expenditure. Now with the introduction of KVAH tariff, almost all of the LS and MS consumers have further invested and are incurring maintenance expenditure to maintain Power Factor near to Unity for ultimate benefit. This has also helped Respondent to achieve better voltage profile and reduction in system losses/outages. The figures of Respondent No 1 in reduction in damage to transformers and in grid losses over the years also support this.

Thus, we request that present Grid Normative Power factor of 0.90 being used by PSPCL for the last ten years be improved to normative power factor of 0.98 for PIU and 0.95 for general industry. Further these figures are based on the study conducted in 2013-14 when KWH tariff was applicable and now with the introduction of KVAH tariff, there has been improvement in power factor of every consumer. Therefore these should be reviewed every year. Further, these grid normative power factor should be used for grant of Peak load exemptions and grant of NOC for open access power etc. Further,

Respondent No 1 and 2 be directed to amend their instructions accordingly.

E. Curtailment in CD due to application of CC 29

1. The action of Respondent No. 1 of using 0.90 as power factor for conversion of Load/demand in KW to KVA as per CC 29 virtually amounts to denying the rightful entitlement of Sanctioned Contract Demand as explained by the following example:-

Contract Demand of Consumer	5 MVA
Open Access quantum permitted by SLDC through NOC	4.5 MW
Actual Power Factor of the month	0.99
Open Access power brought by the consumer under open access	4.5 MW
Open Access power in MVA as per Commercial Circular No. 29 of 2015	5 MVA
Admissible Drawl/Entitlement from PSPCL	0 MVA
Actual MVA recorded at Meter with 0.99 power factor	4.545 MVA

2. Thus Contract Demand of the consumer stands curtailed by $(5.000-4.545) = 0.455$ MVA. This is true for almost all the Induction Furnace consumers getting power at 11 KV since they have the Contract Demand of 2.5 MVA and also use 2.5 MVA for running the induction furnace for optimum efficiency .

3. The situation is addressed if actual power factor is used for converting open access power in MW to MVA on daily basis.

4. As per CC No. 29, violation of Admissible drawl is to be worked out from readings of ABT meters by SLDC. Since the data is to be analyzed after down loaded data of ABT meter is sent by DS office to SLDC after the month, there will be no difficulty in usage of actual power factor and software algorithm can be structured that way.

F. Usage of 0.90 as power factor

1. it is submitted that the Respondent No.1 vide its CC 29 dated 22.07.2015 has considered the usage of power factor as 0.90 to convert load/contract demand from MW to MVA. Clause 5 of CC 29 reads as:

"Power factor of 0.90 shall be considered to convert load/contract demand from MW to MVA."

Now, in case such power factor is implemented, it will impose a penalty on the theoretical figures of admissible drawl in spite of actual figures being available.

2. Therefore, it is respectfully submitted that both the DLMS and ABT meters are recording the actual 30 minute/15 minute data of KVA, KW, KVAh and KWH. Therefore, when there is already availability of actual data, then such use of presumptive/theoretical/ normative data instead of using the actual data is improper in determining the levy of penalty, and is liable to be set aside.

G. Treatment of banked power for outage of grid system of the Licensee

1. That under Collective transactions if in case there arise a fault in the feeding substation/line, the Open Access power purchased by a consumer during the period of fault is considered as power banked with the Respondent No. 1 and as per clause 8 of Procedure for Intra State Short Term Open Access issued by Punjab State Transmission Company Limited, that banked power can be utilized by Open Access consumer within fifteen (15) days from the date of fault of such substation / feeder, with the approval of the Respondent No. 1 in the allotted time slot.
2. Whereas prior to the PSERC order dated 01.06.2015 with reference to Petition No. 16 of 2013, Open Access consumers was not purchasing power in that time slot so as to ensure utilization of such banked power in the allotted time and power used in such slot was adjusted against the banked power.
3. Therefore, with the PSERC Open Access Fifth Amendment Regulation, 2015, there is no clarity in the order dated 01.06.2015/CC 29 to the effect that whenever the Respondent No. 1 allows open access consumer to use such power, then that power is to be considered as Scheduled Open Access power or the power of Respondent No. 1 to determine the admissible drawl for that day. The order dated 01.06.2015 as well as CC 29 do not provide clarity as to whether the slot for which open access power is banked shall be excluded for the purpose of calculation of admissible drawl for that day. Since it is difficult to adjust the unutilized power in the allotted time schedule in view of the amended Regulations and non utilization is due to force Majeure condition of the Respondent No 1 and/or 2, we suggest that such unutilized power be adjusted as utilized and consumption from Respondent No 1 be reduced accordingly.

H. Effective date of CC 29 of 2015 and amendment of short term open access procedure

1. That the CC 29 has been issued on 22.07.2015 but made effective from 03.06.2015 i.e. after a delay of 50 days. Representations on the issue of methodology to work out MVA from MW were made by many affected consumers to the Hon'ble Commission but the issue was not resolved and many consumers used actual/normative PF (0.98/0.95) for deciding the quantum of OA power and now all such consumers will suffer on this account. These issues should have been resolved before issue of said notification by the Hon'ble Commission. The retrospective implementation of CC 29 will put the open access consumers to great financial loss as the clarifications can only be taken care of in future. Therefore the implementation of CC 29 should be prospective.

2. The Respondent No 2 has issued Procedure for Intra State Short Term Open Access with the approval of this Hon'ble Commission in compliance to Open Access Regulations 2011. For proper implementation of Amendment No 5 of Open access regulations, the best course should have been revision of Open access procedure with the approval of this Hon'ble Commission which would have provided clarity to consumers on all these issues. Therefore, Petitioner requests that Respondent no 1 and 2 may please be directed to revise the Open Access Procedure immediately in line with the decisions on the issues raised in this Petition.

PRAYER

In the light of the aforementioned facts and circumstances of the present case, it is therefore most respectfully prayed that this Hon'ble Commission may graciously be pleased to:

- a) To amend and bring the Regulations and Policy on Peak Load Hours Restrictions and Exemptions in consonance with each other for proper implementation of PSERC (Terms and Conditions for Intra-state Open Access) Fifth Amendment Regulation, 2015 read with order on TOD.
- b) To provide for a uniform normative Power Factor of 0.95/0.98 for PIU/general LS consumers for grant of Peak load exemption and NOC for Open Access and usage of actual power factor for converting open access power in MW to MVA for determining the daily admissible drawl of an Open Access consumer as per the practice of working out open access energy in MWH to MVAH,.
- c) To provide in the Open Access Regulations 2011 for drawl of power by Open Access consumer up to the Contract Demand under Force majeure condition of curtailment of approved bilateral schedules by RLDC due to outage of transmission corridors or forced outage of inter-state links/lines.
- d) To decide on the treatment of banked power due to outage of transmission/distribution system of Respondent no 1 & 2.
- e) To order immediate stay on the implementation of CC 29 till decision of this petition and then issue fresh CC.

- f) To direct the Respondent No. 1 to use actual data instead of normative data while calculating/determining the levy of penalty.
- g) To direct Respondent No 2 to amend the Short term open access procedure in line with the Amendment No 5 covering all aspects.
- h) To pass such other order/(s) as it may deems fit and necessary in the interest of justice.

PLACE:

DATE: 4/2/2014.

Abhinav Das
COUNSEL FOR THE PETITIONER(S)

