

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL NO. 26 OF 2017
APPEAL NO. 27 OF 2017
&
APPEAL NO. 318 OF 2017

Dated: 12.09.2025

**Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member**

APPEAL NO. 26 OF 2017

IN THE MATTER OF:

- (i) Punjab State Power Corporation Limited
Through its Chairman,
The Mall, Patiala – 147001
Punjab.
- (ii) Engineer-in-Chief/Commercial,
PSPCL,
The Mall, Patiala – 147001
Punjab.
- (iii) Deputy Chief Engineer/Billing,
PSPCL,
The Mall, Patiala – 147001
Punjab.

....Appellant(s)

Versus

- (i) Punjab State Electricity Regulatory Commission
SCO No 220 -221, Sector-34-A,
Chandigarh, Pin Code – 160022.
- (ii) Garg Acrylics Ltd.,
Kangwanwal Road,
V.P.O. Jugiana,
G.T. Road,
Ludhiana -1410120,
Punjab

(Through its authorized signatory
Shri Suneel Sharma, G.M. Engineering).

- (iii) Sportking India Ltd.,
Village Kanech,
Near Sahnewal G.T. Road,
Ludhiana -1410120,
Punjab
(Through its authorized signatory Shri Suneel Sharma,
G.M. Engineering)
- (iv) Sharmanjit Yarns Pvt. Ltd.,
Lakhowal Road,
Village Kohara,
Ludhiana -141112,
Punjab
(Through its authorized signatory
Shri Ram Ashish Singh,
Chief Engineer of the Company).
- (v) S.T. Cottex Exports Pvt. Ltd.,
Village Iraq, Machhiwara,
Ludhinana -141115,
Punjab
(Through its authorized signatory
Shri Ram Khelawan Verma,
S/o Shri Babu Lal Verma,
General Manager, Engineering)
- (vi) Kaur Sain Spinners Ltd.,
Village Arrincha,
P.O. Doraha, Tehsil Payal,
District Ludhiana-141421,
Punjab
(Through its authorized signatory
Shri Pradeep Kumar Patra,
S/o Shri Bishnu Charan Patra, G.M. (Engg.).
- (vii) Mittal Spinning Mills,
Village Rohla,
Chandigarh Road,
Samrala,

District Ludhiana-141114,
Punjab
(Through its authorized signatory
Shri Pradeep Kumar Patra,
S/o Shri Bishnu Charan Patra,
G.M. (Engg.) of the Company

(viii) Ahuja Cotspin Pvt. Ltd.,
Plot No.-25, Street No.9,
Kirpal Nagar, Ludhiana-141115,
Punjab
(Through its authorized signatory Shri Subrat Panda,
S/o Shri Ganga Dhar Panda,
Vice President of the Company.

(ix) Arisudana Industries Ltd.,
B-XXIX-143,
Giaspura Road, G.T. Road,
Ludhiana-141010,
Punjab
(Through its authorized signatory
Shri Ramesh Kumar Singh).

(x) Happy Forging Ltd.,
B-XXIX-2254/1,
Opposite Hindustan Tyres,
Kanganwal Road,
P.O. Jugiana,
Ludhiana-141003,
Punjab
(Through its authorized signatory
Shri Ramesh Kumar Singh).

...Respondent(s)

Counsel for the Appellant(s) : Ms. Zehra Khan for App-1 to 3

Counsel for the Respondent(s) : Mr. Sakesh Kumar for R-1

Mr. Tajendar K. Joshi
for Res.2,4,5,6,9 & 10

APPEAL NO. 27 OF 2017

IN THE MATTER OF:

Shri K.D. Chaudhary,
Chairman & Managing Director,
Punjab State Power Coporation Limited
The Mall, Patiala – 147001
Punjab.

....Appellant(s)

Versus

(i) Punjab State Electricity Regulatory Commission
SCO No 220 -221, Sector-34-A,
Chandigarh.

(ii) Nahar Spinning Mills Limited,
Having its Registered Office at 373,
Industrial Area-A,
Ludhiana-141001,
Punjab
(Through Shri P.P. Singh,
Vice President (Electricals and Utilities).

...Respondent(s)

Counsel for the Appellant(s) : Ms. Zehra Khan

Counsel for the Respondent(s) : Mr. Sakesh Kumar for R-1

Mr. Praveen Kumar
Mr. Tajendar K. Joshi for R-2

APPEAL NO. 318 OF 2017 & IA No. 74 of 2017

IN THE MATTER OF:

(i) Punjab State Power Coporation Limited
Through its Chief Engineer,
The Mall, Patiala – 147001
Punjab

(ii) Shri K.D. Chaudhary,
Chairman & Managing Director,
Punjab State Power Coporation Limited
The Mall, Patiala – 147001
Punjab.

....Appellant(s)

Versus

- (i) Punjab State Electricity Regulatory Commission
SCO No 220 -221, Sector-34-A,
Chandigarh-160022.
(through its Chairman)
- (ii) Shiva Textfabs Limited,
Having its Registered Office at 8 L Model Town
(backside Hotel Chevron),
Ludhiana -141002,
Punjab
(Through its authorized representative Shri B.P. Sharma).
- (iii) Shiva Speciality Yarns Limited,
Having its Registered Office at 8 L Model Town
(backside Hotel Chevron),
Ludhiana -141002,
Punjab
(Through its authorized representative Shri B.P. Sharma).
- (iv) Yogendra Worsted Limited
Having its Office at Village Lal Kalan,
Post Office Katini Kalan,
Near Neelon Bridge,
Chandigarh Road,
District Ludhinana -141113,
Punjab
(Through its authorized representative Shri B.P. Sharma)
- (v) Shiva Fabricators Limited,
Having its Registered Office at 8 L Model Town
Ludhiana -141002,
Punjab
(Through its authorized representative Shri B.P. Sharma)
- (vi) Indian Yarn Limited,
Having its Registered Office at Village Humayumpur,
14 KM, Lalru-Handesra Road,
Post Office Lalru,
District SAS Nagar,
PIN Code – 140501.

Punjab.

(Through its authorized representative Shri B.P. Sharma)

...Respondent(s)

Counsel for the Appellant(s) : Ms. Zehra Khan for App-1 & 2

Counsel for the Respondent(s) : Mr. Sakesh Kumar for R-1

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. M/s Punjab State Power Corporation Limited (in short "Appellant" or "PSPCL") has filed the present batch of Appeals being Appeal No. 26 of 2017, Appeal No. 27 of 2017 & Appeal No. 318 of 2017.

2. The Appellant is challenging the following Orders passed by Punjab Electricity Regulatory Commission (in short "State Commission" or "PSERC"):

Sl.	Appeal No.	Impugned Order in Petition No.	Dated
1.	26 of 2017	76 of 2015	03.02.2016
2.	27 of 2017	77 of 2015	03.02.2016
3.	318 of 2017	73 of 2015	04.04.2016

Description of the Parties

3. The Appellant, Punjab State Power Corporation Limited, is a company incorporated under the provisions of the Companies Act, 1956, and is an unbundled entity of the erstwhile Punjab State Electricity Board and has been

vested with the functions of generation and distribution of electricity in the State of Punjab.

4. Respondent No. 1 is the State Electricity Regulatory Commission for the State of Punjab, exercising jurisdiction and discharging functions under the Electricity Act, 2003.

5. The Respondent Nos. 2 to 10 in Appeal No. 26 of 2017, Respondent No. 2 in Appeal No. 27 of 2017, and Respondent Nos. 2 to 6 in Appeal No. 318 of 2017 are Large Supply Industrial Consumers (in short “LSCs” or “LSICs”) having their separate factories in the State of Punjab. Each of them has a separate/independent electric connection, as provided by the Appellant.

6. The issues involved in the batch of appeals are identical in nature. Therefore, we decided to adjudicate the complete batch with Appeal No. 26 of 2017 as the lead appeal.

Factual Matrix of the Case(s) (Appeal No.26 of 2017) (as submitted by Appellant)

7. The State Commission, by its Order dated 20.05.2015 in Petition No. 1 of 2015 filed by M/s Siel Chemical Complex, held that the levy of an additional charge of Rs. 3/kVAh on power purchased through open access by Large Supply Consumers (in short “LSCs” or “LSICs”) who had opted for ToD tariff during peak load hours from 06.00 PM to 10.00 PM was not justified and directed refund of the amounts so charged.

8. During the pendency of the said proceedings, Petition No. 3 of 2015 was filed before the State Commission by M/s Nahar Spinning Mills against PSPCL, wherein one of the issues raised pertained to the interpretation and applicability of the ToD tariff.

9. The State Commission, by its Order dated 20.05.2015 in Petition No. 3 of 2015, reiterated that there was no provision in the General Conditions of Tariff permitting the levy of the said charge of Rs. 3/kVAh on open access power drawn during peak load hours and directed PSPCL to refund the amounts recovered through subsequent energy bills.

10. PSPCL filed Review Petition No. 3 of 2015 against the Order in Petition No. 1 of 2015, which was dismissed by the State Commission on 24.08.2015, holding that no error apparent on the face of the record had been established.

11. PSPCL also filed Review Petition No. 4 of 2015 against the Order in Petition No. 3 of 2015, which was similarly dismissed on 24.08.2015 as being devoid of merit.

12. Consequent to the above Orders in Petitions No. 1 of 2015 and 3 of 2015, PSPCL was restrained from levying Rs. 3/kVAh on ToD tariff opting Large Supply Consumers drawing power through open access during peak load hours, with the result that such consumers were liable only for the normal tariff on such drawal.

13. Thereafter, PSPCL, in accordance with the Tariff Orders for FY 2014-15 and FY 2015-16, commenced levy of Peak Load Exemption Charges (in short "PLEC") on LSCs who had opted for ToD tariff and were drawing power during peak load

hours either through open access or through a combination of drawal from PSPCL and open access.

14. The levy of PLEC for the months from October to March led to the filing of Petition No. 76 of 2015 by M/s Garg Acrylics and others before the State Commission.

15. By its Order dated 03.02.2016 in Petition No. 76 of 2015, the State Commission held that PLEC could not be charged on ToD tariff opting Large Supply consumers purchasing power through open access during peak load hours for the period October 2014 to March 2015 and from October 2015 onwards, and directed that any such amount charged be refunded.

16. PSPCL thereafter filed Review Petition No. 2 of 2016 against the Order dated 03.02.2016, which was dismissed by the State Commission on 03.05.2016 on the ground that there was no error apparent on the face of the record and that the Review Petition was like an appeal.

17. Thus, being aggrieved by the Impugned Order dated 03.02.2016 passed by the PSERC in Petition No. 76 of 2015, the Appellant has preferred the present Appeal.

Our Observations and Analysis

18. The Appellant has prayed for the following relief before us (in Appeal No. 26 of 2017):

“i. Allow the appeal and set aside the order dated 03/02/16 passed by the State Commission in Petition no. 76 of 2015, to the extent challenged in the present appeal i.e. to treat power drawn through Open Access during peak load hours, by ToD tariff opting LS consumers, on the same pattern as power drawn from PSPCL i.e. the Appellant, by such LS consumers who have opted for the ToD tariff;

ii. Allow the levying of charges on the drawl of power through open access during the peak load hours on the ToD Tariff opting LS consumers, on the pattern of PLEC, or in the alternate Rs. 3 per kVAh as provided in the Tariff schedule for the FY 2014-15 and 2015-16 and as applicable to ToD opting customers;

iii. Pass such other Order(s) as this Hon'ble Tribunal may deem just and proper.”

19. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issues arise for determination in this Appeal:

Issue No. 1: Whether Punjab State Power Corporation Limited (PSPCL) could lawfully levy Peak Load Exemption Charges (PLEC) on LSICs who opted for Time of Day (ToD) tariff and availed open access power during peak load hours, by issuing administrative circulars without such levy being expressly approved by the PSERC?

Issue No. 2: Whether, under the relevant Tariff Orders (FY 2014-15 and FY 2015-16) and the PSERC (Terms and Conditions for Intra-state Open Access) Regulations, 2011, PLEC is payable by LSICs who have opted for ToD tariff and also draw power through open access during peak load hours, or whether such consumers are exempt from PLEC for the period they avail ToD tariff, regardless of source of power?

20. The impugned order arose out of a series of petitions filed by LSICs, aggrieved by the levy and recovery of Peak Load Exemption Charges (PLEC) by PSPCL during the period October 2014 to March 2015 and October 2015 onwards. These charges were imposed on consumers who had already opted for the ToD tariff and sourced power through open access during the peak load hours, pursuant to certain circulars issued by PSPCL.

21. The consumers approached the Commission contending that such a levy was ultra vires the approved Tariff Orders for FY 2014-15 and FY 2015-16 and contrary to the PSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2011.

22. The Commission, after detailed consideration, set aside PSPCL's directions to the extent of levying PLEC on this category of consumers and directed refund of amounts collected on this account, along with interest as per law.

23. Aggrieved by the Commission's decision, PSPCL has preferred this batch of appeals. In essence, the appeals raise important legal questions about the authority of the distribution licensee (PSPCL) to unilaterally impose or recover charges like PLEC in the absence of express regulatory or tariff approval, the interpretation of relevant Tariff Orders and Regulations in relation to ToD and open

access consumers, the statutory nature of PLEC (as tariff or otherwise), and the implications for non-discriminatory treatment and revenue neutrality within the tariff design mandated by the Electricity Act, 2003.

24. The present judgment will dispose of Appeal No. 26 of 2017 along with all connected matters, as common questions of law and fact arise for consideration.

25. The two issues are dealt with in the succeeding paragraphs on an issue-wise basis.

Issue No. 1: Whether Punjab State Power Corporation Limited (PSPCL) could lawfully levy Peak Load Exemption Charges (PLEC) on LSICs who opted for Time of Day (ToD) tariff and availed open access power during peak load hours, by issuing administrative circulars without such levy being expressly approved by the PSERC?

26. The Appellant contends that the imposition of PLEC on LS Industrial Consumers who have opted for the ToD tariff and sourced power via open access during peak load hours is justified under the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011, specifically Regulation 18(2)(g).

27. It is submitted that Regulation 15(6) of the Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 is pari materia with Regulation 18(2)(g) of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011:

<p>15. Procedure for grant of intra-State short term open access on intra-State transmission and distribution system...</p> <p>...</p> <p>6. During peak load hours restrictions, the open access consumer shall restrict his total drawal, including the drawal under open access, to the extent of peak load exemption allowed by distribution licensee.</p>	<p>18. Procedure for Short-Term Open Access</p> <p>...</p> <p>(2)...</p> <p>(g). During peak load hour restrictions, the open access customers shall restrict their total drawal including open access power to the extent of the peak load exemption allowed.</p>
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28. PSPCL submits that PLEC is not a tariff, but a commercial mechanism that is necessary to ensure grid stability, compensate for high-cost procurement during peak periods, and maintain revenue neutrality as mandated under Section 62(3) of the Electricity Act, 2003.

29. The Appellant further asserts that to read the Tariff Order as barring PLEC on such consumers would result, inter alia, in highly subsidized power for a class of LSC consumers; those opting for ToD tariff and sourcing via open access during peak hours, thereby compromising grid integrity and causing substantial revenue loss and regulatory imbalance. It is stressed that the principles of revenue neutrality embedded in the tariff framework would be violated if open access consumers are altogether exempted from PLEC or other compensatory charges during the peak hours, especially as other similarly-placed LS consumers who do not opt for ToD or do not use open access are subject to such charges.

30. PSPCL contends that the imposition of PLEC on ToD open access consumers is justified under Regulation 18(2)(g) and is necessary to prevent revenue loss and maintain fairness across different categories of consumers, even if the tariff order does not expressly mention such a charge.

31. Relying on the judgment of the Punjab and Haryana High Court in ***Dakshin Haryana Bijli Vitran Nigam v. State of Haryana, 2015 SCC OnLine P&H 3553***, the Appellant maintains that Regulation 18(2)(g) itself permits the claim of PLEC from open access consumers:

“2. Both the writ petitions challenge a common order issued on 20.11.2013 issued by the Haryana Electricity Regulatory Commission. The common order was passed in 4 different petitions filed for various reliefs. The point that hogs our interest is raised in the petition filed on 17.12.2012 by Jindal Stainless Limited (JSL) seeking for amendment of clause 15(6) of Haryana Electricity Regulatory Commission (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 read with clauses 57 to 59 of the aforesaid Regulations. Another petition dated 01.01.2013 was filed by Mahakali Agro & others seeking for clarification/implementation of 2012 Regulations read with clauses 57 and 59 of the said Regulations. JSL, which is the contesting respondent before me, had sought for amendment of 2012 Regulations with regard to the application of clause 15(6) by incorporating the underlined portion to read as under:

*“During peak load hours restrictions, the open access consumers shall restrict his total drawal, **excluding** the drawal under open*

access, to the extent of peak load exemption allowed by the distribution licensee.” (underlining mine)

...

3. The contention in defence of the Regulations as they existed and the sales circular was that the definition of “contract demand” as appearing in Regulation 3 of Regulation 2012 was nothing but sanctioned contract demand as appearing in the agreement. Agreements were actually executed at times when the concept of open access itself was not in existence. Consequently, the agreements did not make any specific provisions with reference to open access mechanism. During peak load hours when the open access consumers scheduled power through open access and draw more than what they had scheduled through open access, they actually draw their entire requirements beyond open access schedule. Upto the contract demand such ad hoc drawals were detrimental to grid security, planning efficiency as well as loss of opportunity for the Discoms and non-recovery of operation costs. It was the submission of the Power Corporation that PLEC as provided under Regulation 15(6) was essential to ensure grid stability and security, since unrestricted peak demand really pushed up the network cost, and if unhindered drawals were not restricted during peak load hours, the grid stability would be in great jeopardy.

...

12. I cannot accept the above argument made by the learned senior counsel for the respondent that the issue before the Commission was merely an issue of implementation of a Regulation that already existed. On the other hand, the Regulation 15(6) was so applied to justify PLEC to open access consumers and the open access consumers had a plea that the Regulation was against the stated policy and would require to

be amended. The decision of the Commission came in a context of a specific delegated legislative power that was possible for its exercise to benefit the open access consumers. If the Electricity Commission found a justification for PLEC for open access consumers, it ought to have simply rejected the plea for amendment but it was wrong to allow for the respondents to get what they wanted on a specious reasoning that the sales circular had not been approved but the Regulation 15(6) would be re-visited. If the Regulation framed already with its approval concluded the issue of PLEC, the sales circular must be taken as merely an application of what was already laid down under the Regulations. There was no other warrant for a specific approval from the Commission. I would, therefore, find that the decision of the Commission to be unjustified and the challenge brought before this court in the writ jurisdiction was perfectly tenable.

13. The petitioner brought sufficient justification on its merits for levy a PLEC. I have already observed that even the Commission found that there was a justification on merits and it was, therefore, making reference to a need for revisiting the provisions. The counsel would refer to the issues of the increase of network cost, the requirements to maintain grid stability, the reliability of supply, reduction of volatility in demand and enhancement of operational efficacy. The learned senior counsel appearing on behalf of the respondents was not prepared to join issues on merit at all. It must be remembered that the decision of the Supreme Court in PTC India Limited (supra) cannot be wrongly understood to even fetter the jurisdiction under Article 226. If the Supreme Court was holding that the validity of regulation cannot be challenged before the appellate Tribunal and only an interpretation

thereof or dispute arising therefrom could be taken before the Tribunal, it ought not to be understood that what could be taken before the Tribunal could not be brought in challenge under Article 226. Even if the remedy by way of appeal against the decision to the Tribunal were assumed to exist on a reasoning that the impugned order was adjudicatory, there could be nothing inherently incompetent to test the correctness in the writ jurisdiction. It must be remembered that the limitation to exercise of jurisdiction under Article 226 is invariably a self-imposed one. The lack of jurisdiction for a Tribunal may non-est an order passed by it. There is no such limitation for this court. If the impugned order is untenable and even if a right of appeal to Tribunal were to exist, this is a fit case to exercise the writ jurisdiction as well to correct a serious error in the impugned order. With the respondent not willing to join the issue on merit to the contentions raised by the petitioner the respondents literally hand on a platter a concession that the petitioner's contentions are indeed tenable.

14. The counsel for the petitioners also refers to several decisions relating to unjust enrichment and the open access consumers having already shifted the incidence of burden on the ultimate consumers of their products and hence they could not have the benefit of claiming any refund from the Power Corporation. Since I have held that the Regulation 15(6) itself allowed for PLEC to be claimed from open access consumers and found the levy to be justified, I find no reason for making reference to any of those decisions.”

32. It is further asserted that there has been a well-established history of levying such charges under the Regulations and that the Tariff Orders' silence or express

grant of relief from PLEC cannot be interpreted to negate or abrogate the binding force of the Regulations absent specific amendment or adjudicatory clarification by the Commission.

33. PSPCL thus contends it is vested with the power to recover PLEC from all relevant consumers, including ToD open access consumers, in the absence of any express Commission directive to the contrary; otherwise, a group of consumers would be unjustly enriched to the detriment of other categories, and the financial stability of the utility itself would be undermined.

34. In the alternative, and without prejudice to the above, PSPCL submits that if PLEC is concluded to be a tariff rather than a compensatory surcharge, this Tribunal should still uphold its levy on the ground of ensuring revenue neutrality under Section 62(3) of the Electricity Act, 2003, reading the Tariff Orders, Annual Revenue Requirement, and General Conditions as including PLEC within their scope.

35. The Appellant further pleads that if this Tribunal finds against the levy of PLEC in the present form, it should at least grant liberty to the Appellant to approach the State Commission under Section 42(4) or otherwise for the determination and recovery of additional surcharge for the relevant financial years.

36. The Respondent Commission, PSERC, contends that PSPCL has acted without legal authority in issuing administrative circulars levying PLEC on ToD open access consumers during the period in question. It is submitted that the entire statutory scheme of the Electricity Act, 2003, the PSERC (Terms and Conditions of Determination of Tariff) Regulations, 2005, and the Open Access Regulations, 2011 vests exclusively in the State Commission the power to determine tariff and

approve any charges, surcharges, or other imposition collectable from consumers. Regulation 6(2) of the 2005 Regulations is adverted to, making it expressly unlawful for a licensee to recover any charge in excess of what is determined by the Commission; any such excess charge is to be refunded along with interest, without prejudice to other liability.

“6. CHARGING OF PERMISSIBLE TARIFF

(2) The generating company or the licensee shall not charge a tariff in excess of the tariff determined by the Commission and if any generating company or licensee recovers a price or charge exceeding the tariff determined by the Commission, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the generating company or the licensee.”

37. The Commission points to its Tariff Orders for the relevant financial years (2014-15 and 2015-16), which, it is submitted, draw a deliberate and conscious distinction between ToD customers and those not opting for ToD, setting out that for ToD consumers, only the additional ToD charge (of ₹3/kVAh during peak hours) is recoverable, whereas for non-ToD consumers, PLEC is specifically provided for. Nowhere do the Tariff Orders provide or contemplate imposition of PLEC on those who have opted for the ToD tariff, even if such consumers source power via open access during peak load hours.

38. It is further submitted that even under the relevant Open Access Regulations, only such charges as are expressly provided for in Chapter 5-Transmission Charges, Scheduling and System Operation Charges, Wheeling Charges, Cross

Subsidy Surcharge, and Additional Surcharge are recoverable from open access customers; neither the ToD charge nor PLEC is listed therein.

39. The Commission strongly resists PSPCL's reliance on general regulatory powers, repeated invocation of grid stability, and revenue neutrality, contending that these cannot override or fill the deliberate omission in the Tariff Order and Regulations to sanction PLEC from ToD open access consumers. The Commission further points out that the impugned PSPCL administrative circulars themselves constitute an impermissible usurpation of regulatory functions, in direct contravention of Regulation 6(2) and Section 62(6) of the Act. It is underlined that the Commission, being exclusively vested with tariff determination, alone has the authority to amend, clarify, or supplement Tariff Orders or Regulations, and that any felt gap or perceived unfairness in treatment among consumer categories must be addressed by an appropriate petition to the Commission and not by PSPCL's unilateral circulars.

40. At the threshold, it must be emphasized that the power to determine the tariff and all related charges or surcharges recoverable from various categories of consumers is statutorily vested in the appropriate Regulatory Commission of the State.

41. Section 62 of the Electricity Act, 2003 is as follows:

“Section 62. (Determination of tariff):--- (1) *The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for—*

(a) supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity;

(c) wheeling of electricity;

(d) retail sale of electricity:

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any

changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.”

42. Section 62 of the Electricity Act, 2003, read with Regulation 6(2) of the PSERC (Terms and Conditions of Determination of Tariff) Regulations, 2005, makes it categorically clear that a licensee “*shall not charge a tariff in excess of the tariff determined by the Commission and if any generating company or licensee recovers a price or charge exceeding the tariff determined by the Commission, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the generating company or the licensee.*” This regulation is designed to ensure that all charges, including surcharges such as PLEC, must have the sanction of an explicit, Commission-approved tariff or regulation. A *fortiori*, administrative circulars or internal instruction/ order from the licensee alone cannot serve as legal authority for the imposition or collection of charges not expressly authorized by the Commission.

43. The Impugned Order of the Commission dated 03.02.2016 in Petition No. 76 of 2015, concerning Tariff Orders for FY 2014-15 and FY 2015-16 has held as follows:

“

Thus, from the above, we conclude that since as per clause 15 of the General Conditions of Tariff read with para 7.3.3 of Tariff Order for FY 2014-15 and para 5.3.3 of Tariff Order for FY 2015-16, the peak load hours restrictions including PLEC, are not applicable to the consumers who have opted for ToD tariff as per the terms and conditions approved by the Commission. As such, there is no occasion to levy peak load hour exemption charges on such consumers even if such consumers bring open access power during this period. No differentiation between consumers using power exclusively from PSPCL and those availing open access also, has been made in the Tariff Orders for FY 2014-15 and FY 2015-16.

Since, no peak load hours restrictions are applicable for the consumers who have opted for ToD tariff from 1st Oct. to 31st March of relevant financial year, as such, these consumers can draw power including open access power up to its sanctioned contract demand. The provision in the NOC being issued by PSTCL allowing open access consumers, who have opted for ToD tariff, to restrict its total drawal within sanctioned contract demand is perfectly in order and is in accordance with the provisions of ToD tariff regime as approved by the Commission, in the Tariff Orders for FY 2014-15 and FY 2015-16.

PSPCL also referred to Regulation 31(1)(a) to justify levy of PLEC stating that in case of drawl more than the scheduled entitlement by an open access consumer, PLEC is chargeable from such consumer along with highest tariff applicable to any permanent category of consumers. Regulation 31 of Open Access Regulations, 2011 deals with levy of imbalance charges which are to be recovered or paid to the Open Access customers in case of over drawl or under drawl of power more/less than the scheduled power. Regulation 31(1)(a) provides that in case of over-drawal by an open access consumer, he shall be required to pay UI charges including congestion charges or highest tariff for any permanent consumer category including PLEC, whichever is higher. This is a punitive clause to discourage over drawl of power by open access consumers. The levy of highest tariff in case of over-drawal on the open access consumer irrespective of the category to which he belongs, does not allow the distribution licensee to levy such highest tariff for its normal billing. Similarly, PLEC is added to this highest tariff to make it more stringent but again it does not mean that open access consumer shall be liable to pay the highest tariff applicable to any consumer category including PLEC for his normal consumption. Thus, reference to clause 31 (1) (a) to justify levy of PLEC on the open access power is devoid of any merit.

Another argument advanced by PSPCL is that regulation 26(1) of Open Access Regulations, 2011, provides for calculation of cross subsidy surcharge payable by Open Access consumers including open access power and since revenue realized from LS category also includes revenue from PLEC so by not charging PLEC or ToD tariff on open access power during peak load hours, the cross subsidy surcharge will

only partially subsidise the cross subsidy element. We find no merit in this argument. The cross subsidy surcharge has to be calculated as per the Open Access Regulations, 2011. The sales and revenue figures for the ensuing year are projections and any shortfall or surplus is duly accounted for during review and true up on the basis of audited figures.

PSPCL has also repeatedly asserted that LS consumers have to pay either PLEC or ToD tariff for the power consumed during peak load hours including open access power since PLEC or ToD tariff serve the same purpose. PSPCL argued that not levying either PLEC or ToD tariff on open access power, according to PSPCL, shall unjustifiably enrich the open access consumers at the cost of other consumers. It appears that PSPCL at their own level had decided to either impose ToD tariff on open access power purchased by the consumers or levy PLEC. Since the Commission in its Order dated 20.05.2015 in Petition No. 01 of 2015 declared the levy of ₹3/- per kVAh on the power purchased through open access during peak load hours as wrong and directed PSPCL to refund the amount so recovered from the consumers so as to block the implementation of Commission's Order, PSPCL imposed PLEC charges on such consumers. The Commission observes that PSPCL through its internal communication dated 08.12.2015 has created a new category of consumers in the Tariff Orders for FY 2014-15 and FY 2015-16 and imposed additional charges which have not been approved by the Commission in these Tariff Orders as explained above. PSPCL letter dated 08.12.2015 states that " it has been decided to levy following charges---- on the consumers who opted for ToD tariff and brought open access power during peak load hours". The Commission in the Tariff Orders for FY 2014-15 & FY 2015-16 has approved the tariff structure

for the period from 1st Oct to 31st March for LS industrial consumers who opt for ToD tariff and those who do not opt for ToD tariff. However, PSPCL at their own level created a new category of consumers who opt for ToD tariff and brought open access power and imposed additional charges. Neither such category was approved by the Commission in the Tariff Orders for FY 2014-15 or FY 2015-16 nor approved the PLEC charges on such consumers. Only on this account, the PSPCL letter dated 08.12.2015 can be struck down. In case the licensee requires any review of the Orders of the Commission, it should have approached the Commission rather than imposing any charges at its own level causing avoidable harassment to the consumers. The Commission has been advising the licensee to submit proposal for levy of “additional surcharge” on the Open Access consumers to meet the fixed cost arising out of obligation to supply as per section 42(2) of the Act and regulation 27 of the Open Access Regulations, 2011, but instead of pursuing the case for levy of charges which are admissible under the law, PSPCL seems to be pleading for charges which are not in accordance with the law.

....”

44. Turning to the Tariff Orders for FY 2014-15 and FY 2015-16, we note with approval the Commission’s detailed analysis and findings. The approved Tariff Orders provide for a distinct, mutually exclusive framework covering:

- (a) LS consumers opting for ToD tariff, who are subject only to the approved ToD charge of ₹3/kVAh during peak hours (6.00 PM - 10.00 PM), and
- (b) LS consumers not opting for ToD, on whom PLEC charges remain applicable during the peak load hour window.

45. Nowhere do these Tariff Orders authorize the simultaneous recovery of both ToD charge and PLEC from the same consumer for the same period, nor do they distinguish between power procured from PSPCL and that sourced via open access for the purposes of levy. The language of the Orders unequivocally sets out two alternative, not cumulative, schemes for the recovery of additional charges during peak hours in the October-March window and omits any mention of PLEC for ToD consumers, irrespective of the supply source.

46. As to the reliance by PSPCL on Regulation 18(2)(g) of the Open Access Regulations, 2011, we find no merit in the contention that this Regulation, by itself, authorizes the recovery of PLEC from ToD consumers availing open access. Regulation 18(2)(g) is, by its plain text, a restriction on the maximum permissible quantum of drawal by open access consumers during periods of peak load hour restrictions, requiring that their total drawal (inclusive of open access power) not exceed the exemption allowed.

47. It does not, by its terms, provide independent authority to PSPCL for the imposition or recovery of PLEC except where such charge is expressly sanctioned by the Commission through the Tariff Order or supplementary regulation. Insofar as Chapter 5 of the same Regulations prescribes, comprehensively, the specific charges open access consumers are liable to pay Transmission Charges, Scheduling and System Operation Charges, Wheeling Charges, Cross Subsidy Surcharge, and Additional Surcharge; there is no scope for importing an additional PLEC without clear regulatory approval.

48. Moreover, the Commission's earlier judgments in Petition Nos. 1 and 3 of 2015, which became final and conclusive in the absence of any challenge, had

already declared the imposition of similar peak hour surcharges (including ToD charges on open access) as illegal, further reinforcing the absence of lawful authority for the present impugned circulars. The Appellant's submission that Regulation 18(2)(g) itself gives a license to recover PLEC finds no support in the actual text of the Regulation and is contradicted by the explicit architecture of the Tariff Orders. If any ambiguity or gap was perceived by PSPCL relating to cost recovery from ToD open access customers, the proper and only course would be to file a petition with the Commission for amendment or clarification, and not to act unilaterally by way of administrative circulars, as done here in this case.

49. The other alternative could have been a challenge to the Regulations.

50. It is equally significant that Regulation 6(2) of the 2005 Tariff Regulations and Section 62(6) of the Act provide for the refund (with interest) of any amount recovered by the licensee in excess of the approved tariff. The impugned circular of PSPCL, therefore, constitutes not just an act in excess of regulatory powers but a direct and actionable breach of statutory command. The Commission's direction for refund, in this context, is correct, proper, and necessary to restore regulatory discipline and consumer confidence.

51. In view of the above, we hold that PSPCL had no lawful authority to levy or recover Peak Load Exemption Charges (PLEC) from Large Supply Industrial Consumers (LSICs), who had opted for Time of Day tariff and availed open access power during peak load hours, where such levy was not expressly approved by the State Commission in its Tariff Orders or under the Regulations for the disputed period.

52. The issuance of administrative circulars by PSPCL purporting to impose such charges, in the absence of enabling regulatory approval, was ultra vires and illegal. Any amounts recovered by PSPCL under such circulars, therefore, must be refunded to the affected consumers along with interest in terms of Regulation 6(2) of the 2005 Regulations and Section 62(6) of the Electricity Act, 2003.

Issue No. 2: Whether, under the relevant Tariff Orders (FY 2014-15 and FY 2015-16) and the PSERC (Terms and Conditions for Intra-state Open Access) Regulations, 2011, PLEC is payable by LSICs who have opted for ToD tariff and also draw power through open access during peak load hours, or whether such consumers are exempt from PLEC for the period they avail ToD tariff, regardless of source of power?

53. The Appellant submits that PLEC is payable by LSCs who have opted for ToD tariff and are drawing power through open access during peak load hours. It is contended that the rationale for imposing PLEC is to ensure grid stability and cover the incremental costs associated with the provision of power during times of peak stress on the transmission and distribution system. PSPCL urges that, historically, PLEC has been levied on all power drawn during peak hours, regardless of whether such power is sourced from PSPCL or through open access, and that this long-settled practice is founded in the Open Access Regulations and is supported by the broader regulatory and financial regime for cross-subsidy and neutrality.

54. PSPCL further contends that the relevant Tariff Orders and General Conditions do not expressly exempt open access drawals during ToD periods from

PLEC; rather, the Tariff structures are to be read in consonance with Regulation 18(2)(g) of the PSERC (Terms and Conditions for Intra-state Open Access) Regulations, 2011, which provides that *“during peak load hour restrictions, the open access customers shall restrict their total drawal including open access power to the extent of the peak load exemption allowed”*.

55. The purpose, according to PSPCL, is not only technical; ensuring network stability but also financial; the structure of Average Revenue Requirement (ARR) for FY 2014-15 and 2015-16 included projected revenues from PLEC and to exempt ToD open access consumers from PLEC, while non-ToD or non-open access consumers are required to pay, would result in revenue shortfall, cross-subsidy distortion, and unjust enrichment of the exempted category.

56. The Appellant further asserts that the words “may” and “instead of” in the General Conditions of Tariff cannot mean a total exemption for ToD consumers from all peak period compensation charges, regardless of source. Rather, these are to be harmoniously construed so as not to allow consumers to avoid peak period charges simply by the choice of power source. PSPCL thus urges that, unless the Tariff Order expressly and unambiguously provides a blanket exemption, the regulatory framework and intent of the tariff design require PLEC to be payable by LS ToD consumers sourcing open access power during peak hours.

57. Without prejudice to the above, repeatedly the Appellant has urged that if there is any ambiguity, liberty be given for the determination of an appropriate additional surcharge by the Commission to cover the fixed costs and cross-subsidy in line with the Open Access Regulations and section 42(2) of the Act.

58. The Respondent Commission, PSERC, resists the Appellant's contention and submits that LS industrial consumers who have opted for ToD tariff are under both Tariff Orders (FY 2014-15 and FY 2015-16), exempt from payment of PLEC for the period when such ToD tariff is operative, irrespective of whether they draw power from PSPCL or through open access during peak hours.

59. The Commission draws attention to the express distinction in the Tariff Orders between (a) those who opt for the ToD tariff and (b) those who do not, both in the impugned order and in the General Conditions (particularly Clause 15). For those consumers who opt for ToD, only the specific ToD charge (Rs. 3 per kVAh in the relevant years) is recoverable during peak load hours; for those who do not opt for ToD, PLEC as previously fixed remains applicable.

60. Nowhere in the Tariff Orders has the Commission contemplated a hybrid arrangement whereby a ToD consumer is also made liable to PLEC simply because open access is availed. This, it is submitted, would amount to creating a new consumer sub-category and charge, wholly outside the express terms of the Tariff Orders, which is impermissible.

61. The Respondent resists the invocation of Regulation 18(2)(g), asserting that it pertains merely to restriction of total drawal (including open access) up to the permitted exemption, not to chargeability of PLEC, and does not override the explicit exemption contained in the Tariff Orders for ToD consumers. The Commission points out that neither ToD nor PLEC is amongst the charges statutorily recoverable from open access consumers under Chapter 5 of the 2011 Regulations (which lists only Transmission Charges, Scheduling and System Operation Charges, Wheeling Charges, Cross Subsidy Surcharge, and Additional Surcharge).

62. The Commission further submits that the intention to exempt ToD consumers from PLEC is not only textual but rooted in regulatory principle; once a consumer has duly opted for ToD tariff, he is bound only to pay the ToD charge specified for that period and class of consumer, regardless of source of power drawn, and cannot be retrospectively subjected to PLEC by recourse to general regulatory powers or administrative circular issued. Any ambiguity that the Commission denies would have to be resolved by petition before the Commission, not by unilateral action of the utility. Finally, PSERC submits that attempts by PSPCL to impose PLEC on ToD consumers post finality of Commission's orders are without jurisdiction and must be set aside, with any amount recovered on this account liable to refund with interest.

63. The question before us is a pure question of interpretation of the Tariff Orders for FY 2014-15 and FY 2015-16, the General Conditions thereto, and the PSERC (Terms and Conditions for Intra-state Open Access) Regulations, 2011- *Can consumers who have opted for ToD tariff, but draw power during peak load hours via open access, be lawfully subjected to PLEC for such drawal, or does the ToD option operate to exempt them entirely from PLEC during the relevant period?*

64. We are satisfied that the design of the Tariff Orders for the years in question is both clear and deliberate. The Orders draw a categorical, mutually exclusive distinction between consumers opting for ToD and those who do not. In each Annual Revenue Requirement and Tariff Order, the structure is outlined in detail; for consumers who opt for ToD tariff, during October to March (the ToD period), the tariff payable during peak load hours (6 PM to 10 PM) is the “normal tariff plus ₹3 per kVAh”, while for non-ToD consumers the tariff is “normal tariff plus PLEC as previously established”. For the off-peak window, rebates and other adjustments

are similarly confined to the ToD option. Nowhere in the approved schedule is there any provision for layering both PLEC and ToD charge, or for imposing PLEC on open access power drawn by a ToD consumer during peak hours.

65. Clause 15 of the General Conditions of Tariff annexed to Tariff Order for FY 2014-15, as well as Tariff Order for FY 2015-16, reads as under:

“15. Levy of Peak Load Exemption Charges/ToD Tariff

15.1 All Large Supply consumers and Medium Supply consumers (except essential services) having sanctioned load of 50 kW or more, may be subjected to Peak Load Hours Restrictions, as declared by the distribution licensee from time to time with the approval of the Commission. During peak load hours restrictions, the consumers shall be allowed to use only part of their sanctioned load without payment of any additional charges. However, a consumer shall be entitled to use additional load during peak load hours restrictions, which will be governed by such conditions and payment of Peak Load Exemption Charges (PLEC) as approved by the Commission. PLEC shall not be adjustable against MMC and will also be exclusive of electricity duty, cesses, taxes and other charges levied by the Government or other competent authority.

15.2 The consumers covered under Peak Load Hours instructions as per 15.1 above may opt to be covered under ToD Tariff on such terms and conditions as specified by the Commission instead of Peak Load Hours instructions.”

66. The General Conditions (Clause 15) reinforce this structure. Clause 15.1 provides that “*all Large Supply consumers and Medium Supply consumers (except*

essential services) having sanctioned load of 50 kW or more, may be subjected to Peak Load Hours Restrictions...with the approval of the Commission”, and that “a consumer shall be entitled to use additional load during peak load hours...on payment of Peak Load Exemption Charges (PLEC) as approved by the Commission”.

67. However, Clause 15.2 then stipulates that *“the consumers covered under Peak Load Hours instructions as per 15.1 above may opt to be covered under ToD tariff...instead of Peak Load Hours instructions”*. The use of the phrase *“instead of”* makes it inescapably clear that a ToD consumer, for the period that the regime is operative, stands regulated exclusively by the ToD tariff structure and outside the regime of PLEC and peak load restriction. The schedule of charges under ToD does not list PLEC as applicable to ToD consumers, whether for PSPCL-supplied power or for open access power drawn within the sanctioned demand.

68. The invocation by the Appellant of Regulation 18(2)(g) of the Open Access Regulations, which requires that *“during peak load hour restrictions, the open access customers shall restrict their total drawal including open access power to the extent of the peak load exemption allowed”*, does not, in our view, advance the case for PLEC imposition upon ToD consumers. That regulation governs the technical regulation of permissible quantum of drawal (including open access), subject to whatever exemption has been granted; it does not, of itself, create a charging provision beyond the explicit tariff schedule.

69. We also note that Chapter 5 of the 2011 Regulations, after considering and defining the charges applicable to open access consumers, does not mention PLEC as a separate recoverable charge for open access power, although it does

reserve utility the right to claim Transmission, Scheduling, Wheeling, Cross Subsidy, and Additional Surcharges as determined by the Commission.

70. The contention that exempting ToD consumers from PLEC for open access drawals will cause distortion or encourage arbitrage is not without force. However, tariff design and the balancing of technical and commercial considerations lie firmly within the policy domain of the Commission. Therefore, we must give effect to the plain wording and scheme adopted by the regulator, especially where the distinction has been drawn explicitly, as here. If, as PSPCL contends, the result is unfair or contrary to the long-term revenue neutrality assumptions of the system, the proper remedy is by proposal to the Commission for review or amendment of the Tariff Orders or Regulations, and not by administrative circular or unilateral demand of charges with no authorization in the applicable schedule.

71. Nor does the Appellant's reliance on the plea that PLEC is not tariff and can be separately imposed under the Open Access Regulations stand scrutiny, for the clear reason that the Commission, for both FY 2014-15 and FY 2015-16, has chosen not to include such a component in the tariff regime for ToD consumers; regardless of the source of power availed during peak window. We, therefore, are of the view that to read the Orders otherwise would be to create, through interpretation, a tariff or charge category which the Commission did not itself create; a result contrary to the settled principle that a tariff is a creature of express regulatory determination and not of administrative practice or utility necessity as per their own accord.

72. In view of the above, we hold that under the Tariff Orders for FY 2014-15 and FY 2015-16 and the PSERC (Terms and Conditions for Intra-state Open Access) Regulations, 2011, Large Supply Industrial Consumers who

have opted for ToD tariff are exempt from PLEC, for the period when the ToD tariff is operative, even in respect of power drawn through open access during peak load hours.

73. No authority exists in the Tariff Orders or the Regulations to require payment of PLEC for such open access drawal by ToD consumers, and any charge or recovery thereunder, by whatever nomenclature, is liable to be set aside as contrary to the express decision of the Regulatory Commission. This issue is accordingly answered in favour of the Respondent and against the Appellant.

74. We also reject the submission of the Appellant to grant liberty to the Appellant to approach the State Commission under Section 42(4) or otherwise for the determination and recovery of additional surcharge for the relevant financial years, if this Tribunal finds against the levy of PLEC in the present form, as the Impugned Order passed by the State Commission is found to be without any infirmities and strictly as per the law. All the tariff orders issued by the State Commission balance the expenditure incurred by the licensee vis-à-vis the recovery allowed.

75. The Annual Revenue Requirement (ARR), along with the Truing up, always considers the revenue requirement versus the revenue received.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal Nos. 26 of 2017, 27 of 2017 & 318 of 2017 do not have merit and are dismissed.

The impugned order dated 03.02.2016 of the Punjab State Electricity Regulatory Commission in Petition No. 76 of 2015 and related petitions are affirmed.

The Captioned Appeals and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 12th DAY OF SEPTEMBER, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

REPORTABLE / NON-REPORTABLE

pr/mkj/kks