



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**

4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

I.A. No.5 of 2017 in O.P. No.28 of 2016

and

I.A. No.6 of 2017 in O.P.No.29 of 2016

Dated 21<sup>st</sup> July, 2018

In the matter of

**Determination of Additional Surcharge under Section 42 (4) of the  
Electricity Act, 2003 for FY2017-18.**

Present

**Sri Justice G. Bhavani Prasad, Chairman  
Dr. P. Raghu, Member**

Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL)

Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL)

.....Petitioners

Vs.

- Nil -

...Respondent

The two Interlocutory Applications have come up for hearing finally on 30.06.2018 in the presence of Sri P. Shiva Rao, learned standing counsel for the petitioners, Sri Challa Gunaranjan, learned counsel for (i) The India Cements Limited (ii) Ravali Spinners Private Limited (iii) M/s Parasakthi Cement Industries Limited (iv) M/s KCP Cement and Sugar Industries Limited (v) M/s Greenco (vi) Reddy Laboratories and (vii) Mylan Laboratories, Sri R. Sivakumar representing AP Spinning mills Association, Sri K. Gopalchoudary, learned counsel for (i) ITC Limited and (ii) Small Hydro Power Developers Association, Sri Alladi Ravinder, learned counsel for M/s Sri Rayalaseema Alkalies and Allied Chemicals Limited, Sri N. Aditya, Manager, Indian Energy Exchange (IEX) and Sri Ashwin Ramanathan, learned counsel for Indian Energy Exchange (IEX). After carefully considering the material available on record and after hearing the arguments of all the parties, Commission passed the following:

## **COMMON ORDER**

- 2 Both licensees APEPDCL and APSPDCL have filed Cross Subsidy Surcharge (CSS) and Additional Surcharge proposals along with the Aggregate Revenue Requirement (ARR) and Filing for proposed Tariffs (FPT) for FY2017-18 in O.P.No. 28 and O.P.No.29 of 2016 respectively and the Commission had issued Orders on Retail Supply Tariff and CSS for FY2017-18 on 31.03.2017. However, the Commission, in the matter of Additional Surcharge has mentioned at para number 301 in the Retail Supply Tariff Order for FY2017-18 that,

*“The Licensees have not been able to demonstrate the above conclusively, as the parameters for grant of additional surcharge prescribed by section 42(4) read with clause 8.5.4 of the National Tariff Policy, 2016 are not satisfactorily established to exist to sustain such a claim. Therefore, the Commission is not rendering any decision on the eligibility or otherwise of the licensees to collect such additional surcharge from a consumer or any class of consumers for FY2017-18 in the present consideration. However, the licensees are at liberty to move an appropriate application for the purpose in accordance with law sufficiently supported by the relevant data and material which may be considered on merits.”*

- 3 Accordingly, the Licensees APEPDCL and APSPDCL have filed Interlocutory Applications (IA) numbers 5 & 6 of 2017 in O.P.Nos. 28 & 29 of 2016 respectively in the matter of determination of Additional Surcharge for FY2017-18.

### **Summary of Filings by Licensees**

- 4 The licensees have proposed revised methodology for determination of Additional Surcharge that could be recovered from Open Access Customers for the year FY2017-18.

**a) Projection of Open Access Sales for FY 2017-18:**

Energy Charges have increased by around 3.5% to 4% for HT-I (Industries) and HT-II (Others), the licensees expect the similar scenario of Open Access Consumption for FY2017-18 considering the power prices in the Exchange.

The actual Open Access Sales in 2016-17 on a monthly basis is indicated below.

<b>Month</b>	<b>APSPDCL (MU)</b>	<b>APEPDCL (MU)</b>	<b>Total State (MU)</b>
Feb-16	49.04	81.18	130.22
Mar-16	58.22	51.72	109.94
Apr-16	52.56	33.80	86.36
May-16	62.43	46.24	108.66
Jun-16	95.41	75.82	171.23
Jul-16	124.52	86.26	210.78
Aug-16	132.29	78.07	210.37
Sep-16	107.93	83.68	191.61
Oct-16	104.41	79.16	183.57
Nov-16	120.70	72.03	192.73
Dec-16	150.43	81.07	231.50
Jan-17	158.38	83.84	242.22
Total	1216.32	852.88	2069.19

**b) Stranded Assets and corresponding fixed Costs with the projected Open Access Sales**

Since, Andhra Pradesh is in a state of energy surplus, any open access consumption would result in the generation assets being stranded.

In the Retail Tariff Order for FY2017-18, the Commission has approved fixed cost of the Power Purchase as Rs.6,412.88 Cr. for Power Purchase Requirement of 56,583.52 MU.

With the Open Access consumption for FY2017-18 estimated as same as that of actuals of 2016-17, the following generation gets stranded.

Month	Open Access consumption (MU)	Stranded Generation (MU)						
		IEX	DBFOO	SDSTPS	Hinduja	RTPP	KTPS	NTPC Simhadri
Apr-17	88.98		58.80	30.18				
May-17	111.96			111.96				
Jun-17	176.41						65.19	111.22
Jul-17	217.17					163.73	50.09	
Aug-17	216.74			82.00	134.74			
Sep-17	197.42		103.58	93.84				
Oct-17	189.13	101.88	87.25					
Nov-17	198.57			198.57				
Dec-17	238.51			238.51				
Jan-18	249.56			249.56				
Feb-18	134.17	93.79	40.38					
Mar-18	113.27		113.27					
Total	2,131.89							
<b>Fixed Costs per Unit (Rs.)</b>		-	<b>2.47</b>	<b>1.87</b>	<b>1.80</b>	<b>1.37</b>	<b>1.07</b>	<b>1.45</b>

The power purchase quantity and fixed costs recoverable by re-running the merit order for the revised sales are calculated.

#### Computation of Additional Surcharge Recoverable for FY 2017-18

S. No.	Description	Unit	Value
A	Approved Power Purchase	MU	56,583.52
B	Approved Fixed Costs	Rs. Cr.	6,412.88
C	Actual Open Access Consumption of FY2016-17	MU	2,069.19
D* = A - C	Net Power Purchase of licensees considering Open Access Consumption	MU	54,451.63
E	Fixed Costs recoverable from licensee sales	Rs. Cr.	6,050.15
F = B - E	Fixed Costs of Stranded Assets	Rs. Cr.	362.73
G = F/C	Per Unit Fixed Cost of Stranded Assets	Rs./Unit	1.75
K = G	Additional Surcharge chargeable to Open Access Consumer	Rs./Unit	1.75

\* Open Access consumption is grossed up with Transmission Losses approved (3.03%) for computing net power purchase by licensees.

Hence, the licensees would incur a net loss of Rs.1.75/Unit by allowing Open Access due to under-recovery of fixed costs of stranded generation units. The impact of estimated Open Access consumption on the Additional Surcharge has also been estimated. It can be observed that the variation in Additional Surcharge per unit is minimal as given in the table below for the variations of Open Access consumption from 80% to 120% over estimated Open Access consumption.

<b>Details</b>	<b>Power Purchase (MU)</b>	<b>Open Access Sales (MU)</b>	<b>Fixed Cost (Rs. Cr.)</b>	<b>Fixed Cost of Stranded Generation (Rs. Cr.)</b>	<b>Per Unit Fixed Cost of Stranded Generation (Rs./Unit)</b>
Approved as per Tariff Order for FY2017-18	56,583.52	-	6,412.88		
With Open Access of FY2016-17	54,451.63	2,069.19	6,050.15	362.73	1.75
With 80% of Open Access of FY2016-17	54,878.01	1,655.35	6,129.82	283.06	1.71
With 120% of Open Access of FY2016-17	54,025.25	2,483.03	5,971.18	441.70	1.78

### **Public Notice**

5 Public Notice along with the interlocutory applications of the Licensees with regard to Additional Surcharge determination for FY2017-18 is placed on the website of the Commission on 25-05-2017, inviting Views / Objections / Suggestions of interested persons / stakeholders. In response to the public notice, a number of Objections were received from various stakeholders. Series of public hearings were also conducted in the Court Hall of Commission's Office, Hyderabad on the Licensees' filings.

### **Stakeholders Views/Objections/Suggestions**

6 Sri Vrindavan Yadav, General manager, Repal Renewables Private

Limited and Arkha Solar Power Pvt. Limited, Hyderabad has requested the Commission to exempt the Additional Surcharge for power supplied under Open Access from Solar Power plants for a duration of 10 years which were established under AP Solar Policy, as otherwise these projects will become unviable.

7 Sri S. Surya Prakasa Rao, Former Director (Commercial), APCPDCL and former Secretary, erstwhile APERC has stated the following:

a) The petitioners computed the stranded Fixed Costs as Rs.362 Crores on account of estimated 2069 MU of Open Access energy and arrived at the Additional Surcharge @ Rs.1.75/unit

**Objection:** There is no scope for any stranded costs in the “full cost tariff regime followed by the Commission. Entire ARR is realised through tariff from all consumers and through subsidy from GOAP as determined by this Commission.

b) Sec. 42(4) of the Electricity Act creates liability to pay Additional Surcharge to the licensee to meet the fixed cost arising out of his obligation to Supply. Para 8.5.4 of new Tariff Policy states that such obligation should be conclusively established in terms of existing PPAs.

**Objection:** If the Licensees have entered into PPAs committing for purchase of power far beyond the requirements to meet their obligation to supply, Open Access consumers cannot be fastened with the liability arising out of such PPAs.

c) Para 8.5.4 of Tariff Policy appears to be inconsistent with sub-section (4) of Sec.42 of the Electricity Act while the said sub-section (4) itself appears to be anomalous and needs a judicial interpretation.

d) Sec. 42(4) stipulates that “Additional Surcharge” shall be as may be specified by State Commission, to meet fixed cost arising out of

Obligation to Supply. Sec.181 (2) (q) provides that State Commission may make Regulations for payment of Additional Charges u/s 42(4).

**Suggestion:** Neither the erstwhile APERC, nor this Commission notified any Regulations so far in this regard. Framing of Regulations is necessary in the interest of regulatory certainty, more so as there is considerable ambiguity in the provisions of the Act. Hence, the levy of Additional Surcharge may be deferred till the regulations are made specifying the basis and procedure for computing it.

- 8 Dr. K. Selvaraju, Southern India Mills Association, Coimbatore and Sri R. Veerappan, General Manager, Chida Spinning Mills Private Limited, Puttur have requested to dismiss the petition of the distribution companies as the same is devoid of merits and imposing additional surcharge besides the cross subsidy surcharge requires further full-fledged justification of incurring cost by the distribution companies.
- 9 Sri P. Narendranath Chowdary, Managing Director, The Andhra Sugars Limited, Kovvur has requested to consider the effect and consequences of the prevailing Cross Subsidy Surcharge and proposed Additional Surcharge on various sources of supply other than the Distribution Licensee and also the effect and consequences upon the legislative policy and mandate for promoting Open Access and competition. There is clear violation of the principles of Natural Justice. It is therefore necessary in the interest of justice that the fillings be reviewed and suitable orders are to be issued stating that the Additional Surcharge as NIL, which will be fit, proper or necessary in the facts and circumstances.
- 10 Sri Amanullah, Managing Director, Vamsha Bharana Lakshman Solar Powers Private Limited, Hyderabad has requested to reject the proposal of this additional surcharge for the third party Sale/ Captive use for

solar power produced and consumed within the State of AP in line with Regulations (1 of 2016).

- 11** Sri Manish K. Singh, Indian Wind Energy Association, New Delhi has requested to reject the proposal of AP DISCOMs for approval of Additional Surcharge, as DISCOMs have failed to conclusively demonstrate that Open access has resulted in fixed cost obligation due to stranded capacity.
- 12** Sri T.S. Appa Rao, IAS (Retd.), Secretary General, The Federation of Telangana and Andhra Pradesh Chambers of Commerce and Industry (FTACCI), Hyderabad, Sri O.L.Kantha Rao, AP Spinning Mills Association, Guntur and Sri Danda Prasad, Chairman, AP Spinning Mills Association, Guntur have requested the Commission to direct the petitioners to furnish additional data /information to analyze the need of such additional surcharge in view of the enabling provisions of the Electricity Act and the Tariff Policy and reject the petitions in absence of such additional information and pass necessary orders as may be deemed appropriate in the facts and circumstances of the case in the interest of justice.
- 13** AP Spinning Mills Association, Guntur has further requested to (i) Declare that the Petition filed by the Petitioner is opposed to and ultra vires the Electricity Act, 2003, (ii) Reject the Petition in absence of requisite data and information to establish that there is stranded capacity due to open access, (iii) Disallow the claim of Additional surcharge due to lack of any justification for the claim proposed by the Petitioner and (iv) Consider the methodology/approach to work out the stranded capacity and costs, if any, attributable to the open access consumption.
- 14** Sri O. P. Taneja, Associate Director, Indian Wind Turbine Manufacturers Association (IWTMA), New Delhi has stated that AP

DISCOMs have proposed Additional Surcharge on future projection rather than the actual energy dispatch which does not demonstrate that Open Access has actually resulted in stranded cost obligation as per the provisions of Section 42(4) of the Act read with clause 8.5.4 of the Tariff policy, 2016. Therefore, the petitions for Additional Surcharge shall be rejected.

- 15 Sri S. S. Syam Sundar, M/s ITC Limited Agri Business Division - I Ltd., Chirala, M/s. Small Hydro Power Developers Association, Hyderabad, M/s Parasakti Cement industries Limited, Hyderabad and Sri B.S.S.V.Narayana, Manager (Finance & Accounts), Synergies Casting Limited, Visakhapatnam have stated that (i) the proposals are not clear as to the scope of application of the additional surcharge. It is not clear as what kind of transactions are considered and comprised in the total of 2069 MU termed as "actual open access sales", (ii) the licensees may be called upon to provide specific and detailed data with respect to the composition of such 'actual open access sales' as considered in the proposal, (iii) the question of additional surcharge is to be considered with respect to existing PPAs. The licensees have considered cases where there is no PPA and/or where there is no determination of fixed cost and/or where there has not even availability or any energy (e.g. DBFOO, SIDSTPS, Hinduja). The fixed costs considered in these cases are without any basis and also incorrect and fictitious; and moreover, the dispatch from these plants are taken in the tariff order on the basis of the costs being entirely variable. The entire basis of the exercise is wrong and unjustified such that it cannot at all be said that there is demonstrably any stranded fixed cost, (iv) the fixed cost per unit of approved power purchase even according to the data stated by the licensees is Rs.1.13 (Rs.6412.88 Cr / 56583.52 MU). There is no logic or rationale in considering the stranding of fixed cost on the basis of so-called "re-running the merit order" when the merit order is on the basis

of variable cost and the fixed cost is wholly irrelevant. The calculation of Rs.1.75 proposed is wholly misconceived and misleading, (v) the consumers availing open access are paying transmission and wheeling charges on the open access quantum which is already embedded in the demand charges. The licensees' proposals tantamount to double-counting and double-charging. Keeping all the reasons in view, the Additional Surcharge may be decided as nil and in any case Open Access from renewable energy sources is exempted from additional surcharge.

- 16** Sri K. Karunakar Rao, Executive Director- Fin. & Comml., Sree Rayalaseema Alkalies and Allied Chemicals Ltd, Hyderabad and The Kurnool District Chamber Commerce and Industry, Kurnool have stated that (i) by imposing the Cross subsidies heavily, the basic concept of promoting Open Access is made difficult to the Consumer. Besides this, proposal for further imposition of Additional Surcharge shall vanish the Open Access system and make consumers unviable and left with no option to purchase the power from DISCOMs thereby defeating the concept of Open Access and competition from the market which is against the Industrial Policy, (ii) the DISCOMs' have adopted the methodology for imposition of Additional Surcharge by taking into consideration the last year Open Access sales, which are unknown to law, to arrive fixed cost of stranded assets, (iii) the MW Capacity, Plant Load Factor, shutting of plants for Maintenance of generating station etc. have not been taken into account while calculating the proposed Additional Surcharge. In a simple way, the DISCOMs considered the stranded power as the Open Access Power drawn in 2016-2017 and have arrived the Additional Surcharge, which is illegal, highly arbitrary, (iv) the Additional Surcharge is on the wheeling charges but the Additional Surcharge proposed basing on the Cross Subsidy Sales for FY2016-17, which is contrary to the Sub-section 4 of the Section 42 of

the Electricity Act. (v) the Hon'ble APTEL in Appeal No. 28 of 2015 in the case of Kalyani Steels has decided that the consumer is liable to pay Additional Surcharge, only if he is liable to pay Charges of Wheeling and not otherwise, (vi) the demand charges are covered by the energy charges and any short fall in recovery of demand charges as the ARR is completely met after tariff hike and Government of Andhra Pradesh subsidy. Hence there is no question of under recovery of cost and proposal to impose additional surcharge is without any basis or foundations. The proposed recovery of stranded fixed cost from open access consumers during the FY2017-18 is nothing but misconceived calculations and imaginary figures shall not be taken into consideration unless and until the DISCOMS shows that they are incurred and likely to be incurred stranded fixed cost on account of power purchase agreement. The applications filed by the Licensees may be dismissed.

- 17 Sri Maneesh Bhartia, Director and Head of Finance, Statkraft Markets Pvt., Ltd, New Delhi has stated that (i) Additional surcharge levy would discourage competition and considering it will make Open Access non-viable forcing the industrial consumers to source power from the only the Distribution Licensees, (ii) Considering the IEX rate of Rs.2.79/kWh, and the open access overheads such as wheeling/transmission charges, cross subsidy surcharges, demand charges, wheeling/transmission losses and RPO obligations, any imposition of additional surcharge of even Rs.0.85 would completely make open access non-viable in the State of Andhra Pradesh, (iii) The data regarding merit order dispatch schedule or forecasted/actual generation of must-run plants/ renewable energy generation may also be a cause for curtailment of long term PPAs or stranded assets.
- 18 Sri R. Subha Chandra, Manager Accounts, Teamec Chlorates Limited, Chennai has stated that (i) the grounds urged for the approval for levy of additional surcharge under Sub- Section 4 of Section 42 are

erroneous for the reason that the provision under the section provides for additional surcharge on wheeling as specified by the Commission, (ii) the Petitioners have resorted to their own methodology which has no approval of the Commission besides the basis of arriving at additional surcharge of Rs.1.75/-unit is erroneous for the reason that the additional surcharge would be leviable on the wheeling charges alone in terms of Section 42(4) of the Act. In any case, the additional surcharge cannot be higher than the wheeling charges itself. Details of Transmission/Distribution/wheeling charges determined for voltage level of supply to objector is Rs.0.21. (vide Table 48 On page 307 of the TF order 2017-18). Therefore, the additional surcharge proposals of Discoms may be rejected.

- 19** Sri Rahul Shrivastava, Indian Wind Power Association, New Delhi has stated that (i) the petitioners are already charging the demand charge from HT Open Access consumers and also recovering the Charges for arranging backup supply from the grid to Open Access Consumers at temporary tariff. Levying of additional surcharge to open access consumers is not justified, (ii) the additional surcharge at the rate Rs. 1.75 /unit proposed will be a sudden financial shock to the Renewable Energy Sources and will make Renewable Energy Projects financially unviable which will hamper the overall growth of the Renewable Energy in the State. Therefore, the additional surcharge applications may be dismissed in the interest of renewable energy growth in the State.
- 20** Sri P. Raghuram, DGM- Electrical & Instrumentaion, M/s Zuari Cements Limited, Yerragunta, Kadapa Dist has stated that (i) Discoms have failed to demonstrate that the existing PPAs have been and continues to be stranded, except a statement that the open access sales are same as that of actual of 2016-17. All the projections made are based on the assumptions that have no effective backing. Therefore, the ground for levying the additional surcharge is not demonstrated in

terms of NTP Para 8.5.4. (ii) In the event of the applications of Discoms are allowed and any retrospective effect of the same would entail huge amount of expenditure as arrangements were made to procure 11 MW power through open access considering the considerable cost benefit. The order may be made with prospective effect; in the event of the additional surcharge levy applications of the Discoms are upheld.

- 21** Sri Parag Sharma, Chief Operating Officer, ReNew Power Ventures Private Limited, Gurgaon has stated that (i) The methodology adopted for the calculation of the Additional surcharge is not in line with the provisions made by Electricity Act, 2003, National Tariff Policy (NTP), National Electricity Policy (NEP) and prevailing open access regulations in the State of Andhra Pradesh (ii) There is no question of levy of additional surcharge as there is no capacity actually stranded on account of open access. Determination of Additional surcharge is only possible when it is demonstrated that Discoms are actually incurring fixed cost obligation due to stranded capacity. The applications may be considered after the Licensees fulfill the above points.
- 22** Sri P. Kamalanathan, Manager-Electrical, Dalmia Bharat Cement, YSR (Kadapa) District, Sri PVYN Somayajulu, General manager (Co-Ord), The India Cements Limited, Hyderabad and Sri V. Manikanth, General Manager- Projects, M/s Penna Cement Industries Limited, Hyderabad have requested not to impose additional surcharge on captive power open access consumers, similar to other States like Rajasthan, Punjab, Uttarakhand, Haryana, Jammu & Kashmir, Chhattisgarh, Gujarat, Tamil Nadu, Sikkim, Nagaland and Arunachal Pradesh, which granted exemption.
- 23** Sri Sruthi Bhatia, Vice President, Regulatory Affairs & Communication, New Delhi has stated that (i) Additional Surcharge cannot be based on Projections. The petition is based on projected loss by the Discom in fiscal 2017-18 on account of Open Access while no loss has actually

been incurred, (ii) The petitioner has not been able to demonstrate that there is continuous stranded capacity on account of Open Access. (iii) There is a shortage situation in almost all the months resulting in Commission having to consider despatch of high cost generation or resort to short term market/Exchange. In case of shortages there cannot be the case of stranded capacity hence there cannot be a case of Additional Surcharge in Andhra Pradesh for FY17-18. (iv) With average IEX price at Rs.2.78 per unit in FY17-18, Exchange procurement would have thus found place much above DBFOO, SDSTPP, Hinduja and RTPP and this would have reduced the cost of the power purchase cost of the Discom by Rs.17 Cr. on account of reduction of power purchase from DBFOO in the month of October and February, (v) variable cost of generation from DBFOO, SDSTPC and Hinduja is more than the APPC therefore backing down of these sources will lead substantial savings to Discoms, (vi) the methodology adopted by the Discoms is not rational and may lead to spurious imposition of Additional Surcharge on the open access consumers and will impede competition and power market in the State. Therefore, Commission may analyze the generation back down data of each of the 15 minute time block period along with the reason of such back-down as the back down could be on account of reasons other than Open Access, to assess the case for Additional Surcharge.

- 24** Sri Abhinandan Das and Sri Joy Acharjee Open Access Users Association (OAUA), New Delhi have stated that (i) the computation of Additional Surcharge should also include the income of the DISCOM from sale of surplus power which will decrease the DISCOM obligation to paying of fixed cost on stranded capacity as the surplus, when sold, will bring increase the revenue of the DISCOM, (ii) the principle set out by the Policy is clear that the obligation of the licensee should be stranded on a continuous basis on account of existing PPAs. The

question herein arises as to what should be the continuous period for which backed down/surrendered capacity can be termed as stranded capacity. Since the Petitioner is claiming additional surcharge primarily on account of procurement of power by open access consumers for one (1) day at a time through the day ahead Market on the Power Exchange, the Commission is requested to consider the continuous period for which a capacity can be termed stranded as one (1) day from 00:00 hrs to 24:00 hrs. The minimum capacity which was backed down/surrendered on RTC basis on a particular day should be considered as stranded capacity for that day. The additional surcharge can only be determined by calculating corresponding fixed cost of such capacity, (iii) there is stranded capacity in the State but such stranded capacity can also be due to power cut, maintenance or may be due to some force majeure conditions too. Hence it may be stated that stranded capacity in a State may also be due to reasons other than Open Access Consumers and that in such cases those situations must be excluded while determining Additional Surcharge. The distribution licensees need to disclose the short-term power purchases made on bilateral basis and from the power exchanges and also the over-drawal of electricity under the UI mechanism during each of the time blocks during the financial year. Power purchase commitments cannot be taken as stranded if utility is purchasing short term power/overdrawing under UI during the period and shutting/backing down its generating plants. No such data is supplied in the Petition for consideration of the stake holders and open access is being presented as culprit for the losses of the DISCOMs, (iv) the very concept and legal basis of additional surcharge is inconsistent with the procurement of electricity on short term basis. Additional surcharge can be determined and made applicable only when the distribution licensees have surplus capacity tied up on long term basis, which is left stranded with unavoidable obligation to pay fixed charges due to open access

consumers, (v) the filings are unbelievable. The distribution licensees are clearly seeking to suppress and misrepresent data to seek and justify an illegal demand. Commission may dismiss the applications with exemplary costs as there are no merits to consider.

- 25 Sri M. N. Samantaray, General Manager, Rashtriya Ispat Nigam Limited, Visakhapatnam has stated that with this kind of surcharges, Open Access can never survive, which is against the spirit of the ACT. The Commission may not consider Additional surcharge of Rs. 1.75/ unit and levy of any additional surcharge may be reckoned from the date of order, if considered.
- 26 M/s Ravali Spinners Pvt. Ltd., Tanuku has requested not to accord sanction to the proposed additional surcharge as the Spinning Industry is suffering from losses.
- 27 Sri B. Diwakar Reddy, Managing Director, Nandyal has requested the Commission to keep Renewable Energy out of the purview of levy of Additional Surcharge, to promote Renewable Energy in the State. And also requested to check the percentage share of Open Access Consumers purchasing Power from Renewable Energy Sources while taking decision on this petition.
- 28 Andhra Chambers of Commerce, Chennai have stated that (i) The MW Capacity, Plant Load Factor, shutting of plants for maintenance of generating station etc. have not been taken into account while calculating the Proposal of Imposing Additional Surcharge. In a simple way the DISCOMs have considered the stranded power as the Open Access Power drawn in 2016-2017 and arrived the Additional Surcharge, (ii) the Open Access Consumer is already compensating the DISCOMs by paying the Cross subsidy charge of Rs. 1.35/- per unit apart from wheeling and Transmission Charge. In addition to this fixed demand charges are also paid for non-drawl of power also. Proposal for

imposition of Additional Surcharge will make the Open Access Power unviable, costlier for the consumers even though the base price is around Rs.2.1 per unit. The proposals of Discoms may not be considered.

- 29** Sri G.R.K.Reddy, Working President, Federation of Andhra Pradesh Small and Medium Industries Association, Kurnool stated that (i) The revised methodology adopted by the Discoms is not in consonance of the spirit of Electricity Act, 2003, National Tariff Policy and the Tariff Order passed by the Commission. The applicant must have shown the incurring stranded cost of power purchase not on method of calculating on the last year Open Access sales, (ii) the intention of the Electricity Act, 2003 for development of the Electricity Industry, promoting the Competition therein duly protecting the interest of the consumers by rationalization of Electricity Tariff and introduced reforms in Electricity Industry by allowing the Consumer to migrate Open Access for purchase of power from Open Market thereby establishment of Exchanges, established the Central transmission Utilities (CTU) and State Transmission Utilities (STU) to access its transmission system for use by any consumer on payment of cross subsidy surcharge and transmission charge to create the competition in Electricity. To defeat the utilization of Open Access System the DISCOMs' have proposed Rs.1.75/- Per Unit as Additional Surcharge which is more than Cross Subsidy Surcharge without any rationale or formula for such proposal. There is no fixed formula as envisaged under the provisions of the Act and Tariff Policy. The Additional Surcharge is on the Wheeling charges but the Additional Surcharge proposed basing on the Cross Subsidy Sales for FY2016-17 which is contrary to the Sub Section 4 of the Section 42 of the Electricity Act. Commission may determine Additional Surcharge as nil for FY2017-18, if permitted the Additional Surcharge may be collected prospectively from the date of

issue of order.

- 30 Sri Venkat Rao, Vice President, Finance, M/s Sri Rayalaseema Alkalies and Allied Chemicals Ltd., Kurnool has requested the Commission to initiate process for making regulations for payment of additional surcharge on the wheeling as per sub section 4 of section 42 of the Act duly returning the applications filed by the Discoms, in the interest of justice and equity.
- 31 Sri R. Kishore, Deputy Manager- Electrical, Amar Raja Batteries Limited, Karakambadi and Sri A. Vamsi Krishna, Asst. Manager (Admin.-Facility), Greentech Industries (India) Pvt. Ltd., SPSR Nellore Dist., have stated that any imposition of Additional Surcharge for FY2017-18 will badly affect their industries survival and therefore requested not to consider Additional Surcharge proposals.

### **Summary of Licensees' Response**

- 32 The licensees' response is more or less the same for all the objections received from the various stakeholders as stated supra. The summary of their response is as under:
- (i) The licensees have submitted the Additional Surcharge as part of the tariff filings for which the Commission has directed the licensees could file an application for additional surcharge conclusively demonstrating that assets get stranded.
  - (ii) AP solar policy has not exempted additional surcharge on open access consumers. Additional surcharge on open access is proposed to recover the fixed costs of stranded assets in case of shift to open access purchases.
  - (iii) The licensees would require additional subsidy for the exemption of additional surcharge for purchase of power from Solar Plants. Otherwise it would lead to burden on other retail consumers.

- (iv) The Commission has approved the HT sales as filed by the licensees, wherein the licensees have projected that the licensee would be able to retain the open access consumers.
- (v) As the State of Andhra Pradesh is in state of surplus in FY17-18, open access consumption would result in generation assets getting stranded resulting in under recovery of fixed costs of generating assets which would increase the burden on other retail consumers.
- (vi) The licensees enter into PPAs based on the load forecasts and would procure power only after due approval of the Commission.
- (vii) The licensees also have default supply obligation wherein the licensees have to supply power to all consumers (even for consumers who come back from open access)
- (viii) The licensees have filed the Additional Surcharge proposals as per the National Tariff Policy and after analyzing the Additional Surcharge orders of other States also. The tariffs and Power purchase costs differ from State to State as such the Additional surcharge calculations cannot be uniform among all the States.
- (ix) The licensees have filed the Additional Surcharge proposals on the part of stranded assets resulting from open access and not the complete fixed cost of all stranded assets. Necessary data has been duly submitted in the filings. Further, detailed information can be found in retail supply tariff order of FY17-18 approved by the Commission.
- (x) The total fixed cost of the stranded assets is Rs. 362.73 Cr. considering the actual open access consumption in FY2016-17 and in per unit terms, it gets translated to Rs. 1.75 per unit (Rs. 362.73 Cr / 2069.19 MU). The licensees have computed the stranded assets resulting due to backing down of specific stations due to open access as submitted in the filings.

- (xi) As the demand from the captive consumers has not been considered in the projections used in retail supply tariff filings, the Commission may examine and exempt captive consumers from the additional surcharge on open access.
  - (xii) The licensees have used the Open Access Levels of FY2016-17 to compute the additional surcharge of FY2017-18. The licensees have also presented the sensitivity analysis in case of variation in open access sales. Similar approach is followed for Cross subsidy Surcharge, wherein the approved average realization for FY2017-18 is used to compute the CSS for FY2017-18.
  - (xiii) The licensees have considered the fixed costs as approved in the Tariff Order for FY2017-18 for each station as submitted in the filings.
  - (xiv) The licensees aim to sell the surplus power as per the guidelines of Commission and the profit margin would be passed on to all the consumers in the form of True-Up as per APERC Regulation.
- 33** During the course of public hearings on 21.04.2018 the Commission directed the AP DISCOMs to produce the data of actuals for FY2017-18 for reference of the Commission with service of copies of such data on all the objectors. Accordingly, on 19.05.2018, AP DISCOMs have filed the data of actual of backing down and the provisional expenditure of power purchase. Further, on 02.06.2018, AP DISCOMs have filed a working sheet of fresh calculations suggesting a tentative additional surcharge arrived at based on the data of actual of stranded power for FY2017-18.

### **Commission Analysis**

Statutory Provisions:

- 34** Section 42 (4) of the Electricity Act, 2003 specifies that the State Commission may specify the additional surcharge to be levied on the

open access consumers to meet the fixed cost of distribution licensee arising out of its obligation to supply.

35 Section 86(4) of the Electricity Act, 2003 states that the State Commission, in discharge of its functions, shall be guided by the National Electricity Policy, National Electricity Plan and National Tariff Policy.

36 Clause 17.1 (iv) of the Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulation, 2005 (Regulation No. 2 of 2005) reproduced below, specifies that the open access consumer shall be liable to pay additional surcharge as specified by the Commission from time to time:

*“The Open Access user shall also be liable to pay additional surcharge on charges of wheeling as may be specified by the Commission from time to time under Section 42(4) of the Act, in case open access is sought for receiving supply from a person other than the distribution licensee of such consumer’s area of supply, to meet the fixed cost of the distribution licensee arising out of his obligation to supply.”*

#### **NATIONAL TARIFF POLICY, 2016 (NTP)**

37 Clause 8.5.4 of the National Tariff Policy, 2016 specifies as under:

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

38 The Commission has prudently checked the data filed by the petitioners in the Interlocutory Applications and additional information filed, in the process of determination of Additional Surcharge with reference to the

statutory provisions and views/objections/suggestions of the stake holders.

- 39** As per clause 2 (i) of the Andhra Pradesh Electricity Regulatory Commission (Interim Balancing and Settlement Code) Regulation, 2006 (Regulation 2 of 2006, “Open Access Consumer” or “ OA Consumer” means a consumer not having a supply agreement with the distribution licensee in whose area of supply the consumer is located, but availing or intending to avail supply of energy from a person other than that distribution licensee under the Open Access Regulation and includes a consumer availing wheeling facility for carrying electricity from his captive generating plant to the destination of his own use without having a supply agreement with the distribution licensee of the area in which the consumer’s premises is located”.

“Scheduled Consumer” means a consumer who has a supply agreement with the distribution licensee in whose area of supply the consumer is located and also has a supply agreement with a person other than the distribution licensee under the Open Access Regulation and includes a consumer of a distribution licensee who also avails of wheeling facility for carrying electricity from his captive generating plant to the destination of his own use”.

The following inference can be drawn from the above definitions:

- I. As the Open Access consumers do not have agreements with Discoms, contractual obligation of supply does not arise on this account and therefore, such Open Access consumption shall not be considered for estimating the stranded capacity / generation.
- II. Some Scheduled consumers have intra-state long term wheeling agreements entered prior to the enactment of Electricity Act, 2003, and they pay Demand and Energy Charges at the applicable tariff as per the Tariff Orders issued by the Commission from time to time, for the capacity contracted with the Discoms. As the wheeling

transactions are continuous, the Discoms should have factored such agreements in arriving at their power procurement plan and therefore the quantum of the wheeling energy shall not be considered for estimating the stranded capacity / generation.

- III. Some Scheduled Consumers have intra-state long-term open access agreements (captive or third party) entered after the enactment of Electricity Act, 2003 and they pay Demand and Energy Charges at the applicable tariff as per the Tariff Orders issued by the Commission from time to time, for the capacity contracted with the Discoms. As these transactions also are continuous, the Discoms should have factored such agreements in power procurement plan and therefore the quantum of such captive / third party energy shall not be considered for estimating the stranded capacity / generation.
- IV. Certain consumers for their short term requirement, over and above their contracted capacity they have with the Discoms, may procure power intermittently from other sources such as Exchanges and / or other market mechanisms. These intermittent transactions would not result in any stranded capacities. Hence, the quantum of such open access consumption shall not be considered for estimating the stranded capacity / generation. However, energy procured through Open Access transactions by the consumers by de-rating their Contracted Maximum Demand they have with the Discoms, shall be included for estimating the stranded capacity / generation.

Certain other consumers for their continuous requirement, over and above their contracted capacity they have with the Discoms, may procure power continuously from other sources such as Exchanges and / or other market mechanisms. As these transactions are continuous, the Discoms should have factored such quantum in arriving at their power procurement plan. Hence, the quantum of such continuous open access consumption shall not be considered for estimating the stranded capacity / generation. However, energy

procured through Open Access transactions by such consumers by de-rating their Contracted Maximum Demand they have with the Discoms, shall be included for estimating the stranded capacity / generation.

Certain other consumers having supply agreements with Discoms and paying demand charges to the Discoms for the contracted capacities with them. For their part of requirement over and above the contracted capacity with Discoms, may procure power from the other sources through exchanges or by other market mechanisms continuously. These transactions are continuous and would not result in any stranded capacities. Hence, the quantity of these open access sales shall not be considered in total Open Access. However, transactions of those consumers who de-rate their CMDs with Discoms, and procure power from market shall be included in the total Open Access sales.

- 40** Neither the data in the interlocutory applications filed by the DISCOMs nor the actual information of FY2017-18 furnished to the Commission subsequently, contain the details of the transactions stated above. Further, the DISCOMs themselves have admitted that out of the total Open Access consumption of 2720.7 MU for FY2017-18, only a quantum of 1139 MU is eligible for levy of Additional Surcharge. It is noted that the Open Access consumption arising out of all the cases mentioned supra is considered by the DISCOMs for estimating the stranded generation by re-running the merit order. The same is not in accordance with the statutory provisions and hence the DISCOMs could not demonstrate the actual continuous stranded capacity arising out of the eligible Open Access transactions for which the Additional Surcharge could be determined for FY2017-18.
- 41** In the actuals submitted for FY2017-18, the total backing down details are furnished and it is not mentioned how the stranded capacity is

arrived from the same. The backing down may be necessitated due to many reasons like lack of demand, injection of full capacity of Renewable energy at certain times in a day etc. Backing down on account of eligible open access based on which only the generation that could have been stranded can be established, is not furnished. Moreover, from the details of Plant wise monthly backing down of Generators for FY2017-18 - Sorted by per unit fixed cost submitted by the DISCOMs, it is noted that for the month of April, 2017 the total backing down is stated to be 143.6 MU whereas the total Open Access transactions are 220.21 MU which clearly indicates that Backing down is not caused by Open Access consumption as being claimed by the DISCOMs.

- 42 Even if it has to be considered that there is stranded generation as per the actuals furnished by the DISCOMs subsequently, the stranded costs on account of such stranded generation is shown to be mostly from the generation of Hinduja and Krishnapatnam power plants (2063 MU out of the Open Access consumption of 2720.70 MU) for which there is no fixed cost determined and the DISCOMS themselves have shown the fixed cost for these two plants as 'zero'.
- 43 Another deficiency noticed is estimation of obligation cost due to stranded generation. The Discoms have not filed the estimation of cost with detailed explanation with reference to various conditions of agreements source wise, in particular, the contractual obligation with M/s Hinduja, M/s SDSTPP, DBFOO, IEX etc.

For example, certain capacity of power station 'X' is estimated to be stranded on account of open access sales. Generally the power plants have an agreement condition that it shall achieve minimum 80 percent availability / PLF in a financial year for full recovery of fixed cost from the Discoms, subject to no backing down instructions.

When there is a demand to utilise the generation to the extent of 80 percent, there will be no issue to the DISCOMs and the generator.

However, if the generator is not dispatched to the extent of 80% of its availability due to lack of demand even though it is ready for generation, the Discoms are bound to pay the full fixed costs. In such a situation, the generation of the generator 'X' which is within 80% of availability gets stranded due to Open Access, then there will be fixed cost obligation on DISCOMs. On the other hand, if the generation of generator 'X' which is over and above the 80% of availability gets stranded due to Open Access, then there will be no fixed cost obligation on DISCOMs.

All such scenarios shall be considered for estimating the actual stranded generation costs due to eligible open access consumption and the DISCOMs did not consider such scenarios.

### **Conclusion**

- 44 The licensees could not properly substantiate their claim for determination of additional surcharge for FY2017-18 in any respect except projecting a change in the methodology from their original petition and once again had not been able to demonstrate conclusively the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded on account of eligible open access and thus the parameters required for grant of additional surcharge prescribed by section 42(4) read with clause 8.5.4 of the National Tariff Policy, 2016
- 45 Hence, both the interlocutory applications are dismissed. No costs.

This Order is signed on 21<sup>st</sup> day of July, 2018.

Sd/-  
**Dr. P. RAGHU**  
**MEMBER**

Sd/-  
**JUSTICE G. BHAVANI PRASAD**  
**CHAIRMAN**