

**Before the A.P. Electricity Regulatory Commission at
Hyderabad**

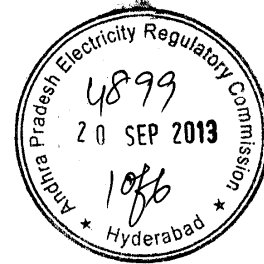
R.P.No.of 2013.
In
O.P.54 of 2013 (submitted)

Engg.		For Perusal
Tariff		Secretary
Law	✓	13/9
Admin		13/9
IT		
CA		
EAS		13/9
R.O.		
Lib.		

In the matter of Review of order dt.13.8.2013 of APERC for determination of cross subsidy surcharge and Addl. Cross subsidy Surcharge of the Financial Year 2013-14

Between

A.P. Central Power Distribution Company Ltd.,
A.P. Eastern Power Distribution Company Ltd.,
A.P. Northern Power Distribution Company Ltd.,
A.P. Southern Power Distribution Company Ltd.,



..... Petitioner

And

Nil

... Respondents.

Petition under section 94 of Electricity Act 2003 read with Clause 49 of A.P.E.R.C (conduct of business) regulations 1999.

1) The petitioners AP.Discoms submit that the Hon'ble Commission, as part of discharge of its obligation under section 42(2) and 42(4) of Electricity Act 2003, to determine cross subsidy surcharge and Addl. Surcharges, suo-moto took up the said issue and invited suggestions/objections from all the concerned by placing the said proposal in its website.

2) The Honble Commission held public hearings on 6.8.2013 in respect of the said matter and passed orders dt.13.8.2013, the summary of conclusions are recorded at Para 37 which reads

" After careful examination of the points submitted in the public Hearings and due consideration to various issues on supply side constraints, plights of OA Users, Discoms inability to give

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24/9/13

assurance with regard to power supply during the remaining period of the financial year and their proposal to review the R&C measures after a period of one month, no threat to recovery of anticipated cross subsidy in Tariff Order for FY 2013-14, as summarized above, the Commission hereby determines Cross-Subsidy Surcharge & Additional Surcharge, under the provisions of the Electricity Act 2013, payable by open Access users, falling in the service areas of respective Distribution Licensees in the State, as "nil" for the Financial 2013-14, However, Discoms are at liberty to approach the Commission afresh on Cross Subsidy Surcharge & Additional Surcharge proposals, during this Financial Year, if they could assure 100% power supply to all subsidizing consumers, for at least four months consecutively.

3) The petitioners submit that said conclusion of the Hon'ble Commission is contrary to law in force and also result of omission of several vital aspects of the matter of cross subsidy surcharge, which is apparent on the face of record, and thus deserves to be reviewed for the following grounds.

4) The very approach of Hon'ble Commission on the issue of determination of Cross subsidy as contemplated by the Act 2003, is apparently hurried manner, which is in violation of principles of natural justice and contrary to object of public hearing.

5) The justification that is projected to arrive at a conclusion that cross subsidy is nil for Financial Year 2013-14 is that the Discoms failed to give assurance of continuous supply of power for four months. In fact they said ground is alien to law for the determination of cross subsidy surcharge. On the other hand, the commission failed to take into consideration of relevant material and data submitted by Discoms for determining the Cross Subsidy Surcharge. Thus, the order under review suffers with consideration of extraneous material, and non-consideration of relevant material.

6) The said order is contrary to mandate of section 42(2) of Electricity Act 2003 where under it is stated that Cross Subsidy is provided to meet the levels of cross subsidies determined in respective tariff order in the event that cross subsidizing consumer opts for open access. The appellate Tribunal in Appeal No.32 of 2009 decided on 28.04.2010 held *that the cross-subsidy surcharge, which is referred to in the proviso to sub-section (2) of Section 42 of the Act, is a compensatory charge. It does not depend upon use of distribution licensee's irrespective of the fact whether its line is used or not. In view of the fact that, but for the open access the consumer would have taken the quantum of power from the distribution licensee and in the result the consumer would have paid Tariff applicable for such supply which would include an element of cross subsidy surcharge on certain other categories of consumers.*

7) No doubt that the Discoms are obliged under law to provide electricity supply to all categories of consumers, but in doing so some of consumers are cross subsidized. If cross subsidizing consumer opts for open access and if as per the order under review, no surcharge is levied, the object of permitting surcharge is defeated which is not sustainable at law. In fact, in another case the APTEL in appeal No.132 of 2011 relying on the Hon'ble Supreme Court in civil appeal No.3466 and 3467 of 2006, held *that the consumers who continued to be connected to particular entity, but have migrated to another company, still they are liable for surcharge.*

8) The said obligation of universal supply is subject to the clause 16 of general terms and conditions of supply issued by Hon'ble Commission dt.6.1.2006 amended time to time. The said Clause reads as that *"The Company shall endeavor to afford continuous supply and to restore interrupted supply as early as possible. The Company shall be entitled to scatter or curtail supply of electricity to any consumer or a class of consumers in accordance with the Directions issued by the statutory authorities including*

Commission from time to time for maintaining efficient supply and securing equitable distribution of electricity.

Therefore the Discoms, de hors to the fact of giving or otherwise of assurance as ordered in the order under review all ways obliged to provide supply to all consumers continuously subject to the orders passed by statutory authorities including state local Dispatch centre etc, as stated above.

9) Be that as it may, the Hon'ble Commission failed to afford reasonable opportunity to respond the objections of the several objectors and observations of Hon'ble Commission made in the public hearing dt.6.8.2013, which resulted in the present impasse of Nil Cross Subsidy Surcharge, on the ground of alleged default of petitioners.

10) There is absolutely no difficulty, and in fact the petitioners hereby submit that they would make all-out efforts to provide continuous supply to the consumers. Since the Hon'ble Commission gave liberty in the order under review, to the petitioners to approach once again with assurance of continuous supply, the discoms are submitting the said assurance and seeking review of order dt.13.8.2013, for determination of appropriate Cross Subsidy Surcharge.

11) The petitioners submit that the findings of Hon'ble Commission at Para 33 of order under review that Discoms would not loose any cross subsidy on account of exemption from payment of Cross Subsidy Surcharge during R&C measures is factually incorrect and logically wrong.

12) Further the view of the Commission at Para 34 of the above Order that if the consumer consumes less than that mentioned in the R&C measures, such surplus power can be supplied to other needy consumers of same class to obtain the cross subsidies, has no basis for the simple reason that all consumers in the same

class are likely to take similar decisions to avail Open Access in the similar circumstances and the same is contrary to electricity act, 2003.

13) Further, at Para 36 of the above Order it is found that even if it is assumed that availability of full power is for short period only, the DISCOMs still have the obligation to supply electricity to subsidized consumers during this period as per Tariff Order. If during the period when full power is available and Cross Subsidy Surcharges are not collected from the subsidizing consumers, then the anticipated Cross subsidy in the Tariff Order 2013-14 cannot be recovered and there will be loss of cross subsidy revenues to DISCOMs which may lead to rise in tariff rates for all the consumers including the subsidized consumers.

14) The order under review works out to detrimental to the interest of petitioner/Discoms whose financial positions is already looks grim due to various other reasons not attributable to their performance.

15) Discoms cannot afford to give any relief to consumers in respect of cross subsidy even during R&C measures as the same would not be compensated and hence has to be passed on consumers in future tariffs.

16) The Hon'ble Commission has wide powers to review the orders passed by it, more so, when the commission gave liberty to Discoms at Para 37 of its orders it is necessary to review the said order dt.13.8.2013 and determine the Cross Subsidy Surcharge on the basis of embedded method which is being followed all through in the past.

17) The requisite court fee is paid. Other grounds will be urged during the course of arguments.

18) It is prayed that the Hon'ble commission may be pleased

- a) To take this review petition on record.
- b) To determine the Cross Subsidy Surcharge for F.Y.2013-14.
- c) To pass any other order than this deems fit and proper in the circumstances of the case.

Petitioner No 1

Chief General Manager, Commercial
6-1-50, APCPDCL, Corporate Office,
Mint Compound, Hyderabad-500 063.

Petitioner No 2

Chief General Manager, Commercial
6-1-50, APCPDCL, Corporate Office,
Mint Compound, Hyderabad-500 063.

Petitioner No 3

Chief General Manager, Commercial
6-1-50, APCPDCL, Corporate Office,
Mint Compound, Hyderabad-500 063.

Petitioner No 4

Chief General Manager, Commercial
6-1-50, APCPDCL, Corporate Office,
Mint Compound, Hyderabad-500 063.

BEFORE THE HONOURABLE ANDHRA PRADESH ELECTRICITY
REGULATORY COMMISSION

AT ITS OFFICE AT 5th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004

FILING NO. _____/2013

CASE NO. _____/2013

In the matter of:

Review petition filed seeking review of the order dt. 13.8.2013 passed in O.P.54 of 2013(suo-moto) Seeking for determination of cross subsidy surcharge and Addl.Cross subsidy Surcharge of the Financial Year 2013-14


In the matter of:

**CENTRAL POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH
LIMITED**

... Applicant

**AFFIDAVIT OF APPLICANT VERIFYING THE APPLICATION
ACCOMPANYING FILING OF PETITION.**

1. I, K. Sai Baba S/o Late Sri K. Swamy aged 48 years, Occupation: Chief General Manager (Commercial & RAC), APCPDCL, Hyderabad, R/o Hyderabad do solemnly affirm and say as follows:
2. I am Chief General Manager (Commercial)/APCPDCL, I am competent and duly authorized by APCPDCL to affirm, swear, execute and file this petition.
3. I submit that I have read and understood the contents of the appended Application of APCPDCL. The facts stated in the application are true to the best of my knowledge, which are derived from the official records made available.


DEPONENT
Chief General Manager, Commercial
6-1-50, APCPDCL, Corporate Office,
Jint Compound, Hyderabad-500 063.

VERIFICATION:

The above named Deponent solemnly affirm at Hyderabad on this day _____ of September, 2013 that the contents of the above Affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.



DEPONENT

Chief General Manager, Commercial
6-1-50, APCPDCL, Corporate Office,
Mint Compound, Hyderabad-500 063.

Solemnly affirmed and signed before me



COMPANY SECRETARY
APCPDCL, Corporate Office
Mint Compound, Hyderabad-500 063.